

**ORDER PROHIBITING PUBLICATION OF NAME AND IDENTIFYING
DETAILS IN THE CONTEXT OF THIS JUDGMENT**

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

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

**[2024] NZEmpC 142
EMPC 469/2023**

IN THE MATTER OF	an application for a search order
BETWEEN	MGE NEW ZEALAND 2010 LIMITED First Applicant
AND	MCKAY LIMITED Second Applicant
AND	JAMES CAMPBELL First Respondent
AND	JAYCEE ELECTRIX LIMITED Second Respondent

Hearing: 30 July 2024
(Heard at Auckland by VMR)

Appearances: D Grindle, counsel for applicants
J Browne, counsel for respondents

Judgment: 2 August 2024

JUDGMENT (NO 4) OF JUDGE M S KING

[1] On 19 January 2024, a search order was granted.¹ On 12 February 2024 and 10 May 2024, by consent, the orders were varied and extended.² A review hearing was held on 30 July 2024.

¹ *MGE New Zealand 2010 Ltd v Campbell* [2024] NZEmpC 5.

² *MGE New Zealand 2010 Ltd v Campbell (No 2)* [2024] NZEmpC 13; and *MGE New Zealand 2010 Ltd v Campbell (No 3)* [2024] NZEmpC 73.

[2] Counsel advised that the parties had previously applied agreed search terms to the cloned devices. A search yield of 14,507 documents was identified (search yield). The independent computer consultant has uploaded the search yield onto an electronic platform called Reveal. The Reveal platform allows the parties access to the documents online as part of the inspection process. Using the Reveal platform incurs a monthly fee.

[3] The parties have reviewed the search yield and by agreement identified 1,147 that they have classified as “open” documents. The open documents have been shared outside of the Reveal platform, and the parties agree that these open documents are classified as “open” for the purposes of the litigation and are no longer subject to any confidentiality provisions. However, these documents remain subject to the general restrictions on the use of discovered documents in litigation.

[4] Within the search yield, a further 828 documents featured the name of client A, and 2,133 featured the name of client B. Client A and client B have been longstanding clients of the applicants. The parties agreed at the review hearing to a further database being made of client A and client B documents and to a process for the inspection of those documents.

[5] The applicants sought consequential orders which permitted three of its representatives to have access to the client A and client B documents on the Reveal platform. The purpose of granting access is for these representatives to assist counsel for the applicants in assessing the relevance of the documents. The parties have agreed that access would be subject to these representatives signing a confidentiality and non-disclosure agreement – the form of the agreement to be agreed by the parties.

[6] The respondents have raised concerns about the ongoing need for the Reveal platform once the inspection of the client A and client B documents has been completed. The parties have agreed to a process where the search yield of 14,507 documents can be downloaded onto a device and held with the cloned devices by the independent computer consultant. This allows for the search yield to be preserved without incurring further cost through hosting the search yield on the Reveal platform. It also avoids incurring the cost of paying for the search to be repeated in the future (if

required). The parties agree that the cloned devices held by the independent computer consultant cannot be searched without further order of the Court.

[7] Lastly, the parties have indicated that they have different views as to how the Court should treat costs in this matter. The applicants have indicated that they will be seeking for costs in the Employment Court to be dealt with once the review hearing for the search orders has been completed and the inspection of client A and client B documents are completed. The respondents submit that costs in the Employment Court should be reserved until after the Employment Relations Authority (the Authority) has determined the substantive matter. The respondents submit that the outcome of the Authority determination, including the significance of the documents that were obtained by the search order and their relevance to the Authority's proceedings, will be relevant to the issue of costs. The parties have agreed that it is premature to deal with the issue of costs at this point in time. The issue of how costs will be treated in this matter will be considered at the next review hearing.

[8] In the circumstances the following consequential orders are made by consent:

- (a) The independent computer consultant is to place client A and client B documents in their own separate file within the Reveal platform.
- (b) Counsel for the respondents is to advise counsel for the applicants if any of the documents are objected to, and the basis for that by 21 August 2024.
- (c) Counsel are to try and resolve any such objections by 28 August 2024. Failing resolution, the opinion of the independent solicitor, Mr Magee, will be sought. If this does not resolve the matter, either counsel can file an appropriate application with the Court.
- (d) After the status of client A and client B documents are ultimately resolved, the computer consultant will provide copies of such documents to the parties. The computer consultant will then download the search yield onto a device and discontinue the Reveal database

electronic platform. For the avoidance of doubt the computer consultant will keep in their possession the cloned devices (including the downloaded copy of the search yield) until further order of the Authority or the Court.

- (e) The applicants' representatives, Mr L Faithfull, Mr M McGinley and Mr T Ashby, will sign a confidentiality and non-disclosure agreement in respect of the client A and client B documents.
- (f) For the avoidance of doubt, there will be a continuation of the interim order for non-publication and the order that the file is not to be searched except by leave of a Judge.
- (g) The parties will confer with the registry to ensure a review hearing is scheduled promptly after the parties have completed their search of the client A and client B documents from the search yield.

[9] Leave is reserved for the parties to apply on reasonable notice for further or other orders.

[10] Costs are reserved.

M S King
Judge

Judgment signed at 3.30 pm on 2 August 2024