

**IN THE HIGH COURT OF NEW ZEALAND
GREYMOUTH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
MĀWHERA ROHE**

**CIV-2019-418-19
[2019] NZHC 2326**

BETWEEN

SCENIC CIRCLE HOTEL GROUP
LIMITED
Plaintiff

AND

WEST COAST REGIONAL COUNCIL
First Defendant

WESTLAND DISTRICT COUNCIL
Second Defendant

Hearing: On the Papers

Appearances: A Challis and J Heard for the Plaintiff
D Heaney QC for the First Defendant
S Mitchell and K Perry for Second Defendant

Judgment: 16 September 2019

JUDGMENT OF MANDER J

This judgment was delivered by me on 16 September 2019 at 3.15 pm pursuant to Rule 11.5
of the High Court Rules

Registrar/Deputy Registrar

Date: .

Introduction

[1] Joanne Carroll, a journalist for Stuff Ltd, has made an application for access to the documents in this case. The application is not opposed by Scenic Hotel Group (the plaintiff) or West Coast Regional Council (the first defendant). However, Westland District Council (the second defendant) opposes the application on the basis that release of the documents would be premature and potentially injurious to the proceeding as a whole.

The application

[2] Ms Carroll's application requests access to the documents filed by the plaintiff outlining the allegations against the defendants. She states that the purpose of access is to allow Stuff to write a "full and balanced report on the proceedings which are in the public interest". Ms Carroll asks that the principles of open justice be applied.

[3] The second defendant submits that the only documents currently on the Court file are the statement of claim and notice of proceeding. It says that it would be unfair for Ms Carroll to access those without also seeing the statements of defence. Given Ms Carroll has not requested any statements of defence, the second defendant submits this contradicts her claimed purpose of full and balanced reporting. It contends that it would be inappropriate and potentially detrimental for the documents to be released at this time, but accepts that access may be granted when statements of defence have also been filed.

Law

[4] Because the statement of claim is not part of the formal Court record and Stuff Ltd is not a party to the proceeding, this application falls under r 11 of the Senior Courts (Access to Court Documents) Rules 2017 (the Rules):

11 Any person may ask to access documents

...

- (2) A person may ask to access any document by providing the Registrar of the relevant court registry with a letter, an email, or any other written form of request that—

- (a) identifies the person and gives the person’s address; and
 - (b) sets out sufficient particulars of the document to enable the Registrar to identify it; and
 - (c) gives reasons for asking to access the document, which must set out the purpose for which the access is sought; and
 - (d) sets out any conditions of the right of access that the person proposes as conditions that he or she would be prepared to meet ...
- ...
- (7) A Judge may—
- (a) grant a request for access under this rule in whole or in part—
 - (i) without conditions; or
 - (ii) subject to any conditions that the Judge thinks appropriate; or
 - (b) refuse the request; or
 - (c) refer the request to a Registrar for determination by that Registrar.

[5] In making a determination under r 11, the Judge must consider the nature of, and reasons given for, the request.¹ The Judge must also take into account the following matters where relevant:

12 Matters to be considered

- ...
- (a) the orderly and fair administration of justice:
 - (b) the right of a defendant in a criminal proceeding to a fair trial:
 - (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
 - (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
 - (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):

¹ Senior Courts (Access to Court Documents) Rules 2017, r 12.

- (f) the freedom to seek, receive, and impart information:
- (g) whether a document to which the request relates is subject to any restriction under rule 7:
- (h) any other matter that the Judge thinks appropriate.

[6] Rule 13 deals with the approach to balancing matters in r 12. It provides that “before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited.”²

Decision

[7] The news media plays an important role in reporting proceedings, particularly where they concern matters of public interest. I consider this case engages a legitimate public interest given the defendants are a regional and district council. This can be contrasted with cases where the dispute is personal to the parties.³

[8] However, the Court’s general practice is not to allow the media access to pleadings until, at a minimum, both parties have filed substantive pleadings.⁴ The Court of Appeal in *Crimson Consulting Ltd v Berry* stated:⁵

When matters are still at the pleadings stage, there is an element of unfairness on parties in the publication of one side of the story. The allegations in the statement of claim have not yet been tested by the giving of evidence. There being no hearing in Court, the need for transparency and public scrutiny is less, because pre-trial the Court is generally not determining substantive issues.

[9] I accept there are grounds for the second defendant’s concerns of a risk that premature reporting may result in an unbalanced public perspective of the parties’ positions.⁶ At this stage, I decline the application. However, as accepted by the second defendant, because of the nature and anticipated public interest in the matter it may well be appropriate to allow Stuff Ltd (and other media) to access the pleadings once

² Rule 13(a).

³ *Lifestyles Investment Group v Coral Investments Securities Ltd* [2019] NZHC 2154 at [18].

⁴ *Scott v ANZ Bank New Zealand Ltd* [2019] NZHC 1908 at [12]; *Fuji Xerox New Zealand Ltd v Whittakers* [2018] NZHC 78 at [6]; and *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petroleo* [2017] NZCA 490 at [25].

⁵ *Crimson Consulting Ltd v Berry* [2018] NZCA 460 at [39].

⁶ *Hansen v Escape Rentals Ltd* [2017] NZHC 2185 at [8].

the defendants have filed their statements of defence. Stuff Ltd will be able to renew its request at that time.

Conclusion

[10] At this stage, the application is declined, but that is without prejudice to Stuff Ltd's right to make a further request once all parties have filed their pleadings.

Solicitors:
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