Employment Court of New Zealand

Snowdon v Radio New Zealand Limited [2011] NZEmpC 162 (5 December 2011)

Last Updated: 11 December 2011

IN THE EMPLOYMENT COURT WELLINGTON

[2011] NZEmpC 162

WRC 17/04

WRC 19/05

WRC 8/09

IN THE MATTER OF an application for adjournment

BETWEEN LYNNE FRANCES SNOWDON Plaintiff

AND RADIO NEW ZEALAND LIMITED Defendant

Hearing: 25 November 2011 (Heard at Wellington)

Counsel: Richard Fletcher, solicitor for plaintiff

Michael Quigg and Tim Sissons, counsel for defendant

Judgment: 25 November 2011

Reasons: 5 December 2011

REASONS FOR ORAL INTERLOCUTORY JUDGMENT NO 3

OF JUDGE B S TRAVIS

[1] On Friday 25 November 2011, after reading extensive written submissions from the defendant and hearing submissions from the solicitor for the plaintiff and counsel for the defendant, I made the following orders:

Medical Records

1. The plaintiff has until 1:00 pm on Friday 2 December 2012 to inform the Court as to whether she agrees to all her medical records since 1

January 2007 (together with material provided to the Court relevant to

the plaintiff"s health since 1 January 2007 by either party) being

provided to a Registered Psychiatrist to facilitate a full psychiatric

assessment of the Plaintiff. Such assessment would result in a written report to the Court that would address:

i. The Plaintiff‟s current state of health;

ii. The Plaintiff‟s fitness to give instructions now and in the foreseeable future;
iii. The Plaintiff's fitness to give evidence in Court now and in the future;

iv. The Plaintiff‟s ability since 1/1/07 to give instructions;

v. The Plaintiff‟s ability since 1/1/07 to give evidence in Court.

2. The author of the report once finalised may be subject to questioning on the report in Court.

3. If the plaintiff does not agree by 1:00 pm on Friday 2 December 2011 to provide such information, the Court directs that the plaintiff arrange for copies of all her medical records from 1 January 2007 to be provided to the Court and counsel for the defendant for access by those parties and the defendant's nominated medical advisers. The defendant may subsequently apply to the Court for further orders as to the provision of those medical records to the defendant's representatives, if this is considered necessary.

Report to Serious Fraud Office

4. The plaintiff and/or Mr John Hickling and/or Mr Wayne Kedzlie shall by 4:00 pm on Friday 9 December 2011 provide to the Court and to the defendant a copy of the 310-page report that was relied upon as a substantial ground in support of an application for an adjournment of WRC8/09.

Correspondence in Relation to Representation

5. The plaintiff‟s solicitor shall by 4:00 pm on Friday 2 December 2011 provide to counsel for the defendant copies of the letters written by the plaintiff‟s solicitor to Mr John Hickling and Mr Colin Carruthers QC respectively regarding the plaintiff‟s counsel at trial dated 15 and

23 June 2011. The defendant may subsequently apply to the Court for further orders as to the provision of those letters to the defendant's representatives if this is considered necessary.

Financial Information

6. Mr John Hickling shall by 4:00 pm on Friday 2 December 2011 provide an affidavit to the defendant setting out up-to-date information regarding the sale of the properties in Oriental Bay which are owned by a trust of which he and the plaintiff are trustees, and regarding the plaintiff ‟s and the trust‟s current financial situation. The defendant may subsequently apply to the Court for further orders as to the provision of that affidavit to the defendant's representatives if this is considered necessary.

Timetable for the Exchange of Costs Memoranda

7. The timetable for the exchange of costs memoranda in respect of the adjourned proceedings in WRC17/04; WRC19/05 and WRC8/09 shall be (in place of the timetable previously ordered):

i. The defendant shall file its costs memorandum by 4:00 pm on

Friday 9 December 2011;

ii. The plaintiff shall file its costs memorandum by 4:00 pm on

Friday 23 December 2011; and

iii. The defendant shall file any costs memorandum in reply by

4:00 pm on Monday 9 January 2012. [2] These are my reasons for making those orders. **Background**

[3] In my second interlocutory judgment adjourning the fraud trial,[1] I noted that

there would be terms and conditions to the grant of the adjournment similar to those that had been addressed in relation to the adjournment of the grievance proceedings. I stated that I wished it to be made clear to the Court and the defendant what instructions were received in relation to the plaintiff‟s proposed trial counsel‟s availability for the 1 August 2011 hearing, and whether or not trial counsel indicated at the outset his unavailability for those proceedings. I noted that these were matters which Mr Fletcher had undertaken to address by way of a memorandum which he duly filed on 4 August 2011. I also noted that there would be costs consequent upon the grant of the adjournment to be addressed by an exchange of memoranda. I concluded:

[11] It is perhaps trite to say that this is likely to be the last time that these matters will be adjourned by this Court and that before these proceedings receive another fixture there will have to be safeguards put in place to avoid the debacle that has taken place this time around.

[4] Following that judgment, Mr Fletcher filed a document described as a Memorandum of Solicitor for the Plaintiff ‟s Understanding of Counsel Availability. In his memorandum, Mr Fletcher advised that he had received initial instructions on or about 16 May 2011 and had been advised that Mr Colin Carruthers QC had been briefed as counsel. Mr Fletcher had difficulties contacting Mr Carruthers because Mr Carruthers was involved in what Mr Fletcher described as the „Nathan‟s Finance‟ proceedings in Auckland. Mr Fletcher advised that he understood, wrongly as it transpired, that Mr Carruthers would be appearing to oppose the strike-out application brought by the defendant, set down for 14 June 2011. Mr Fletcher

instead was required to appear because of Mr Carruthers‟s unavailability. Mr

Fletcher states that by letter dated 15 June 2011 he formally raised concerns about Mr Carruthers‟s availability in letters to both Messrs Carruthers and Hickling. Mr Hickling is the plaintiff‟s husband and is a solicitor. He had been involved in the briefing of counsel for his wife‟s cases. He states that he received no reply to either letter and wrote to them both again on 23 June 2011. These are the letters the defendant‟s counsel sought to see.

[5] Mr Fletcher attached to his memorandum an email from Mr Carruthers in which Mr Carruthers states that in February 2011 he was approached and asked to assist with accounting issues in the case and that when Mr Laurenson (a previous counsel for the plaintiff) was granted leave to withdraw, Mr Carruthers agreed to lead the case on the basis he was not available for a fixture commencing on 1 August

2011. Mr Carruthers states that this was made clear to Mr Hickling and he had accepted that position throughout. Mr Carruthers states that since June 2010 he had been committed to an estimated 12 week hearing in another set of criminal proceedings on the basis that if that proceeded he would not be available as counsel. He states that he had explained orally the position to both Mr Fletcher and the Acting Registrar of the Employment Court.

[6] Mr Fletcher then filed an affidavit of Mr Hickling, sworn on 9 August 2011, which sets out in considerable detail the chronology of events relating to the representation of the plaintiff by some five counsel since September 2002. There are matters contained in Mr Hickling‟s affidavit critical of one of those counsel and his instructing solicitors and on 29 August 2011 the instructing solicitors sought to obtain a copy of the affidavit. The Acting Registrar wrote to the parties in the present litigation asking if they had any objection to the request. Mr Fletcher responded on 29 August 2011 objecting to the request and referring to a paragraph in Mr Hickling‟s affidavit where Mr Hickling asked that part of his affidavit relating to these matters be placed under permanent court suppression. Mr Fletcher noted that to date there had been no ruling regarding Mr Hickling‟s request. Mr Fletcher stated that it was of considerable concern that people who were not parties to the proceedings are, or may be, aware of material for which such an application has been made before the Court has made any order.

[7] This issue has yet to be resolved because Mr Hickling has asserted on several occasions that he does not appear for his wife, although he has sought in the past to be an assistant counsel, and therefore he has no status to ask for the suppression of all or any part of his affidavit which Mr Fletcher filed and served on behalf of the plaintiff. Once a formal application for suppression has been made on behalf of the plaintiff, then this issue will be resolved.

[8] On 25 August 2011, counsel for the defendant applied for orders regarding the information relied on in the plaintiff ‟s adjournment application. The defendant sought orders that the plaintiff obtain and disclose to the Court and to the defendant copies of all medical notes, records, certificates, correspondence, and reports relating to the plaintiff ‟s medical history and medical condition since the year 2000, including in relation to her current state of health. The defendant also sought that the plaintiff disclose to the Court and to the defendant copies of the letters written by Mr Fletcher to Mr Hickling and to Mr Carruthers respectively and dated 15 and 23 June

2011 regarding the plaintiff‟s counsel‟s availability for trial.

[9] The application also sought an order that the plaintiff disclose to the Court and to the defendant a copy of the report of Mr Wayne Kedzlie, one of the plaintiff‟s forensic accountants, to the Serious Fraud Office submitted on 4 July 2011, together with any relevant correspondence. Also sought was a copy of the report submitted to the Serious Fraud Office by any other forensic experts, detailing concerns similar to those expressed by Mr Kedzlie as referred to in an affidavit by him dated 18 July

2011, filed in support of the plaintiff‟s application for the adjournment. Mr Kedzlie is a forensic accountant who has been engaged by the plaintiff and has provided lengthy briefs of evidence to the Court.

[10] Finally, in the context of the defendant‟s application for security for costs, the defendant sought an order that the plaintiff disclose to the Court and to the defendant, by way of affidavit, up-to-date information regarding the sale of certain properties and her current financial situation.

[11] The application was supported by an extensive memorandum of counsel for the defendant, in excess of 22 pages and a bundle of 38 documents dating back to

July 2004. These included memoranda with medical certificates, filed on behalf of the plaintiff, correspondence from Mr Hickling to the Court, four of Mr Hickling‟s affidavits, and other material that the defendant submitted was relevant to its application. Counsel for the defendant also filed a substantial memorandum relating to the costs the defendant had allegedly incurred in response to the adjournment application. This satisfied me that it was appropriate to grant the orders sought by Mr Quigg directing that the costs of the two adjournment applications be dealt with together and not separately.

[12] According to an affidavit of service filed by the defendant, Mr Fletcher initially refused to accept service of the documents filed on 25 August 2011 on the grounds that they were irrelevant and were not before the Court, so that he could not take them. After checking the index which accompanied the documents, Mr Fletcher advised that he would take the documents but that he reserved his position.

[13] On 26 August 2011, Mr Fletcher filed a memorandum asking for directions regarding what steps it might be appropriate for the plaintiff to take because the plaintiff‟s solicitor was confused about the application and what, if anything, he should do to respond in more detail and in an appropriate manner.

[14] On 20 October 2011, I issued a minute referring to Mr Fletcher‟s memorandum asking for directions. I advised that the Court had not been kept informed as to whether the plaintiff is now said to be fit to be giving instructions on the interlocutory matters which the defendant wishes to pursue. I stated that all these matters needed to be addressed in order to progress the plaintiff‟s various claims. I therefore made directions that Mr Fletcher should file and serve, by 4 pm on Friday

4 November 2011, a memorandum advising the Court, on medical grounds, if he is still unable to obtain instructions from the plaintiff on any of the interlocutory matters and why he cannot proceed in the absence of such instructions. Alternatively, I directed that if he had such instructions, he should file and serve, by the same time and date, a notice of opposition to any of the outstanding applications made by the defendant which were still opposed. Time was then provided for the defendant to respond and a Chambers hearing on Friday 25 November 2011 was set

down to deal with any outstanding interlocutory matters which were ready for hearing in the Employment Court at Wellington.

[15] On 4 November 2011, Mr Fletcher filed a memorandum in response to my minute in which he advised that Mr Hickling had advised him that the plaintiff remained on medication, under medical supervision and that her mother‟s deteriorating health and terminal illness was still adversely impacting upon the plaintiff‟s health. Mr Fletcher stated he remained unable to obtain instructions from the plaintiff on interlocutory or substantive matters.

[16] As to the medical grounds, he referred to the affidavit of Dr Sawrey (sworn on 25 July 2011) filed in support of the adjournment application and also to my reasons for granting the adjournment. He submitted that it was highly inappropriate for the plaintiff‟s solicitor to proceed on any interlocutory matters in the absence of instructions from the plaintiff because the steps that he might take could affect the plaintiff‟s interests without her having given him instructions.

[17] Mr Fletcher claimed that the proceedings had been adjourned sine die to be brought on again at the plaintiff‟s application. This would not be made for at least six months from 2 August 2011, on the basis of Dr Sawrey‟s evidence. Any proceedings would therefore be at some time after February 2012, when Mr Carruthers would be available. Mr Fletcher submitted that all interlocutory applications should be dealt with after the plaintiff had applied to bring on the proceedings.

[18] Mr Quigg filed a memorandum on 18 November 2011 setting out the orders the defendant still sought, as I have set out above, and noting that the plaintiff‟s solicitor had provided no new details of the plaintiff‟s current state of health or particulars of when and how Mr Fletcher had endeavoured to obtain instructions. Mr Quigg noted that the plaintiff‟s solicitor had repeatedly stated in his memorandum that the proceedings had been adjourned until the plaintiff applied to bring them on but that this was not the defendant‟s understanding of this Court‟s ruling. The defendant understood that either party was entitled to apply to the Court to have the

proceedings brought on. I observe, at this point, that Mr Quigg is correct in that either party could apply to bring on the proceedings at an appropriate time.

[19] Mr Quigg‟s memorandum addressed Dr Sawrey‟s affidavit, noting that there was no new information as to whether the medication she had prescribed for the plaintiff has had any effect and whether the estimated six months‟ recovery period still remained current. He also referred to a lack of information about the plaintiff‟s previous medical history which would be necessary for the Court to assess when the plaintiff might be fit to give instructions and participate in a defended hearing, or whether she would ever be fit to do so. He observed that this would allow the defendant to apply at the appropriate time to have the proceedings either heard or struck out.

[20] Mr Quigg referred to the information that had been provided to the Serious Fraud Office and apparently cited by the

newspaper *The Herald on Sunday*. He referred to an affidavit of Kenneth David Law, the Deputy Chief Executive of the defendant, sworn on 18 November 2011, which addressed the effects on him and his family of the disclosure that there had been a complaint to the Serious Fraud Office made by Mr Kedzlie which apparently included the allegedly false allegation that he had purchased a yacht and two properties using Radio New Zealand funds. Mr Law referred to requests he had made of the Serious Fraud Office for copies of the report and annexed a letter declining that request. The Serious Fraud Office properly observed that it was important to that office that complainants were free to disclose their suspicions and any supporting evidence without fear that such information would end up in the hands of those who may be investigated, and accordingly the request for disclosure was declined under ss 6(c) and 9(2)(ba) of the Official Information Act 1982. Mr Law observed that this was despite the fact that a copy of Mr Kedzlie‟s reports apparently had been provided to the *Herald on Sunday* and that Mr Kedzlie‟s allegations had been published widely.

[21] Mr Quigg submitted that it was inequitable that the defendant and Mr Law, a senior officer of the defendant, should not have access to the information that was relevant to these proceedings and which had been damaging to the reputation of the defendant and its officers. He also advised that in a letter, dated 18 November 2011,

the Serious Fraud Office had stated that its investigation into the actions of the defendant had been closed. That letter also confirmed that any requests for disclosure of the complaint or associated documentation would need to be made formally and that the Director would not be authorising the release of such information.

[22] In the course of the interlocutory hearing on 25 November 2011, Mr Quigg produced, without objection, a letter from the General Manager of Fraud Detection and Intelligence of the Serious Fraud Office concerning the release of material forwarded to it as part of a complaint laid by Mr Kedzlie. This letter confirmed that the releases to the press had not come from the Serious Fraud Office, and included the statement:

With regard to your quote of the secrecy provisions from the Serious Fraud Office Act, those provisions relate to information acquired using the powers provided under the Act. They do not cover material received voluntarily from complaints. Indeed there is nothing in the Serious Fraud Office Act to prevent any complainant from releasing a copy of a complaint to the media, or any other person.

[23] Mr Quigg‟s memorandum of 18 November 2011 also referred to the number of interlocutory steps taken on the plaintiff ‟s behalf since she first consulted Dr Sawrey on 6 July 2011 which resulted in a medical certificate saying she was unable to give instructions. Mr Quigg submitted that, based on the steps taken on her behalf, it was apparent that she would be able to give sufficient instructions in relation to the interlocutory orders sought by the defendant and that, in any event, it was in the interests of justice that the Court made the orders sought.

[24] I issued a minute on 18 November 2011 summarising these matters and observing that throughout the recent course of these proceedings the plaintiff has been assisted by her husband, Mr Hickling, and that the current orders sought by the defendant are of a technical and legal nature about which it is likely that a lay person could only give broad instructions as to whether they should be opposed or consented to. In view of the lack of any updated medical information, I directed that the Court would proceed with the interlocutory hearing due to commence on 25

November 2011, but gave the plaintiff until Thursday 24 November 2011 to file and serve a notice of opposition.

[25] On 24 November 2011 Mr Fletcher filed a document described as “Memorandum of Solicitor for Plaintiff in lieu of Notice of Opposition to Defendant‟s Applications”. Mr Fletcher stated that Mr Hickling has advised him that the plaintiff remains on medication and under medical supervision and that her mother‟s deteriorating health and terminal illness is still adversely affecting the plaintiff‟s health. Mr Fletcher stated that he attempted to obtain instructions without success and that, despite attempts to contact both the plaintiff and Mr Hickling, he had not been able to discuss matters with either of them since Monday, 21 November

2011. He stated, therefore, that he was unable to obtain instructions from the plaintiff on either interlocutory or substantive matters. He submitted that it was highly inappropriate for him to proceed on any interlocutory matters in the absence of instructions but to assist the Court he commented on aspects of my minute and the plaintiff‟s applications and related material.

[26] As to updated medical information, Mr Fletcher stated that he had not received any direction or order that required the plaintiff or her solicitor or her counsel to keep the Court informed as to her ability to give instructions. Since becoming aware of the Court‟s desire for updated medical information, the plaintiff‟s solicitor was making active efforts to obtain this information but, to date, they had not been successful.

[27] Mr Fletcher questioned the technical and legal nature of the applications but claimed it was debatable whether the plaintiff was even capable of giving broad instructions, even though the orders, if granted, would have a dramatic personal and financial impact on her. He submitted that neither the Court nor the defendant should see Mr Hickling‟s advice or views as any substitute for the plaintiff‟s clear instructions. He maintained that the previous orders granting the adjournment were conditional upon her being able to give instructions, be present at trial, and provide compelling medical opinion that she was

able to give evidence.

[28] As to the plaintiff "s application for costs on the adjournment and the application for security for costs, Mr Fletcher stated that, in the absence of instructions, he could not provide any more up to date information, and that this would only be able to be provided when the plaintiff was able to give instructions.

In reference to Mr Kedzlie"s report and complaint to the Serious Fraud Office, he submitted that the orders sought were putting the plaintiff and her advisers in a position where they might breach the Serious Fraud Office Act 1990. Mr Fletcher referred to the Court"s failure to address his confusion as to what he should do to respond in more detail and in an appropriate manner to the 25 August 2011 applications and continued to maintain that he could not respond without instructions and this memorandum was in lieu of a notice of opposition. He concluded that although he had no instructions, he trusted that his memorandum would assist the Court.

[29] Mr Fletcher duly appeared as solicitor for Ms Snowdon at the hearing on 25

November 2011 and indeed did assist the Court. Mr Fletcher was able to make constructive suggestions in relation to the orders sought by the defendant and agreed to the form of several of them.

[30] I granted the opposed orders sought by the defendant in a modified form because, having heard Mr Quigg"s submissions and those of Mr Fletcher in opposition, and considering the 25 August 2011 memorandum and the documents relied on, I concluded that such orders were appropriate.

[31] In summary, the material that persuaded me to make the orders sought in modified form was as follows.

[32] Since the plaintiff first consulted Dr Sawrey on 6 July 2011, the following steps, in addition to those referred to above, were able to be taken by Mr Fletcher on the plaintiff"s behalf.

1. The defendant was provided with the plaintiff"s list of

documents on 8 July 2011.

2. He attended the judicial telephone conference on 14 July 2011.

3. He filed and served the memorandum seeking the adjournment dated 18 July 2011.

4. He filed and served two affidavits of Mr Kedzlie dated 18 July

2011.

5. He filed and served an affidavit of Dr Sawrey dated 25 July

2011.

6. He provided written submissions in support of the adjournment application and attended the hearing on 25 July 2011.

7. He filed and served the memorandum seeking that orders be varied or rescinded.

8. He filed and served an affidavit of Dr Sawrey dated 29 July

2011, and an affidavit of Mr Hickling of the same date.

9. He filed and served a further memorandum on 1 August 2011 and another affidavit of Mr Hickling of the same date.

10. He prepared three sets of written submissions in support of the application that orders be varied or rescinded and attended the hearing on 2 August 2011.

11. He filed and served a memorandum regarding counsel"s availability on 4 August 2011 and a further affidavit of Mr Hickling dated 9 August 2011.

12. He filed and served a memorandum in relation to the application for costs dated 12 August 2011.

[33] In these circumstances, I was satisfied that it was appropriate to deal with the defendant‟s application on the assumption that it was defended and with the assistance of Mr Fletcher‟s submissions in opposition.

[34] As to the issue of medical information, Mr Quigg accepted that s 100 of the

Judicature Act 1908, which provides that the High Court may order that a person

submit to a medical examination, cannot be invoked in the Employment Court.[2] Mr Quigg submitted that the defendant did not seek such an order but sought disclosure of relevant medical information. It was sought as part of the terms and conditions of the adjournment and not pursuant to the disclosure provisions in the Employment Court Regulations 2000 although, he submitted, the cases under those Regulations were relevant to the Court‟s exercise of the discretion. He submitted that the documents were relevant because, at the very least, they bore on the issue of the true grounds for the adjournment and were referred to in my judgment granting the adjournment of the fraud proceedings. He submitted that they were within the possession or control of the plaintiff, citing *Gilbert v Attorney-General in Respect of*

the Chief Executive of the Department of Corrections (No 1)[3] and *Coy v*

Commissioner of Police.®[4] He also relied by analogy on the Evidence Act 2006, concerning confidentiality of medical information and s 69(2) of that Act which requires a court to weigh the public interest of the disclosure in the proceedings of the communication or information against the public interest in preventing harm. He referred to the seven factors set out in s 69(3) of the Evidence Act and submitted that the disclosure of the information was unlikely to cause significant harm, the information was of importance to the defendant and the Court, and it was necessary to bring the issue of the medical situation of the plaintiff up to date. He relied on the plaintiff‟s earlier affidavit dated 10 June 2011 where she had stated: “As to my health, I am perfectly fit and well. I want to appear in Court in August, give my evidence and have my case heard.”

[35] Mr Quigg submitted that in the absence of the information being sought by the defendant, the plaintiff might have succeeded in a tactical move because of the unavailability of the counsel of her choice. He also referred to the circumstances of the adjournment in 2007 which he submitted were strikingly similar to those of 2011.

[36] I accepted Mr Quigg‟s submissions and considered that it was relevant and

necessary to have the medical information disclosed from 2007 forward. Medical information concerning the earlier period before 2007 might also become relevant

when considering the merits of the plaintiff‟s personal grievance, as it appears that she was dismissed after a lengthy period of sick leave. In this regard, Mr Quigg noted that the case was close to approaching the 10th anniversary of that dismissal, a factor to which the Court should have regard in closely monitoring the plaintiff‟s ability to go to trial.

[37] As to the representation issues, Mr Quigg referred to my minute of 27 May

2011 in which I advised the parties “that the Court is unlikely to entertain an adjournment application based on the unavailability of counsel because of other fixtures”. He observed that representation issues were relied upon in support of the adjournment application and sought the orders in relation to the communications referred to by Mr Fletcher in order to ascertain the correct position. He observed there was some confusion in Mr Hickling‟s material as to the exact date when he was informed that Mr Carruthers would not be able to attend the August hearing. Mr Quigg submitted that this advice could have been given as early as late May or early June 2011 and yet the adjournment application was not made until mid-July and after the 14 July 2011 judicial teleconference. He noted that this was notwithstanding that the plaintiff had already had her first consultation with Dr Sawrey on 6 July 2011.

[38] There was some argument about whether legal professional privilege applied to this correspondence but Mr Fletcher accepted that privilege had been waived on the plaintiff‟s behalf, not the least by Mr Hickling‟s affidavit concerning the steps he was taking to instruct counsel. The correspondence was also relied on by Mr Fletcher in support of the adjournment application. In these circumstances, I considered it appropriate for the communications to be disclosed and that order was made without strong objection.

[39] As to the report given to the Serious Fraud Office I reject Mr Fletcher‟s submissions that disclosure of Mr Kedzlie‟s report or complaint would be an imprisonable offence under s 41 of the Serious Fraud Office Act. I accept Mr Quigg‟s submission that that section applies to people to whom “protected information” is disclosed pursuant to the Serious Fraud Office Act, an example of

which was seen in *R v Aspinall.*[5] Those circumstances do not apply in the present case as the communication from the

Serious Fraud Office of 21 August 2011 (referred to at [22] above) confirms.

[40] I had initially considered limiting the terms of the order to the material on which the plaintiff intended to rely in relation to the fraud proceedings, if it was in addition to the voluminous material already filed and the lengthy statement of claim. However, after hearing submissions from Mr Quigg which showed the report given to the Serious Fraud Office was relied on by the plaintiff in support of the adjournment application, I considered that the form of the order as issued was more appropriate.

[41] This Court has wide powers conferred on it by s 189(2) of the Employment Relations Act 2000 to call for such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not. For the reasons advanced by Mr Quigg, and because the report is referred to in Messrs Kedzlie‟s and Hickling‟s affidavits, the order was made in reliance on s 189(2).

[42] The form of the order relating to the medical assessment and reports was agreed after discussion between counsel for the defendant and the solicitor for the plaintiff. That material is necessary to determine the genuineness of the adjournment grounds and when the substantive matters are likely to be ready for trial.

[43] As to the security for costs, in the reasons for my oral interlocutory judgment dated 29 July 2011,[6] I indicated that I was prepared to review my decision on this matter when more up to date information was available. The defendant sought that information. Mr Fletcher confirmed that Mr Hickling was a trustee with the plaintiff of the property that was on the market and the proceeds of that sale would be the

source of the $200,000 to be paid into court as security.

[44] It appears, in these circumstances, that Mr Hickling could provide the necessary up to date information notwithstanding any inability on the plaintiff‟s part to be able to provide instructions.

[45] The issue of costs is to be dealt with on the basis of the orders made and in respect of which there was no objection.

BS Travis
Judge

Judgment signed at 11.30 am on Monday 5 December 2011

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[1] [2011] NZEmpC 98.

[2] *Lloyd v Museum of New Zealand Te Papa Tongarewa* [2002] NZEmpC 189; [2002] 1 ERNZ 744.

[3] [1998] NZEmpC 200; [1998] 3 ERNZ 500.

[4] [2010] NZEmpC 88, [2010] ERNZ 199.

[5] HC Auckland CRI-2005-004-19057, 11 August 2006.

[6] [2011] NZEmpC 96 at [63].
