

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 202
EMPC 368/2022**

IN THE MATTER OF an application to vary search orders

BETWEEN HYNDS PIPE SYSTEMS LIMITED
 Applicant

AND JUNMING (JASON) CHENG
 First Respondent

AND ZEB LIMITED (T/A SPANIT)
 Second Respondent

Hearing: On the papers

Appearances: J Rooney and M B Austin, counsel for applicant

Judgment: 9 November 2022

**JUDGMENT (NO 2) OF JUDGE J C HOLDEN
(Application to vary search orders)**

[1] On 1 November 2022, a search order was made without notice authorising the search for, inspection, cloning and/or removal of, certain electronic storage devices and hard copies of documents held by Mr Cheng and Zeb Limited (t/a SPANIT) (SPANIT).¹

[2] Hynds Pipe Systems Ltd (Hynds) now applies urgently, and without notice, for a variation of the search orders on the basis that, having attempted to execute the search orders, the independent solicitors engaged by Hynds were unable to serve them

¹ *Hynds Pipe Systems Ltd v Cheng* [2022] NZEmpC 197.

and the accompanying documents on Mr Cheng and SPANIT (or on any other persons appearing to be in charge of the respective premises).

[3] The original search order against Mr Cheng provided for a search to take place between 8 am and 8 pm during a weekday, but a man left Mr Cheng's home prior to 8 am, and there was nobody else present from that time until approximately 1.30 pm on the day in question. At that point a decision was made to reschedule the execution of the orders until another day.

[4] In those circumstances, Hynds seeks to vary the search orders to allow them to be executed between 7 am and 8 pm on a weekday.

[5] Further, when an attempt was made to execute the search order against SPANIT, there did not appear to be any representatives of SPANIT present at the address in the search order. It also did not appear that the business of SPANIT took place from that premises. Hynds says that, at this stage, despite a number of additional attempts to locate other premises used by SPANIT, Hynds has been unable to identify any other locations from which SPANIT is operating.

[6] Accordingly, Hynds seeks that the search order against Mr Cheng be varied to allow the persons set out above paragraph [4] of the order to require Mr Cheng (or the person appearing in charge of the premises) to disclose all locations from where SPANIT conducts its business, including (but not limited to) any location where SPANIT manufactures its products, operates an office space, or otherwise conducts the administration of its business.

[7] It also seeks amendments to the search order against SPANIT to allow searches to be conducted at any premises disclosed by Mr Cheng and/or by the person appearing to be in charge of the relevant premises and to require SPANIT and/or the persons appearing to be in charge of SPANIT's premises to disclose all locations from where SPANIT conducts its business, including (but not limited to) any location where SPANIT manufactures its products, operates an office space, or otherwise conducts the administration of its business.

[8] Hynds intends to execute the search orders on a date between 14 and 17 November 2022. Accordingly, it requests that the date previously fixed by the Court under r 33.7(4) of the High Court Rules 2016 (22 November 2022) be vacated to provide further opportunity for the preparation of the independent solicitors' reports and any applications that may be filed by the parties following the execution of the search orders.

[9] In the circumstances the amended orders sought are appropriate. The amended search orders are now made in terms of the drafts provided to the Court. The hearing date of 22 November 2022 is vacated.

[10] The documents set out in [38] of the judgment of 1 November 2022, along with this judgment and the amended search orders, are to be served on Mr Cheng and on SPANIT before the search orders are executed.

[11] This judgment is not to be published other than to the parties, their representatives, the supervising lawyer and computer consultants until further direction from the Court. The other orders contained in the judgment of 1 November 2022 continue to apply.

[12] At 9.30 am on 1 December 2022, the Court will consider reports on the searches from the independent solicitors, Ms Swarbrick and Mr Langton. Hynds, Mr Cheng, SPANIT and the independent solicitors are all entitled to be heard on that date. The other matters specified in the orders will also be considered at that hearing.

[13] Leave is reserved for any party to apply to the Court on 24 hours' notice to vary or discharge the orders made in this judgment.

[14] Costs are reserved.

J C Holden
Judge

Judgment signed at 3.30 pm on 9 November 2022