

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

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

**CIV-2021-409-000461  
[2021] NZHC 2742**

BETWEEN

RACHEL JOANNE TOMKINSON  
Plaintiff

AND

COUNTDOWN SUPERMARKET,  
TIMARU  
First Defendant

AND

NEW WORLD SUPERMARKET, TIMARU  
Second Defendant

Hearing: On the papers

Judgment: 13 October 2021

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**JUDGMENT OF DUNNINGHAM J**

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*This judgment was delivered by me on 13 October 2021 at 3 pm, pursuant to  
r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar  
Date:*

[1] I have had the above proceeding referred to me by the Registrar under r 5.35A of the High Court Rules 2016. That rule applies to a proceeding if a Registrar believes that, on its face the proceeding is “plainly an abuse of the process of the Court”.

[2] Under r 5.35B, on such referral, I may, make a range of orders including (without limitation) an order under r 15.1 that: –

- (a) the proceeding be struck out;
- (b) the proceeding be stayed until further order;
- (c) documents for service be kept by the Court and not served until the stay is lifted;
- (d) no application to lift the stay be heard until the person who filed the proceeding files further documents as specified in the order (for example, an amended statement of claim or particulars of claim).

[3] The Court has an inherent power to strike out a proceeding to prevent misuse of its process. This includes:

- (a) when it would be manifestly unfair to another party that they be required to respond to the case; and
- (b) where “right thinking people” would regard the Court as exercising very poor control of its processes if it were to allow the applicant’s document to be regarded as a proper document”.<sup>1</sup>

### **Application to the present case**

[4] The documents which have been filed by the plaintiff are a notice of proceeding and statement of claim. They are in proper form. However, the statement of claim simply reads:

1. Plaintiff self-representing for a Judicial Review for 2 trespass notices, from above supermarkets being 2 years each, for a non-compliance of mask mandates COVID 19, re freedom to practice my religious liberties under my Human Rights Act, Law of the Land.

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<sup>1</sup> *Mathieson v Slevin* [2018] NZHC 1032, (2018) 25 PRNZ 116 at [6].

[5] My assumption is that the plaintiff has been banned from entering the two supermarkets because she has refused to wear a mask as required by the COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) 2021 (the COVID-19 Order) on the grounds that such a rule infringes her human rights, including her religious beliefs. The nexus between the requirement to wear a mask in the supermarkets in question and the impact on her religious beliefs is not specified.

[6] However, more importantly, the supermarkets are not the appropriate respondents if (as it appears to be) her application is to judicially review the legality of the COVID-19 Order itself. All the supermarkets appear to be doing is enforcing the law as it currently stands. They did not promulgate the Order which requires the wearing of masks in public places such as supermarkets, and so could not properly be named as the respondents in an application for judicial review.

[7] For that reason, the proceedings are struck out. It would be manifestly unfair to the named defendants if they were required to respond to these claims.

[8] I should note, for the proposed plaintiff's benefit, that if she was to re-instigate her proceedings against a more appropriate respondent, she would need to articulate much more fully in her pleadings, why the provisions relating to mask wearing contained in the COVID-19 Order unreasonably impinge on her freedom to practice her religion or on any other human right which she claims is unreasonably affected.

[9] I also note, as required under High Court r 5.35B, the plaintiff has the right to appeal this decision. In addition, this decision is to be forwarded to the two supermarkets which are named in the proceedings.<sup>2</sup>

Copies To:  
Ms Tomkinson, Timaru,  
Countdown Supermarket, Timaru  
New World Supermarket, Timaru

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<sup>2</sup> As required under High Court r 5.35B(4).