9/2 NZLR.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP. No.103/89

LOW PRIORITY

BETWEEN FUDAY LIMITED

Plaintiff

AND THE NEW ZEALAND SEAMEN'S UNION INDUSTRIAL UNION OF WORKERS AND OTHERS

First Defendants

AND DAVID MORGAN

Second Defendant

AND HECTOR THORPE

Third Defendant

AND THE FEDERATED COOKS AND STEWARDS INDUSTRIAL UNION OF WORKERS AND OTHERS

Fourth Defendants

Hearing: 27 January 1989

Counsel: Mr Greeson, Miss Muir and Mrs Barrett for the Plaintiffs
Dr Harrison and Mr Towle for 1st, 2nd and 4th Defendants

Judgment: 27 January 1989

(ORAL) JUDGMENT OF ROBERTSON J

At about 3.45 this afternoon my attention was drawn to an application which had been filed by the plaintiff seeking an interim injunction restraining the defendants herein from impeding persons employed by the Ports of Auckland Limited, the Waterfront Industry Commission or Unions employed by that body from efficiently and expeditiously carrying out their duties. The papers express it more elegantly but that is the force of what they say. I immediately agreed to see Mrs Barrett, one of the counsel involved for the plaintiff, and she advised me of the urgency of the matter. The Court is of course not unmindful of the public interest which has attended this dispute and the background to it.

On the basis of the submissions made to me, I indicated that I would consider the application at 8 p.m. this evening, that I expected the defendants to be advised so that if they chose they could be present before the Court at that time. I had initially anticipated that the matter should immediately be called in open Court, but on reflection it appeared to me that it was more appropriate to consider the matter on the basis of a chambers application, the consequences of which, it appeared to me, were to more justly protect the position of all the parties.

The plaintiff has been represented by counsel before me this evening and there is representation for the first, second and fourth defendants. Apparently the third defendant has not yet been advised that he has been named in these proceedings. The initial issue is whether I should proceed to hear this interim application or whether I should accede to Mr Harrison's application to adjourn the matter to enable the defendant to file affidavits and for them to be represented by counsel, prepared and able to assist the Court.

There are two issues which are integrally intertwined. The first is the need for the plaintiff to satisfy the Court that there is a matter of such overwhelming urgency that the Court should effectively proceed ex parte with the disadvantage of not having evidence from the defendants or the assistance of their legal representative. The evidence before me is principally but not exclusively a series of affidavits which exhibit affidavits which were filed and read in a proceeding in the Labour Court between this plaintiff and initially 5 defendants. Two of those defendants were the first and fourth defendants in this case before me. In the Labour Court the proceedings were discontinued against these two parties prior to a determination by His Honour Judge Nicholson on Thursday 26 January.

By way of background I should note that there has been before the Chief Judge of the Labour Court this week a compliance application brought by the first and fourth defendants against the New Zealand Shipping Corporation. The New Zealand Shipping Corporation is not before me on this application. It is referred to because the plaintiff acquired early this month the vessel, which is at the centre of the dispute, from the New Zealand Shipping Corporation on terms and conditions which are partially disclosed in the papers. That compliance proceeding has been concluded. The Learned Judge has reserved his decision and it is anticipated that it will be to hand in the immediate future.

Mr Gresson of counsel for the plaintiff contends that there is a situation now whereby there is evidence before the Court that there is unlawful activity on the part of the defendants which unless immediately restrained will create irreparable damage. He points to the problem of the plaintiff whose only real asset is idle and useless. He points to the inability to meet contractual obligations to the conference. He points to the wider ramifications as far as consignee and consignor in respect of the cargo on the vessel, and the problems for persons throughout New Zealand who wish to have cargo loaded on to this vessel and transported to other parts of the world. Inter-related to all that are substantial issues with regard questions of health

and safety on the vessel itself as it sits idle alongside the wharf. He has drawn my attention to evidence that the Terminal Services Manager of the Ports of Auckland Limited, having advised the General Manager of New Zealand SHipping Agencies International Limited, the local agent for the ship "Tui", that if the Court was unable or unwilling to act urgently against the picket it was likely that the Port Company would require the ship to be removed.

Mr Harrison advises that he received instructions in this matter only at 5 p.m. today and that some of the documentation including the Statement of Claim were not in his hands until 6 p.m. He properly draws attention to the fact that the plaintiff is a foreign company and has taken me through the evidence with regard to the financial viability or lack of it of that company. He advises the Court that he has instructions to make an application under the Rules for security and costs and in an essence says - "this is a matter of important industrial and legal significance". The plaintiff has failed to establish the need to deal with the matter with such haste as to justify a substantive hearing of any sort this evening. He has instructions which will challenge what I have in the course of the hearing described as some of the factual inferences. Mr Harrison does not quibble with the fact that there may be an issue which should urgently be before the Court.

His contention is that it should be before the Court next week when there can be evidence available, proper preparation, and therefore responsible assistance from his clients to the Court.

I have been particularly concerned with regard to the evidence which suggests that there may be health and safety problems arising as a result of the activity alleged against the defendants. In the course of the hearing on this question of whether I should have a hearing, I have discussed in an active way with both counsel that issue. Counsel accepted my invitation to consider the matter between themselves and undoubtedly with their clients. Mr Gresson contends that that is only part of an inter-related total situation and that it is simplistic, if not naive, to imagine it can be sheared off as an issue in itself.

Mr Harrison contends that there is no evidence before me that since the determination by Judge Nicholson there has been any impediment to action being taken which would alleviate or at least mitigate the problems in that regard.

For good reason the Courts are always reluctant to hear any matter and make any determination on the basis of only part of the story. Where it is necessary the Courts of course will do so. A party which seeks

to have the Court do that clearly has the onus of establishing a need. The Courts also for good reason are reluctant to involve themselves in any sensitive issue in a way which may damage rather than remedy because it is only partially appraised of all the matters it should have before it. It appears to me that it is more important that the Courts' powers are used to solve an issue rather than provide a quick answer which may do nothing but flame the fire.

As I said to Mr Gresson in the course of his submissions he has no difficulty in persuading me that there is an issue which should be before the Court within days. He does not satisfy me that it is necessary or desirable for the Court to embark on hearing this application for interim relief tonight or until there has been a day or two to enable the defendants to respond and prepare. That is the position on the papers as they stand now. It is of course a fluid situation and I do not close the door on the possibility that other matters may intervene even within the short timetable that I am going to refer to which may require the matter to be reconsidered.

I remain exercised about this question of health and safety. If that is not a matter which can be properly and sensibly accommodated between the parties then there may well be justification for returning at

brief notice to a Court to obtain intervention in that regard. I may be simplistic in my approach but it appears to me that there can be major differences between the response on that level and the attitude and response towards the cargo either coming off or going on to the vessel.

There was a determination in the Labour Court yesterday. There is another anticipated after the weekend. If this matter is left until after the weekend then as I say there is an opportunity for up-dated evidence from both sides and if there are problems of the sort which are referred to in a hearsay way by Mr Parry, then of course that evidence can be properly placed before the Court as well.

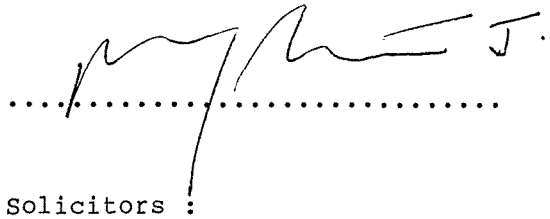
Mr Gresson reminds me that the Port of Auckland operates 365 days a year despite any misapprehensions Mr Harrison may have with regard to the operating time of his client or some of them. I am not persuaded on the evidence currently available, bearing in mind the history of this matter and the other related activities, that irreparable damage will be created if I adjourned this proceeding until Wednesday next, 1 February.

I repeat that if there is additional evidence which places a different complexion on the matter, then there is no impediment to the plaintiff coming back

before the Court. Because of the need for the Court to be properly appraised I direct that any affidavits which are to be filed by the defendants should be filed and served by noon on Tuesday next 31 January. I doubt that I have the power to direct, but I would urge, that each party have prepared and available written submissions for the Court by 10 a.m. on Wednesday morning. It will require counsel to make contact with the appropriate Deputy Registrar on Tuesday to confirm the exact nature or time of the hearing but I certainly am of the view that the issues require Court time to be made available to hear them at that time.

I say only one last thing, this has been a hearing in chambers. I have permitted representatives of the defendants to be present while it has been heard. All I have done is determined that the issue should be fully and properly before the Court with all available information there. There will be many people who will want to see out of tonight a winner and a loser and there will only be losers in the eventual resolution of the dispute if anybody adopts that attitude towards the position which I have taken. I have simply determined that for the Court to embark on an inquiry and determination of this matter it needs all the information before it and that despite continuing problems because of the dispute running on, those do not out-weigh the advantages of having everything

available. But it really is not a win lose situation and the position between the parties will be worsened if anyone interprets it in that way.



.....J.

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