

**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 13
EMPC 469/2023**

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

Hearing: On the papers

Appearances: D Grindle, counsel for applicants
J Brown, counsel for respondents
P Magee, independent solicitor

Judgment: 12 February 2024

JUDGMENT (NO 2) OF JUDGE M S KING

[1] On 19 January 2024, the Court granted a search order to allow the applicants to search the premises of the second respondent, Jaycee Electrix Ltd (JEL), for specified electronic devices held by the respondents.¹

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

[2] Peter Magee was appointed as the independent solicitor to carry out the search order. In his written report he advised the Court that the search was carried out on 22 January 2024 and that the respondents co-operated fully throughout. That assistance enabled the search to be executed expeditiously.

[3] The search resulted in the seizure of two laptops and four USB sticks. Access was also provided to the cloud-based storage system used by the respondents. The seized items were cloned and the original devices returned to the respondents within less than six hours.

[4] The cloned data is currently in the possession of Jamie Tooke, independent computer consultant.

Consequential orders sought

[5] The applicants have filed a memorandum of counsel seeking consequential orders to vary the search order to allow for the identification of relevant documents on the cloned devices and an order replacing the independent computer consultant, Mr Tooke, with Campbell McKenzie, an independent computer consultant who specialises in forensic search and data recovery. Mr McKenzie has signed an appropriate undertaking which has been filed with the Court.

[6] The respondents filed a memorandum of counsel setting out amended consequential orders, which were agreed to by the applicants. The following consequential orders varying the search order are made by consent:

- (a) The search order made on 19 January 2024 is continued and the items seized, and copied, except for those that have been returned to the respondents, are to remain in the custody or under the control of the independent computer consultant and Mr Magee until further order of the Court.
- (b) Mr Tooke is to be replaced by Mr McKenzie as the independent computer consultant named in the order. Mr McKenzie will liaise with Mr Tooke to arrange to uplift and secure the cloned data.

- (c) The parties are to confer on the search terms that will be used to search the devices by Mr McKenzie. To the extent that the parties cannot agree on search terms, counsel shall engage the independent solicitor, Mr Magee, for the purpose of making a determination on that point. Counsel are to file a memorandum informing the Court on the progress on this point by 4 pm on Friday, 23 February 2024.

- (d) Once the search terms have been agreed or determined by Mr Magee in accordance with [6](c) above, the cloned devices will be searched by the independent computer consultant. The following process will apply to the documents and information obtained as a result of the search (search yield):
 - (i) The search yield will be disclosed to counsel for the applicants, counsel for the respondents, and Mr Campbell only.
 - (ii) Counsel for the applicants may disclose all or any part of the search yield to his clients with the express agreement of the other party or the Court.
 - (iii) Counsel will liaise to determine any questions of privilege, confidentiality or business sensitivity that arise from the search yield.
 - (iv) To the extent that the parties cannot agree on these issues, counsel shall engage the independent counsel, Mr Magee, to give his opinion on the point. If, following considering such opinion, the parties still do not agree, then either party can seek a determination from the Court on the point.
 - (v) Once issues regarding the search yield have been resolved, counsel for the applicants will prepare an agreed schedule of the search yield which together with the corresponding documents will be provided to counsel for the respondents and filed with

the Court on an “open” basis. While the schedule of such documents is itself “open”, the documents themselves will not necessarily be.

- (vi) Either party may seek the intervention of the Court for further orders or ultimate resolution of the proceedings.
- (e) 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.

[7] The parties will confer with the registry to ensure a review hearing is scheduled to resume promptly after the events ordered above have been completed.

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

[9] Costs are reserved.

M S King
Judge

Judgment signed at 4.45 pm on 12 February 2024