

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

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

**CIV-2020-409-197
[2020] NZHC 2605**

UNDER the District Courts Act 2014

BETWEEN CLAIMS RESOLUTION SERVICE
LIMITED
Appellant

AND JAMIE ROBERTS
First Respondent

NATASHA MAREE ROBERTS
Second Respondent

CIV-2019-409-704

UNDER the District Courts Act 2014

BETWEEN THE STAPLES GROUP LIMITED
Appellant

AND RACHAEL LOUISE BEETON
Respondent

Hearing: 21 July 2020

Appearances: D Ballantyne and R D Ashton for Appellants
R Lynn and B Hood for Respondents N and J Roberts
Respondent R Beeton in Person

Judgment: 5 October 2020

JUDGMENT OF MANDER J

This judgment was delivered by me on 5 October 2020 at 4.30 pm pursuant to Rule 11.5
of the High Court Rules 2016

Registrar/Deputy Registrar

Date: .

[1] Claims Resolution Service Ltd (Claims Resolution) and its parent company The Staples Group Ltd (Staples Group) appeal separate decisions by the District Court to adjourn two sets of proceedings in that Court pending developments in a representative action against Claims Resolution taken in this Court by former clients.¹

[2] On 14 September 2017, Claims Resolution issued a proceeding against Jamie and Natasha Roberts (the Robertses) to recover various costs and fees it claimed were owed by the Roberts. The Robertses denied their liability and pleaded affirmative defences, including breach of fiduciary duty by Claims Resolution, for which they claim damages. The Robertses obtained an adjournment of the District Court proceeding pending further order of that Court to allow them the opportunity to take steps to join the representative action.

[3] Rachael Beeton is being sued by Staples Group in defamation for comments she made on a Facebook page. She is defending that claim. As with the Robertses, Ms Beeton's partner, Simon Risdon, is being sued by Claims Resolution for unpaid amounts it has invoiced for its services. That claim is denied by Mr Risdon on broadly the same grounds as the Robertses', including alleged breaches of fiduciary obligations by Claims Resolution. As a result of Ms Beeton's application to have the defamation claim stayed or deferred until a determination of her partner's case, the District Court adjourned the defamation proceeding.

[4] Because the two appeals raise similar issues, particularly as to the jurisdiction of the District Court to adjourn the proceedings, a direction was made that the two appeals be heard together.²

Background

Claims Resolution v Roberts

[5] The Robertses' home was damaged in the earthquakes that struck Christchurch in 2010 and 2011. They filed claims with the Earthquake Commission and their insurance company. Claims Resolution offered an insurance advocacy and litigation

¹ *Smith v Claims Resolution Service Ltd* [2019] NZHC 127.

² *Claims Resolution Service Ltd v Roberts* HC Christchurch CIV-2020-409-197, 10 June 2020.

funding service. The Robertses entered into an agreement with Claims Resolution to be provided with these services, in consideration for which they agreed to pay various costs, fees, disbursements and a commission on the final settlement amount obtained. It is in respect of these amounts that Claims Resolution issued proceedings, seeking judgment of \$43,932.28, together with contractual interest and costs.

[6] The Robertses deny liability on various bases and raise affirmative defences. The Robertses intend to file an amended pleading to advance these affirmative defences by way of a counterclaim in order to recover monies they have paid to Claims Resolution and to obtain damages suffered as a result of the alleged mismanagement of their insurance claim by Claims Resolution.

Staples Group v Beeton

[7] Ms Beeton and Mr Risdon lived together in a house owned by Mr Risdon that was red-zoned as a result of the earthquakes. Their circumstances are difficult. Mr Risdon is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and is in and out of hospital. He and Ms Beeton are dependent on a benefit.

[8] Because of issues arising out of their damaged property, Mr Risdon engaged Claims Resolution, which is a subsidiary company of Staples Group. Because of Mr Risdon's mental health difficulties Ms Beeton was authorised to act as his agent and deal with Claims Resolution.

[9] Pursuant to the terms of the agreement entered into with Claims Resolution, it claims Mr Risdon became liable for various fees, disbursements and commission in return for the services it provided. Mr Risdon declined to pay these amounts and in 2018 Claims Resolution issued proceedings, and made an application for a summary judgment against Mr Risdon, claiming some \$60,000. Ms Beeton has been appointed Mr Risdon's litigation guardian in respect of those proceedings due to his incapacity. Liability is denied on the basis that Claims Resolution did not meet its contractual obligations under the agreement and allegedly breached its fiduciary obligations by failing to declare conflicts of interest and by acting in a dishonest and underhand way.

[10] It was against that background that, in February 2020, Mr Beeton posted comments on a Facebook page associated with Staples Group and Claims Resolution. That post was taken down several days later in response to a request by Staples Group. Notwithstanding that step, Staples Group sued Ms Beeton in defamation for a sum of “not less than \$100,000”. Ms Beeton defends the defamation proceeding on the basis her statements were the truth and/or she was expressing her honest opinion. She also pleads qualified privilege.

[11] Ms Beeton applied to the District Court to have the defamation proceeding against her stayed or deferred until the claim against Mr Risdon was determined. She maintains the two proceedings are legally and factually intertwined. Significantly, by agreement, the claim against Mr Risdon has been stayed pending the determination of the representative action against Claims Resolution presently before this Court. It appears to have been recognised that the questions of fact and law that are involved in the representative action are directly relevant to the proceeding involving Mr Risdon. It was for that reason that Claims Resolution asked Mr Risdon to consent to a stay pending determination of the High Court case. Notwithstanding that stance, Staples Group opposes any stay or deferral of the defamation claim.

The representative action

[12] A Ms Karlie Smith has brought a proceeding in this Court against both Claims Resolution and the solicitor engaged to represent home owners, like Ms Smith, who contracted with Claims Resolution to obtain advocacy and litigation funding. That claim is brought in her name and on behalf of a group of other home owners who contracted with Claims Resolution as a representative action. Ms Smith alleges that Claims Resolution and other affiliated companies, including its principal Mr Staples, together with the solicitor, were involved in an undisclosed joint venture arrangement. Claims advanced against Claims Resolution and the solicitor include breach of fiduciary duty and unconscionable bargain arising from this joint venture and other associated arrangements.

[13] In February last year, Gendall J granted leave for the Smith proceeding to continue as a representative action on an “opt in” basis.³ In October 2019, the Judge also granted leave to allow his decision to be appealed to the Court of Appeal.⁴ Pending determination of this appeal, the representative action is stayed.

The District Court’s decisions

Claims Resolution v Roberts — decision of Judge Kellar

[14] Depending on the outcome of Claims Resolution’s appeal, the Robertses intend to seek the removal of the District Court proceeding to this Court and to opt in to the representative action.⁵ In order to follow that intended course, the Robertses sought an order staying or adjourning Claims Resolution’s proceeding against them until further order of the District Court. That application was opposed on the basis that the matter was ready for trial in the District Court and that, while no trial date had been set, it was awaiting the allocation of a fixture.

[15] Judge Kellar considered that the District Court proceeding and the representative action had some common questions of law and fact. Both would require identification of the representations made and the nature of the relationship between the parties and determinations of whether a fiduciary relationship existed between Claims Resolution and its clients. Further common issues included whether Claims Resolution breached its duty to its clients in the way it appointed experts and lawyers closely associated with it without disclosure of the true nature of that relationship and allegedly in circumstances where the company had put its own interests ahead of those of its clients.

[16] The Judge observed that Gendall J, in the representative action, had noted a number of aspects that united the litigants as a class, including shared questions of fact and law regarding whether Claims Resolution owed fiduciary duties, the scope and content of such duties and whether they had been breached. Similarly, whether Claims

³ *Smith v Claims Resolution Service*, above n 1.

⁴ *Smith v Claims Resolution Service* [2019] NZHC 2738.

⁵ District Court Act 2016, s 89.

Resolution's contract represented an unconscionable bargain and whether members of the class were entitled to relief.

[17] After weighing up the competing factors against and in favour of granting a stay or adjournment, Judge Kellar concluded that the interests of justice favoured an adjournment in order to give the Robertses the opportunity to consolidate their proceeding with the representative action and to opt in to that proceeding should it continue. An order was made adjourning the District Court proceeding pending further order of the Court.

Staples Group v Beeton — decision of Judge Gilbert

[18] Judge Gilbert considered there would be significant factual and/or legal overlap between the claim made against Mr Risdon and the defamation proceeding. The Judge noted that Ms Beeton's defence to the defamation claim of truth and honest opinion derived from her experience of dealing with Claims Resolution on behalf of Mr Risdon and that if the allegations made in defence of the claim against Mr Risdon, of breach of contract and fiduciary duty and alleged general duplicity, are sustained, they would "undoubtedly breathe life into her defence" of the defamation claim. The Judge considered the two proceedings to be intimately related.

[19] Having reached that conclusion as to the commonality of the two proceedings, the Judge turned to the appropriate mechanism by which the defamation claim could be deferred. While not raised by Ms Beeton, who was representing herself, Judge Gilbert considered he had jurisdiction under r 10.10 of the District Court Rules 2014 (the Rules) to adjourn the matter should he consider the interests of justice favoured such a course. In exercising his discretion to do so, the Judge acknowledged the competing interests of the two parties. While adjourning the defamation claim would not achieve a speedy resolution of that dispute, Judge Gilbert considered the justice of the situation should not be sacrificed in order to achieve that sole objective.

[20] Judge Gilbert adjourned the defamation proceeding until following the determination of the interlocutory application for summary judgment in respect of the claim against Mr Risdon. The Judge directed that after that application had been dealt with the parties were to notify the District Court Registry in order for the defamation

proceeding to be allocated a case management conference for the purpose of making further directions, and flagged that the consolidation of the two District Court proceedings (Mr Risdon's proceeding and the defamation claim) may be appropriate at that point.

Claims Resolution v Roberts

The appeal

[21] Three grounds of appeal are relied upon by Claims Resolution in challenging Judge Kellar's decision to adjourn or stay the Robertses' proceeding:

- (a) The Judge was wrong to determine the District Court has jurisdiction to stay or adjourn a proceeding, as distinct from a trial, *sine die*.
- (b) If the Judge had such jurisdiction, he erred by not allocating a date to which the trial was to be adjourned or in not imposing any terms or conditions on the proceedings being continually stayed.
- (c) The Judge took into account irrelevant considerations and failed to take into account relevant considerations in deciding to erroneously adjourn the proceeding.

Ground one — did the District Court lack jurisdiction?

[22] Rule 10.10 of the Rules provides as follows:

10.10 Adjournment of trial

The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

[23] Claims Resolution submitted that the District Court erred in finding it had jurisdiction under r 10.10 to effectively stay a proceeding *sine die*. It sought to distinguish between the postponement or adjournment of a *trial* and an adjournment or stay of the *proceeding*. It was argued that the Court has no jurisdiction to direct the latter course and that r 10.10, which is found in pt 10 of the Rules ("Trial"), deals with

the modes of trial and their conduct and has no application to the present situation. It was argued that the rule only provides jurisdiction to the District Court to postpone or adjourn a *trial* “that has been allocated” and does not provide jurisdiction to postpone or delay the Court’s determination of a *proceeding* that should otherwise be dealt with in a just, speedy and inexpensive way.⁶ It was argued that the Court’s power of adjournment pursuant to r 10.10 is predicated on a trial having been allocated to determine the proceeding, as distinct from providing the Court with the ability to adjourn the proceeding itself.

[24] I accept that a proceeding is not usually the subject of adjournment. The term “proceeding” is defined by the Rules as meaning “any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application”.⁷ It is, however, a common formulation or use of language that is employed when a proceeding cannot be progressed in the way initially anticipated. For example, r 7.3(8)(b) provides that if the parties are unable to settle at a judicial settlement conference the Judge must “adjourn the proceeding to a second case management conference”. To the extent the District Court’s order, in the context of r 10.10, refers to the adjournment of the proceeding, it may be open to misinterpretation because the proceeding remains extant until finally dealt with by the Court in accordance with the Rules and is not itself adjourned or deferred.

[25] In large part, that is why the District Court’s ability to stay a proceeding is limited to prescribed situations. The first, as provided by r 15.1, is when the Court may stay all or part of a proceeding where the pleading discloses no reasonably arguable case, is likely to cause prejudice or delay, is frivolous or vexatious, or otherwise an abuse of process. The parties are agreed that rule does not have application in the present situation. Second, the Court may order proceedings to be consolidated or any one of them stayed until after the determination of the other in certain situations, including where some common question of law or fact arises. The Robertses maintain that is the situation here and that the District Court proceeding should be stayed to allow them to join the representative action in this Court.

⁶ Rule 1.3.

⁷ Rule 1.4 definition of “proceeding”.

[26] The District Court has the power to adjourn the various components of a proceeding that come before the Court, either for call or hearing. These may include interlocutory applications, case management conferences, the hearing of any question of fact or law separately, and the trial itself. These calls, conferences and hearings remain subject to judicial management and oversight and can be set down, vacated or adjourned as the Court considers appropriate in the particular circumstances in accordance with the interests of justice.

[27] In the present case, at the time the Robertses made their application the parties were seeking the allocation of a three-day hearing. The fact that no trial date had been allocated did not prevent Judge Kellar from exercising his power under r 10.10 to postpone or adjourn the prospective trial. I do not accept Claims Resolution's argument that the rule is limited to specific circumstances where an allocated trial cannot proceed on a previously stipulated date because of some contingency such as a Judge becoming unwell or the parties having defaulted on timetabling obligations regarding the service of evidence. As observed by Judge Kellar, r 10.10 provides the Court with a broad discretion to adjourn the trial where the interests of justice favour that course. The exercise of that discretion can occur either before or at the trial itself. The Court may adjourn or postpone the trial "for any time, to any place, and upon any terms it thinks just".

[28] I accept the Robertses' submission that, at least theoretically, the power to adjourn the trial of the matter can be exercised at any stage of the proceeding, although the adjournment of the trial until or after a particular time in the future would not prevent interlocutory steps proceeding in the interim. That difficulty does not arise in the circumstances of the Robertses' case because all that apparently remained to complete the proceeding was the trial itself. For that reason the postponement of the trial had the effect of placing the proceeding on hold.

[29] It was submitted that, in any event, Judge Kellar could have exercised the power under r 10.18 to stay the proceeding. That rule provides:

10.18 When order may be made

The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or

one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—

- (a) that some common question of law or fact arises in both or all of them; or
- (b) that the rights to relief claimed in those proceedings are in respect of or arise out of—
 - (i) the same event; or
 - (ii) the same transaction; or
 - (iii) the same event and the same transaction; or
 - (iv) the same series of events; or
 - (v) the same series of transactions; or
 - (vi) the same series of events and the same series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule.

[30] It was argued by the Robertses that the proceeding should be stayed until the determination of the representative action, thereby allowing them to apply to opt in to the proceeding before this Court because of the commonality of the questions of law and fact. Again, the discretion to make such an order is a wide one that is to be exercised broadly in accordance with the interests of justice.⁸ As observed by the Court of Appeal, it is difficult to conceive of a wider procedural discretion. It is a discretion that is to be exercised by taking into account such factors as the efficient use of resources, both judicial and those of the parties, the avoidance of inconsistent findings of fact or law, and the avoidance of “confusion, prejudice or even oppression”.⁹

[31] The difficulty with the argument put forward by the Robertses is that it is reliant on the representative action before this Court being the second of the two proceedings with which the rule is concerned. However, a “proceeding” is defined as an application to the court for the exercise of its civil jurisdiction.¹⁰ In turn, “court”

⁸ *Regan v Gill* [2011] NZCA 607 at [10], when considering the predecessor (r 382) to r 10.12 of the High Court Rules 2016, which is the equivalent to r 10.18 of the District Court Rules 2014.

⁹ *Minister of Education v Opus International Consultants Ltd* [2018] NZHC 2949 at [7]–[8].

¹⁰ District Court Rules, r 1.4 definition of “proceeding”.

means the District Court.¹¹ It follows that the reference to the proceedings in r 10.18 is limited to proceedings before the District Court.

[32] However, notwithstanding this limitation on the application of r 10.18, should the powers of adjournment and/or stay under the Rules be considered inapplicable in the present circumstances, I am satisfied the District Court has the residual inherent power necessary to enable it to effectively manage and control its own proceedings to adjourn or stay a matter in the present situation. Such a lacuna in the Rules could only be interpreted as an unintended oversight rather than the intentional effect of a deliberate limitation on the District Court’s ability to govern its own processes. There is no readily discernible reason why the objective of r 10.18 should be defeated, because the second proceeding is one that lies in this Court’s jurisdiction and could not otherwise be met by an application to this Court and exercised on this appeal. The ability to delay the hearing of a matter pending the outcome of a related proceeding in another court is an obvious and necessary power that is inherent to a court exercising civil jurisdiction in order to allow it to exercise its functions and duties in a manner consistent with securing the just, speedy and inexpensive determination of proceedings.

Ground two — did the Judge err in not adjourning the trial “for any time, to any place, and upon any terms it thinks just”?

[33] Judge Kellar adjourned the District Court “proceeding” “pending further order of the Court”. Claims Resolution is critical of the Judge omitting to impose any conditions on the order or requiring the Robertses to apply to transfer the proceeding to the High Court, or for leave to consolidate the proceedings.

[34] I do not consider the Judge was obliged to impose any requirement on the Robertses to take any particular steps in the meantime, nor to adjourn the trial to a particular date. As noted by the learned authors of *McGechan on Procedure*, adjournment to a fresh or further fixture is not often possible.¹² An adjournment sine die pending the arrangement of a new trial date is possible in principle, although I am

¹¹ District Court Rules, r 1.4 definition of “court”.

¹² *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [HR10.2.03(2)].

aware that for administrative purposes the Registry may require a nominal date to be allocated. The imposition of any conditions and terms is at the discretion of the Court.

[35] In the present case, the parties are awaiting the outcome of the appeal from Gendall J's judgment granting leave to Ms Smith to advance her proceeding as a representative action on an "opt in" basis. Until the appeal is decided it would be premature for the Robertses to make applications to either consolidate their proceeding or to opt in to the representative action. An appropriate waypoint would be a date after the Court of Appeal's decision. However, that omission as a term of the order does not invalidate the District Court's direction or affect its substance, which can be appropriately modified.

Ground three — did the District Court err in the exercise of its discretion?

[36] Claims Resolution submits that the Judge erred in the exercise of his discretion by not taking into account the procedural steps that the Robertses will have to successfully undertake to be able to "opt in" to the representative proceeding. Further, that the costs associated with those steps would be out of proportion to the quantum involved in the current District Court proceeding and increase the number of issues to be determined in addition to significantly delaying the finality of the proceeding. That submission is accompanied by a criticism of Judge Kellar's reliance on Gendall J's reasons approving the representative action and the extent to which that influenced his decision to adjourn the Robertses' proceeding pending any decision regarding its consolidation with the representative action.

[37] I do not consider Claims Resolution's submissions have merit. Judge Kellar began his analysis by referring to the "principal criterion" when adopting a particular course as being in the interests of justice. Further, that the overarching objective was "to secure the just, speedy, and inexpensive determination" of the proceeding.¹³ The Judge further articulated these principles by reference to a number of statements, including by the Court of Appeal and the Supreme Court, regarding the objective of representative actions. Those included that hearing separate proceedings where a representative action is available would be inconsistent with seeking just, speedy and

¹³ District Court Rules, r 1.3.

inexpensive resolution of claims, and that a multiplicity of actions covering the same subject matter would undermine the efficiency and economy of litigation.¹⁴

[38] Judge Kellar expressly acknowledged that in assessing the interests of justice in the particular case, he must ensure the costs of the proceeding are proportionate to the subject matter but that there will be circumstances where a “just” determination will not be achieved without delay and expense. In that regard, the Judge explicitly noted Claims Resolution’s concerns that the Roberts proceeding had now reached the stage of seeking the allocation of a trial date and the delay if the matter has to await the outcome of the appeal relating to the representative action. Claims Resolution’s concerns regarding the potential cost implications were noted.

[39] The Judge also specifically took into account the fact that interlocutory steps had been completed in relation to the Roberts proceeding and the necessary delay should a stay or adjournment be granted. However, the factors that swayed the District Court were the commonality of the way in which the Robertses and other potential members of the group litigation had entered into their contractual relationship with Claims Resolution and the way it is alleged that company operated in discharging its obligations pursuant to that relationship.

[40] Claims Resolution is critical of Judge Kellar’s references to Gendall J’s judgment, but it is readily apparent that the matters that influenced this Court in granting leave to permit the representative proceeding apply to the Robertses and that those considerations properly influenced the way the Judge chose to exercise his discretion.

[41] In that regard, Gendall J observed that there may be factual differences in the way each individual group member entered into their contracts with Claims Resolution, but there is an overall similarity that means there are common ingredients in the cause of action of each member of the representative group and an alleged pattern of behaviour by Claims Resolution which will require evidence of that

¹⁴ *Body Corporate 366567 v Auckland Council* [2017] NZHC 1520, (2017) 23 PRNZ 569 at [46]; *Malley & Co v Burgess* [2015] NZHC 841 at [22]; *Saunders v Houghton* [2009] NZCA 610, [2010] 3 NZLR 331 at [19]; and *Credit Suisse Private Equity LLC v Houghton* [2014] NZSC 37, [2014] 1 NZLR 541 at [8].

experience to be given by a large group of claimants. It is notable that Mr Roberts has filed affidavits in support of the representative action. Gendall J noted how an individual claimant would struggle to show in their individual claims this pattern or propensity of conduct should they be required to proceed separately and that, if such evidence had to be adduced in each individual case, there would be an obvious duplication of the same evidence.

[42] This was highlighted by reference to Gendall J's identification of the commonality in the way that group members entered into a contractual relationship with Claims Resolution and the subsequent way it is alleged to have operated in that relationship. Judge Kellar observed that the Robertses' affirmative defences, which are to be pleaded by an amended statement of defence and counterclaim, engage similar issues of fact and law. In regard to the economy of a representative action, this Court's observations that there is a need to avoid clogging the courts with a multiplicity of proceedings and the efficiency and cost-effectiveness that is to be gained from a case management perspective by having all group members represented by one proceeding rather than filling up the Court's time with discrete claims, was apposite.

[43] Judge Kellar specifically had regard to the claim against the Robertses having been filed in September 2017 and that discovery and inspection of documents had been completed. It was also expressly acknowledged that Gendall J's leave decision in the representative proceeding was subject to an appeal. Notwithstanding those and the other considerations already reviewed, the Judge considered the interests of justice favoured the adjournment or postponement of the trial in order to provide the Robertses with the opportunity to consolidate their proceeding with the representative action.

[44] I do not consider the Judge's conclusion that the just determination of the proceeding takes precedence over considerations of speed and potential expense, if indeed that will be the case, when the broader situation is considered and which sees Claims Resolution involved in much wider litigation involving the same issues, was misjudged. Insofar as there may be some wasted cost incurred by placing the Roberts proceeding on hold, it is still more efficient and cost-effective that all potential

members of the group are represented in one proceeding rather than filling the courts' time and expending resources (across the two jurisdictions) with discrete proceedings.

[45] It remains to be seen whether the Robertses will be permitted to join the representative action and, indeed, the outcome of the appeal from Gendall J's decision remains unknown. But as matters can be appropriately assessed at this stage, I consider there is an obvious desirability to avoid the making of possible inconsistent findings of fact and law in separate proceedings before the District and High Courts by postponing the trial and allowing the Robertses the opportunity to opt in to the representative proceeding.

[46] From a review of the proceedings it would appear that the Robertses are well-placed to be able to participate in the representative action. They are owners of a house that was damaged in the Canterbury earthquakes and entered into a contract with Claims Resolution for funding and advocacy services in respect of their claim against EQC and their insurer. The same experts were engaged and solicitors instructed as with others in the group who, like the Robertses, as former clients, complain that their insurance settlement was significantly less than what Claims Resolution and the responsible solicitor initially represented was the full and true value of their claim. Such an assessment will have to be made if and when any application is made to "opt in" to the representative action. The short point is that, insofar as that issue is relevant to the merits of the appeal, I do not accept this aspect detracts from the merits of the District Court Judge's decision to exercise his discretion the way he did.

[47] Claims Resolution made much of the various steps that are required to be completed before the Robertses' position in respect of the representative proceeding will be known. However, those requirements were matters the District Court was well aware of in coming to its conclusion. As noted, the parties must await the outcome of the appeal to the Court of Appeal. But the District Court's analysis of the Robertses' position has not been substantively challenged. They would appear to fit the criteria for the group action in the event the appeal is dismissed. Insofar as there may have to be applications to remove the current proceeding from the District Court and to consolidate it with the representative proceeding in this Court, such a step ought not be the source of material delay. Insofar as there has been resource expended in

completing interlocutory steps in the District Court, such as discovery and inspection, there is no reason to believe that completed work cannot be utilised for the purposes of the representative proceeding without any substantive duplication of costs.

[48] As matters presently stand, the Robertses contest that discovery in the District Court has been completed. They submit that if the matter was to proceed in the District Court there would be a need to duplicate the extensive discovery that will be necessary for the purposes of the representative proceeding. A similar duplication of work would likely occur by having to brief and call many of the same witnesses should the matters proceed separately.

Conclusion

[49] I am satisfied that the District Court did not err in granting the application to adjourn or stay the matter in order to provide the Robertses with the opportunity to consolidate their proceeding with the representative action and to opt in to the proceeding should that course be available after the Court of Appeal has decided the appeal from Gendall J's decision to grant leave. Having re-assessed the matter myself, I would have come to the same decision.

[50] I consider the District Court had jurisdiction to postpone the trial. The infelicitous wording of the order could be amended to read that the trial of this proceeding is postponed or adjourned until after the determination of the appeal from Gendall J's decision to grant leave to bring *Smith v Claims Resolution Services Ltd* as a representative action.¹⁵ Once the position in respect of that proceeding has been clarified a case management conference is to be convened for the purpose of either permitting the Robertses to make application to join the representative action, or, alternatively, should the appeal be successful, to make any necessary further directions for the trial in the District Court.

¹⁵ *Smith v Claims Resolution Services Ltd*, above n 1.

Staples Group v Beeton

The appeal

[51] Three grounds of appeal are relied upon by Staples Group to challenge Judge Gilbert's decision to adjourn the defamation proceeding:

- (a) The Judge was wrong to determine he had jurisdiction under r 10.10 to adjourn the proceeding sine die.
- (b) The Judge erred by not allocating a date to which the proceeding should have been adjourned or stayed and without imposing any conditions.
- (c) The Judge took into account irrelevant considerations and failed to take account of relevant factors that resulted in him not fairly balancing the interests of both parties.

Ground one — did the District Court lack jurisdiction?

[52] Before dealing with the particular point raised by Staples Group it is necessary to set out the nature of the application that was before the District Court. Ms Beeton, who was acting for herself on the defamation claim, applied to have that proceeding stayed, "or somehow deferred" until the determination of her partner's proceeding because of the commonality of the legal and factual issues that the two matters give rise to. The first submission made in opposition to that course by Staples Group was that the District Court had no jurisdiction to grant a stay of the defamation claim because the applicable rule, r 10.18, as set out at [29], does not apply.

[53] It was submitted that the rule contemplates two "proceedings" and that, because there was an interlocutory application for summary judgment associated with Mr Risdon's matter, it did not meet the definition of "proceeding" which is expressly excluded from the statutory definition of that term.¹⁶ Judge Gilbert appeared to accept the point and observed that arguably r 10.18 was not engaged until such time as the interlocutory application for summary judgment in the Risdon matter had been

¹⁶ District Court Rules, r 1.4 definition of "proceeding".

determined and that, once that occurred, it would inarguably become a “proceeding”. It was observed that the rule would then potentially be brought into play.

[54] I struggle with that interpretation. The application for summary judgment is an interlocutory application and represents a procedural step available to a party. However, there must be a contemporaneous proceeding in existence before such an application can be made. The fact there is an extant interlocutory application that is yet to be determined does not change the fact that the proceeding to which it relates is a separate proceeding that can potentially be consolidated with another matter.

[55] Mr Risdon’s proceeding has been stayed by consent pending determination of the representative action in this Court, presumably because of the recognised common issues that Mr Risdon’s proceeding gives rise to that are shared with the group proceeding. The application for summary judgment is, as a result, similarly stayed, forming, as it does, part of that proceeding. Given the outstanding issues to be litigated between the parties, its prospects for success were poor, hence, no doubt, the logicity of the agreed stay.

[56] It follows that I consider r 10.18 was available to the District Court but the Judge preferred to deal with the issue pursuant to r 10.10.

[57] I accept that, when regard is had to the limited procedural progress that had been made in the defamation proceeding, it is questionable whether r 10.10 was the appropriate rule to be utilised in the present situation. For the reasons set out earlier in this judgment, the whole “proceeding” itself is not usually the subject of an adjournment, other than in specific circumstances.¹⁷ However, its various procedural parts are commonly adjourned and various case management directions often made regarding the timing and completion of certain procedural steps on or before, or not before, a certain date or event as part of the overall management of the proceeding. I do not consider that Judge Gilbert was reliant on the application of the rule to make a direction that any further procedural steps in respect of the defamation proceeding should await the outcome of an application in respect of a related proceeding.

¹⁷ District Court Rules, r 7.3(8)(b).

[58] In the absence of any explicit rule governing the making of such a direction, I consider the District Court had the inherent power to make such an order, being one that is necessary to enable the Court to act effectively in the exercise of its jurisdiction and to administer justice in accordance with the Rules' objectives to secure just, speedy and inexpensive determinations of the proceedings before it. However, notwithstanding that conclusion, because of the nature and circumstances of Ms Beeton's case and its close relationship with Mr Risdon's proceeding, I consider that r 10.18 also had application. The test remains substantially the same however the issue is approached. Namely, whether the Court considers it desirable in the interests of justice to make an order either to consolidate the cases or defer the determination of Ms Beeton's matter until after Mr Risdon's proceeding is completed should the Court be satisfied that the two proceedings give rise to some common questions of law or fact, or if the rights to relief claimed in respect of the dual proceedings arise out of the same series of events and/or transactions.¹⁸

Ground two — was the Judge wrong to adjourn the proceeding sine die without any conditions?

[59] Staples Group is critical of the Judge not requiring as a condition of the order that Ms Beeton apply for leave to consolidate the defamation proceeding with Mr Risdon's matter and that he did not impose an award of costs for steps taken by the company up until that point in the proceeding in reliance on Ms Beeton's acceptance of the District Court's jurisdiction to determine the claim. Staples Group also maintains that the District Court Judge erred in not addressing any potential decision by Mr Risdon to transfer his claim to the High Court and to opt in to the representative action against Claims Resolution.

[60] As I have observed in respect to the Roberts proceeding, the Court has a very wide discretion in exercising its powers to stay the proceeding or adjourn the hearing of any application, the trial itself, or any conference convened to manage the matter. Similarly, the conditions and terms upon which any such direction or order is made are only limited by the need to conform with what the Court "thinks just". As previously observed, that can extend to adjourning a matter sine die, although I have

¹⁸ District Court Rules, r 10.18.

accepted that, as a matter of good practice, it is in the interests of the parties, in the absence of their consent, for there to be some accompanying direction as to when the matter has been adjourned or stayed, and/or identification of the triggering event for its review to ensure the matter remains subject to the oversight of the Court and is not simply allowed to lapse.

[61] In the present case, Judge Gilbert identified as part of his order that the proceeding would remain in abeyance until the determination of the interlocutory application for summary judgment in Mr Risdon's proceeding, after which the matter was to be made the subject of a case management conference for further directions. It was anticipated that consolidation of the defamation proceeding and Mr Risdon's matter would be assessed at that point, assuming the summary judgment application was unsuccessful.

[62] A difficulty with that course is that the Risdon proceeding is by agreement stayed pending determination of the representative action. There will be no determination of the summary judgment application before then, if at all. Given that the fate of that proceeding is dependent on the determination of the representative proceeding before this Court, it makes sense to direct the defamation proceeding be recalled after the outcome of the appeal against the leave decision in *Smith v Claims Resolution Services Ltd* is known and, in the event of the appeal being unsuccessful, not before the determination of Mr Risdon's application to "opt in".

Ground three — did the District Court Judge err in the exercise of his discretion?

[63] Staples Group was critical of the Judge's reliance on statements made by Ms Beeton in her oral and written submissions that were not in evidence before the District Court on the hearing of the application and, I was informed, are in dispute in the Risdon proceeding involving Claims Resolution, as well as the defamation proceeding. The District Court's reference to Mr Risdon and Ms Beeton being on a benefit, Mr Risdon's mental health difficulties, Ms Beeton having acted as his agent in dealing with Claims Resolution and that Ms Beeton's disposable resources had been "exhausted in the fight", who as a self-propelled litigant had "few resources at her disposal", were highlighted by counsel for Staples Group as part of his submission.

[64] Staples Group may have grounds to object to these references in the Judge's decision, but I do not consider them to be particularly critical to the merits of the decision reached by the District Court. It is apparent that Ms Beeton was acting for herself in defending the defamation claim made against her by the company. It is not feasible to realistically argue that the action taken by Staples Group in suing Ms Beeton in defamation is not inextricably linked with the substantive issues that arise in respect of its subsidiary company's proceeding against Mr Risdon and his defences to that claim. The factual matrix of the two cases and the competing contentions of the parties almost entirely overlap. That aspect of the two proceedings has not been directly contested and is a key consideration to which Judge Gilbert had regard in concluding there was "obvious commonality" as between the two proceedings. I do not therefore consider the Judge's reference to Ms Beeton's impecuniosity or to her and Mr Risdon's personal situation materially bears on the merits of his decision. Similarly, I do not consider that Mr Risdon has legal representation in the proceeding in which he is a party bears on the legitimacy of the Judge's findings.

[65] Staples Group also submitted that the Judge did not undertake or failed to sufficiently assess the Court's statutory jurisdiction to consolidate the proceeding under r 10.18, implicitly finding that there were prima facie grounds for the defamation proceeding to be consolidated with Mr Risdon's matter after the determination of the summary judgment application. That submission does not square with the stance taken by Staples Group in the District Court that r 10.18 could not be utilised by the Judge, but, insofar as that was the effect of Judge Gilbert's decision to adjourn the proceeding, it is one with which I agree.

The question of consolidation

[66] Staples Group sought to argue that there was no overlap of issues between the defamation proceeding and the Risdon matter. In order to make that submission, reliance was placed on the submission that the claim against Mr Risdon involved a contractual dispute between its parties and a counterclaim alleging that Claims Resolution owed fiduciary duties to Mr Risdon arising out of the nature of the relationship between himself and Claims Resolution. The nature of that proceeding

was contrasted with the defamation claim that concerned statements made by Ms Beeton which Staples Group maintained were false and defamatory. That summary of the nature of the two claims is accurate but it does not address the more central considerations that have already been reviewed concerning the common factual matrix and, importantly, how both the legal and factual findings of the Court in respect of the Risdon proceeding will bear upon Ms Beeton's defence to the claim made against her and that may inform the appropriate outcome of that proceeding.

[67] Ms Beeton's defence to the defamation claim was that she was speaking the truth or expressing her honest opinion about Staples Group and its subsidiary company, Claims Resolution, based upon her experience in dealing with the latter company as a result of her involvement as Mr Risdon's partner in respect of his claim for the earthquake damage to the house in which they lived. It is noted by Judge Gilbert that this aspect forms a central part of the defence to the claim made against Mr Risdon. Should he be successful in defending that claim on the basis of adverse findings against Claims Resolution for breach of contract and fiduciary duty, such findings are likely to support Ms Beeton's defences to the defamation claim made by Staples Group. I consider the commonality of the issues arising between the two jurisdictions favours the factual determinations common to both proceedings being dealt with before the same court at the same time. Duplication of litigating these issues will be avoided, with consequent cost savings and inconsistent outcomes avoided.

[68] While different legal principles will have to be applied, the fact there are no common questions of law is far from determinative. Those legal questions will be informed by the factual findings made by the Court based upon an evaluation of the same evidence which would otherwise have to be repeated if the claims were to be tried separately. Staples Group placed much emphasis on the rule that the factual findings in one case cannot be applied as findings of fact in another.¹⁹ That is undoubtedly correct but it does not arise as a result of the District Court's direction, nor was such a belief erroneously relied upon to justify the course taken by the District Court Judge. To the contrary, the rule highlights the need for the two proceedings to be heard together in order that the common evidence is called once, and for there to

¹⁹ *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [33].

be findings of fact that have application to both matters that are not required to be duplicated with all the cost that such an exercise would involve.

[69] I consider the matter is better dealt with pursuant to r 10.18 on the basis that the two proceedings be consolidated. That, however, was not the application before the District Court, nor was it the basis upon which Judge Gilbert approached the issue before him. The proceeding involving Mr Risdon has been stayed because of the overlap with the legal and factual issues that arise in the representative action before this Court. As noted by Staples Group, the staying of the claim against Mr Risdon pending determination of that proceeding appears to have been a sensible and pragmatic decision by the parties. I consider in the circumstances that rationale equally applies to the defamation proceeding when regard is had to the overlap between the prospects of Staples Group succeeding in that claim in the face of the defences put forward by Ms Beeton that rest on the same issues that will be determined by this Court relating to the conduct of its subsidiary, Claims Resolution.

[70] There will undoubtedly be considerable delay in choosing to proceed on the defamation proceeding in a manner that awaits the outcome of the representative action, but that is largely the corollary of the claim against Mr Risdon having already been stayed. Judge Gilbert acknowledged the interest Staples Group has in having its defamation claim determined. However, apart from the inherent delay in waiting until the proceeding against Mr Risdon can be determined, there is no specific prejudice. As noted by the District Court Judge, there is a record of the alleged defamatory statement which will not degrade over time and there is no ongoing prejudice resulting from the claimed defamatory post because it has long since been removed. There are obvious efficiencies to be gained by allowing the common issues to be determined at the one hearing and the desirability of avoiding potentially inconsistent and conflicting findings regarding the parties' conduct.

[71] I accept the position is somewhat complicated by the prospect of the claim against Mr Risdon being "joined" with the representative action in this Court, and that there may need to be some reassessment of the appropriate course should such an application be successfully made by Mr Risdon to opt in to that litigation. However, because of the agreement already made between the parties to that proceeding that

Claims Resolution's claim be stayed pending the outcome of the representative litigation, that is not presently the immediate source of delay.

Conclusion

[72] I have concluded that the District Court was correct in its assessment of the merits of Ms Beeton's application. The only issue that remains is whether the Judge adopted the correct mechanism to ensure the type of duplication that would arise from the hearing of the defamation proceeding and the claim against Mr Risdon separately would be avoided. As I have found, I consider that it would be just for those two proceedings to be tried together, or at least the defamation proceeding not heard until after the determination of Mr Risdon's litigation. A complication arises in the claim against Mr Risdon having been stayed pending the outcome of the representative action.

[73] I consider in the circumstances the best course, in order to do justice between the parties, is to utilise r 10.18 and order that the determination of the defamation proceeding be stayed to allow an assessment of whether those proceedings should remain in abeyance until after the determination of the group action in this Court. I appreciate that such a course will likely place Staples Group's defamation action on hold, potentially for a number of years. However, when regard is had to the common issues that the litigation involving its subsidiary company and intrinsically Staples Group itself give rise from its relationship with and its alleged treatment and conduct towards its former clients, I consider that such an approach is the appropriate outcome in the unusual circumstances of this case.

[74] Accordingly, as a first step towards the question of the sequence or timing of the trial of the defamation proceeding there will be an order staying that proceeding until the determination of the appeal against Gendall J's decision granting leave to bring a representative action by the Court of Appeal. Should the appeal be unsuccessful that interim stay will extend until the determination of any application by Mr Risdon to "opt in" to the representative action before this Court, or him giving notice of his intention to not make such an application.

Result

[75] Both appeals are dismissed.

Costs

[76] Because the Robertses have been successful in having the appeal dismissed they are entitled to scale costs, which are made in accordance with category 2B of the High Court Rules.

[77] Because Ms Beeton was self-represented no costs order is made.

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