

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

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

**[2024] NZEmpC 242
EMPC 52/2022**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for discovery against a non- party
BETWEEN	ALLAN HALSE First Plaintiff
AND	CULTURESAFE NZ LIMITED (in liquidation) Second Plaintiff
AND	HAMILTON CITY COUNCIL Defendant
AND	JOANNE LINDA THOMSON First Non-party
AND	MANIOTOTO ENTERPRISES LIMITED Second Non-party
Hearing:	On the papers
Appearances:	A Halse, first plaintiff in person No appearance for the second plaintiff No appearance for the defendant E J Tait, counsel for the non-parties
Judgment:	5 December 2024

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for discovery against a non-party)**

[1] This judgment resolves an application by Allan Halse for non-party discovery. CultureSafe NZ Ltd is in liquidation and is taking no part in these proceedings.

[2] The application was made against Joanne Thomson but has been treated as an application against Maniototo Enterprises Ltd and Ms Thomson. Ms Thomson is the sole director of Maniototo Enterprises.

[3] Mr Halse's involvement with Maniototo Enterprises and Ms Thomson followed the winding up of CultureSafe NZ, which had been the company through which Mr Halse operated. At that stage, Ms Thomson and Mr Halse agreed to an arrangement whereby Mr Halse could operate out of Maniototo Enterprises. The relationship between Mr Halse and Maniototo Enterprises subsequently broke down, and Maniototo Enterprises was no longer prepared to work with Mr Halse. After that, Mr Halse says he could not access documents that were on Maniototo Enterprises' computer system.¹ There is no suggestion that Ms Thomson separately holds relevant documents.

[4] In the substantive proceedings, Mr Halse is challenging a determination of the Employment Relations Authority in which the Authority made compliance orders and ordered penalties against Mr Halse and CultureSafe NZ in respect of a found breach of a settlement agreement entered into between Mr Halse and the Hamilton City Council.²

[5] That challenge was about to be heard when Mr Halse sought an adjournment on the basis that he did not have access to certain documents that he says he needed so as to be able to proceed with his challenge as they were in the possession of Maniototo Enterprises and Ms Thomson. The adjournment was granted.

[6] Mr Halse then made the application for non-party discovery. Although the Hamilton City Council says the application and consequential delays have caused disadvantage to, it has not been substantively involved in the matter; it abides the decision of the Court, reserving its position on costs.

¹ It seems that physical documents are not the issue in this application.

² *Hamilton City Council Ltd v Halse* [2022] NZERA 34.

[7] Maniototo Enterprises does not disagree that Mr Halse should be provided with his documents; the issue is over the costs of doing so.

[8] The application has been the subject of several directions conferences, and the applicant and the non-parties have filed memoranda and affidavits. Despite this, and despite discussions between them directly, matters remain unresolved. Hence, the need for a Court judgment.

[9] The parties largely agree on the law. The Court has the power to order non-party discovery pursuant to sch 3 cl 13 of the Employment Relations Act 2000, which grants the Court the powers of a District Court judge under s 106 of the District Court Act 2016.³ The Court may, if it thinks just, order the applicant to pay the person from whom discovery is sought, the whole or part of that person's expenses (including solicitor and client costs) incurred in relation to the application and in complying with any order made on the application.⁴

[10] It is usual that the party who applies for non-party discovery pays the non-party's reasonable costs.⁵

[11] The difference in position between the parties essentially is over the time required to conduct a computer search to obtain the documents sought by Mr Halse. Mr Halse suggests it is a five-minute job and that Maniototo Enterprises should provide access to him to conduct the search. Understandably, Maniototo Enterprises is not prepared to provide access to its IT systems to Mr Halse. It considers that the fees it would be required to pay to someone to conduct the appropriate searches would be in the vicinity of \$1,000.

[12] It also expresses concern over Mr Halse's solvency, noting that he continues to face bankruptcy proceedings in the High Court.

³ It is unclear why the legislation refers to the District Court Act 2016; the Court generally follows the High Court Rules 2016, pursuant to reg 6(2)(a)(ii) of the Employment Court Regulations 2000.

⁴ High Court Rules, r 8.22 (see also District Court Rules 2014, r 8.22)

⁵ *Churchill Group Holdings Ltd v Aral Property Holdings Ltd* HC Auckland CIV-2001-404-2302, 3 August 2005 at [33]–[36]; and *Clear Communications Ltd v Telecom Corporation of NZ Ltd* (1994) 8 PRNZ 200 (HC).

[13] The person who is probably best placed to conduct any computer search (and who previously worked with Mr Halse) provided evidence that Mr Halse's record-keeping was haphazard and shambolic. She thinks that she may be required to undertake quite extensive work.

[14] Maniototo Enterprises seeks that the costs of this application be fixed now and paid in advance of the work being done.

[15] In the circumstances, I am prepared to make an order for non-party discovery requiring Maniototo Enterprises to provide to Mr Halse documents retrieved through searching its IT systems for documents relating to the proceedings between Mr Halse and the Hamilton City Council. However, I consider it is appropriate for that to be done once Mr Halse has paid the sum of \$1,000 into Court.⁶ Although that sum may not reflect the costs Maniototo Enterprises may be entitled to on this application, it should protect Maniototo Enterprises in respect of the expenses it has yet to incur.

[16] Accordingly, I order that:

- (a) Mr Halse is to pay \$1,000 into Court within 14 days of the date of this judgment as security for costs, which the Registrar is to place in an interest-bearing account as soon as practicable after receipt;
- (b) Maniototo Enterprises is to search its IT systems for documents relating to the proceedings between Mr Halse and the Hamilton City Council and must provide the documents recovered to Mr Halse within 30 days of confirmation that Mr Halse has paid the \$1,000 into Court.

[17] The Court will timetable submissions from Mr Halse and Maniototo Enterprises (and from Hamilton City Council if it wishes) regarding costs and disbursements, including in respect of the expenses incurred by Maniototo Enterprises

⁶ Interlocutory orders may be made subject to conditions, see r 7.45 of the High Court Rules (see also District Court Rules, r 7.38).

to undertake the necessary document search, once the order has been complied with or the timeframe for payment of security has passed with no payment made.

J C Holden
Judge

Judgment signed at 12.15 pm on 5 December 2024