

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2025] NZEmpC 273
EMPC 348/2024**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF challenges to objections to disclosure

BETWEEN PAUL HARDY
Plaintiff

AND PRECISION SOLUTIONS LIMITED
Defendant

Hearing: 16 July 2025
(Heard at Christchurch and further submissions filed on 24 and 31
July 2025)

Appearances: A Keir, counsel for plaintiff
M Davis, counsel for defendant

Judgment: 16 December 2025

**INTERLOCUTORY (NO 2) JUDGMENT OF JUDGE K G SMITH
(Challenges to objections to disclosure)**

[1] There are unresolved disputes between Paul Hardy and Precision Solutions Ltd over disclosure necessary to enable the litigation between them to progress to a hearing.

[2] To provide some context to these disputes it is necessary to briefly review the background. There is a large measure of agreement between Mr Hardy and Precision Solutions about some aspects of their dispute, but sharp disagreement over whether he breached the employment agreement and duties said to be owed to the company.

[3] Precision Solutions is a house-levelling company incorporated in January 2015. It was created to take advantage of a business opportunity that emerged following the Canterbury earthquakes. The shareholders in that company were Mr Hardy, Kelly Wood and Andrew Breward. Mr Hardy, Mr Wood and Mr Breward owned an equal number of shares in the company and were all directors. There is however a dispute about the roles each of the directors performed.

[4] Mr Wood and Mr Breward are also involved as shareholders and directors in a building company called Premium Home Builds Ltd.

[5] Following the establishment of Precision Solutions, the company performed earthquake-related repair work which was mostly managed by insurance companies or the Earthquake Commission (EQC). From about 2017 there was a move away from this way of working to what Mr Hardy described as a push for cash settlements. That is, where insurance companies did not have to take on any risk of additional damage once building work started.

[6] There is also, it seems, general agreement that in 2019 a further move was made to implement what was referred to as EQC's "on-sold programme". As described by Mr Hardy, this was a programme for homeowners who purchased houses after the earthquakes, and therefore did not have the benefit of an insurance claim, who later found the house was inadequately repaired.

[7] Mr Hardy said that there were two important features of this programme:

- (a) the homeowner was to be the contracting party rather than the insurance company or EQC; and
- (b) the work had to be completed.

[8] Mr Hardy said those features meant that it was the homeowner who had responsibility for organising the preliminary repair-related work such as engineering and contracting with a builder to undertake the repairs.

[9] That compared to the previous situation where homeowners could get a cash settlement with no obligation to complete the repair work. The house could then be sold “as is/where is” or perhaps demolished.

[10] The business relationship between Mr Hardy and his fellow shareholders broke down. Eventually, an agreement was made for him to sell his shares to Mr Wood and Mr Breward. That agreement was completed on 15 May 2020 and Mr Hardy’s employment with Precision Solutions ended that day. A few days later, on 21 May 2020, he incorporated a company called Hardy Projects Ltd. That company also undertakes house releveling.

[11] Precision Solutions’ claim against Mr Hardy is that, before ceasing employment, he stockpiled or diverted work that the company had a reasonable prospect of undertaking as part of a reciprocal referral arrangement with Precision Home Builds. It says that, as part of this breach, Mr Hardy directed work to builders he knew favoured him so that Hardy Projects would get the releveling work that Precision Solutions should have had a reasonably prospect of securing.

[12] Mr Hardy denies any wrongdoing. He maintains that there were other reasons to explain why Precision Solutions did not secure some of the releveling work undertaken by Hardy Projects.

The Employment Relations Authority determination

[13] The Employment Relations Authority issued a determination on 19 August 2024.¹ It found against Mr Hardy and concluded that he had breached duties to the company. That determination was confined to liability with any damages arising from the breaches reserved for further investigation.

The challenge and disclosure

[14] Mr Hardy challenged the determination. He maintained that the liability finding against him was wrong. He sought a full rehearing of the matter.

¹ *Precision Solutions Ltd v Hardy* [2024] NZERA 497.

[15] That procedural history explains why Mr Hardy’s statement of claim contains positive pleadings that he did not breach any duties owed to Precision Solutions. It also explains why the statement of defence alleges breaches occurred, including listing properties where releveling work was undertaken by Hardy Projects allegedly as a result of Mr Hardy stockpiling or diverting work.

[16] The parties served notices for disclosure on each other in accordance with the Employment Court Regulations 2000. Each party objected to the notice served on them.

The Employment Court Regulations

[17] There is no dispute about how the regulations apply to each party’s notice. Mutual disclosure and inspection of documents is provided for in regs 37–52. Regulation 37 states the object of disclosure. The regulations are intended to ensure that each party has access to relevant documents. Relevance is defined by reg 38. A document is relevant if it directly or indirectly:

- (a) supports, or may support, the case of the party who possesses it; or
- (b) supports, or may support, the case of a party opposed to the case of the party who possesses it; or
- (c) may prove or disprove any disputed fact in the proceeding; or
- (d) is referred to in any other relevant document and is itself relevant.²

[18] The potential scope of disclosure required under the regulations is, in a sense, regulated by reg 37. It recognises there are circumstances where disclosure is unnecessary, undesirable or both.

² Employment Court Regulations 2000, reg 38(2) provides an extended definition of “document”.

[19] The regulations provide grounds for an objection to disclosure. Those grounds are that the document is subject to legal professional privilege, disclosure would tend to incriminate the objector or be injurious to the public interest.³

[20] While relevance is not specified as a ground of objection, it follows from reg 37 that either party may decline to disclose documents that are irrelevant. What is relevant is dictated by the pleadings because they define the ambit of the proceeding and the issues to which questions of relevance must relate.⁴ Having made that observation, relevance is not looked at through a narrow lens.⁵

[21] There are three other points to make before turning to consider the parties' submissions. First, there is a well-developed principle that the Court will not make orders for disclosure that are essentially a fishing expedition.⁶ That is, where the documents sought are designed to discover a new and previously unknown cause of action or to support a baseless or speculative one.

[22] Second, the disclosure process has been described as a function of relevance, proportionality, and discretion.⁷ I agree.

[23] The third point is that there are certain limitations that apply to disclosure. Ms Keir and Mr Davis did not suggest that the approach to be taken should differ from earlier cases where disputes about disclosure have emerged. In *Fox v Hereworth School Trust Board*, the Court restated fundamental aspects of disclosure that are sometimes overlooked, about the way it operates in practice and the Court's expectation of the parties.⁸ The Court in that case acknowledged that obtaining disclosure of another parties' documents is an important part of litigation; the existence of documents held by the other party may dictate the outcome of a case.⁹

³ Regulation 44(3).

⁴ *Airways Corp New Zealand Ltd v Postles* [2002] ERNZ 71 (CA).

⁵ At [5].

⁶ *Van Kleef v Alliance Group Ltd* [2019] NZEmpC 157 at [20].

⁷ At [7].

⁸ *Fox v Hereworth School Trust Board (No 6)* [2014] NZEmpC 154, (2014) 12 NZELR 251.

⁹ At [3].

[24] With those introductory observations, *Fox* commented that the Court does not undertake or supervise disclosing and producing documents at least until the point is reached where there is an impasse between the parties. The Court noted the onerous responsibility on representatives to ensure, and to satisfy the Court, that all relevant admissible documents have been disclosed if a party has been called on to do so.¹⁰

[25] The Court went on to say that an assurance given by counsel, or a statement made on oath or affirmation by a responsible and knowledgeable person that, for example, no documents exist or that relevant documents are privileged will usually be accepted by the Court.¹¹

[26] In this case, the objections do not seek to rely on claims of privilege, or any concern that documents may incriminate the objector, or contain anything injurious to the public interest. Both objections (and the subsequent challenges to them) turn on claims that the documents sought are irrelevant or, alternatively, that what is asked for is out of proportion to the issues raised in the litigation so that requiring disclosure is unnecessary, undesirable or both.

Mr Hardy's notice

[27] The notice Mr Hardy served listed 17 categories of documents to be disclosed and inspected.

[28] The categories are extensive, including:

- (a) seeking documents:
 - (i) relating to the establishment of Precision Solutions;
 - (ii) about drafting the employment agreement between Mr Hardy and the company;

¹⁰ At [4].

¹¹ At [5].

- (iii) about communications with directors and staff regarding an identified property; and
 - (iv) disclosing financial information; and
- (b) communications with third parties and documents relating to what was described as engagement with listed builders or “builders/partners”.

[29] While some of the categories appeared on their face to span significant periods of time they were often limited in scope. For example, category 3 sought documents described as “all correspondence with PSL directors and staff regarding releveling of 5 Hanmer Street” for two years, 2019 and 2020.

[30] Precision Solutions objected to Mr Hardy’s notice. It did so by stating a global objection on two bases:

- (a) The disclosure requested documents not relevant to the proceeding.
- (b) What is sought is oppressive and disproportionate, because the bulk and scale of the requests are unreasonable and unnecessary and would involve substantial expenditure of time and cost.

Precision Solutions’ notice requiring disclosure

[31] In contrast, Precision Solutions’ notice for disclosure was brief. It sought:

A list of all jobs, identified by street address, completed by the plaintiff at Hardy Projects Ltd from 21 May 2020 to 21 May 2023.

[32] This notice was objected on the grounds that:

- (a) the information is not relevant; and
- (b) the request would require the creation of documents not already in existence.

Mr Hardy's amended notice

[33] During the hearing issues arose about the scope and wording of Mr Hardy's notice. An opportunity was granted to refine it to provide clarity to which Precision Solutions responded.

[34] The amended notice made significant changes. Generally speaking, those amendments were designed to reduce the scope of some of the categories and to improve clarity.

[35] In response, Precision Solutions maintained some of the grounds on which it originally opposed the notice. It objected to the amended notice where it referred to "all communications" because that was beyond the scope of the regulations.

[36] There was a small advance from the position taken at the hearing for categories 1, 2, 7 and 16. As to categories 1 and 2, Mr Davis' memorandum stated that the defendant had searched its records and that no documents of this nature exist. He went on to say that all communication relating to these categories occurred in "face-to-face oral conversations".

[37] Precision Solutions agreed to provide documents in category 7. However, Mr Davis said that a further search was conducted and that the company believed no additional documents exist beyond what was already disclosed. Consistent with the duty of continuous disclosure, he advised that if any additional documents are found they will be provided. The same response was given for category 16.

[38] Ms Keir acknowledged the apparent breadth of Mr Hardy's notice but submitted that in itself did not make the disclosure request oppressive or disproportionate. She drew attention to what were described as serious and wide-ranging allegations against Mr Hardy which he was required to respond to and that went some way towards explaining the documents being sought. Additionally, she pointed out that the company has indicated it is seeking an account of profits for three years.¹² Part of this submission was an acknowledgement that the parties have already

¹² By arrangement, the parties deferred the damages aspect of this proceeding.

accepted that this litigation is complex, because it deals with the relationship between two businesses and the roles discharged by Mr Hardy, Mr Wood and Mr Breward.

[39] Mr Hardy's categories are discussed below.

Categories 1 and 2

[40] As originally written the scope of these categories was broad, relating to all documents about the establishment of Precision Solutions. The justification for this disclosure was that the documents would set out the agreement between shareholders about how the business operated, Mr Hardy's role in it, its intended relationships with other building companies, and any interactions between Precision Solutions and Premium Home Builds.

[41] As previously mentioned, Mr Davis explained that the defendant has searched its records following the amended notice and that no documents exist in either categories 1 or 2. Given the observations in *Fox*, the defendant's obligations are satisfied.

Category 3

[42] Category 3 asks for communication between Precision Solutions' directors and staff relating to the releveling of 5 Hanmer St. Ms Keir explained that the statement of defence did not identify this address as a property involved in the dispute. However, there are claims that Mr Hardy breached his duties to the company and, it seems, this property may feature in those claims.

[43] Mr Davis did not respond directly to the submission that the pleading is intended to capture this property. Instead, he referred to the breadth of the proposed disclosure. Additionally, he submitted that category 3 referring to "all communication" fell outside the ambit of the regulations because it contemplated something more than documents.

[44] Mr Davis' submission that the reference to "all communication" is beyond the ambit of the regulations is correct. However, I do not accept the balance of the

submission. Where the allegations are of stockpiling and diverting work the scope of the claim encompasses ascertaining whether 5 Hanmer St fell within the defendant's category of claimed potential future work. Disclosure in this category is required, subject to the deletion of "all communication" and its replacement with "any documents relating to obtaining the releveling work for 5 Hanmer St".

Category 4

[45] The fourth category is about correspondence between Precision Solution's directors and Placemakers. While Mr Hardy denies being in breach, he says there were other reasons to explain why Precision Solutions did not secure certain work. He claims that Placemakers stopped providing credit to Precision Solutions and Premium Home Builds which had a bearing on their ability to do work or the preparedness of others to refer work to them.

[46] There is no pleading in the statement of claim asserting that Placemakers stopped credit. There are, however, general pleadings in which Mr Hardy denies any breach of his employment-related duties. In relation to eight named properties where Hardy Projects carried out releveling work, the pleading states why that company performed the work and, in a sense, amounts to an affirmative response to the anticipated criticisms of Precision Solutions.

[47] Likewise, there is no pleading touching on the financial viability of Precision Solutions. However, the pleadings do claim that Mr Hardy formed a working relationship with another builder, which relationship he used as part of the arrangements to divert or stockpile work.

[48] The pleadings are sufficiently broad to call into question why work was handled by Hardy Projects and not Precision Solutions. If there were issues with a supplier over providing trade-related credit then that is relevant. The category is, however, confined to Precision Solutions. The drafting as it relates to Premium Home Builds is effectively an application for non-party discovery.

[49] As amended, disclosure in this category is required.

Category 5

[50] Category 5 asks for disclosure of communications between Premium Home Builds and the insurance company, IAG. Mr Hardy considers that documents in this category exist because of his knowledge of dealings between those companies.

[51] Mr Davis did not expressly deal with this category beyond objecting to the reference to “communications” rather than disclosure of any document. I accept that criticism. Additionally, this is litigation between Mr Hardy and Precision Solutions. The disclosure seeks information about what transpired between non-parties; Premium Home Builds and IAG.

[52] This category falls outside the scope of reg 38 and disclosure is not required.

Category 6

[53] Category 6 asks for disclosure of all documentation regarding Premium Home Builds’ tender for work at 60 Purchas St and the performance of this work.

[54] Mr Hardy deposed to knowing this material exists because he handled the information during his employment. It was said to be relevant to issues relating to a named builder, with whom Mr Hardy developed a working relationship and which business referred work to Hardy Projects after May 2020. Ms Keir submitted this disclosure was relevant to financial challenges faced by Precision Solutions and to business strategies that were adopted and, therefore, to possible losses that may have been incurred. Part of this submission was that it addressed the core allegation that Mr Hardy breached a known business relationship between Precision Solutions and Premium Home Builds.

[55] The difficulty with this category is that, while Mr Hardy said he knows these documents exist, there was no explanation as to why a tender by Premium Home Builds would be in the possession of, and under the control of, Precision Solutions. This is effectively a request for non-party disclosure.

[56] Disclosure in this category is denied.

Category 7

[57] Category 7 has been addressed through Mr Davis' memorandum after the hearing. Disclosure in this category is satisfied in accordance with *Fox*.

Category 8

[58] Category 8 asks for all information provided, and accounting advice given, in relation to the valuation for the sale of Precision Solutions' shares in May 2020.

[59] The submission in support of this category was that the information is known to exist because Mr Hardy was involved in the correspondence. The disclosure is said to be relevant to his bona fides in seeking to purchase the other directors' shares in Precision Solutions before agreeing to sell his to them in 2020, and to assumptions made about the value of the business.

[60] I do not accept that this category is relevant. What is in question in this litigation is not the fact that the shares were bought and sold, or their value. None of the pleadings suggest that the shares were wrongly valued or that, in some way, what was paid when Mr Hardy sold them was influenced by the diversion or stockpiling of work he is alleged to have undertaken.

[61] Even if it might be said that this information is in some peripheral way relevant, it is outside the scope of reg 37 in the sense that it is unnecessary, undesirable and disproportionate.

[62] Disclosure in this category is denied.

Category 9

[63] In category 9, Mr Hardy sought financial accounts for Precision Solutions from March 2017 to May 2022. That was said to include year end and any part-year accounts. This information is claimed to be relevant to allegations about business losses associated with the alleged breaches. Ms Keir explained that the five-year span of this request was to enable business patterns to be identified. For example, how the

company was actually performing particularly when the EQC on-sold programme was known to be coming to an end.

[64] The span of years was justified by saying that starting in 2017 provided a baseline for assessment and continuing to 2022 showed what happened after Mr Hardy left.

[65] Mr Davis submitted that this information is irrelevant because the hearing at present is confined to liability. I prefer Ms Keir's submission that a brightline distinction between liability and damages claim is not always possible to draw.

[66] There was an underlying concern from Precision Solutions, echoed also by Mr Hardy in his response to that company's notice for disclosure, arising from the businesses being competitors. Understandably, there is reluctance to share information with competitors if that might give one or other of the businesses a commercial advantage.

[67] The reality, however, is that disclosure of relevant material is required. As a baseline, reg 51 provides that the party obtaining disclosure may use the documents for the purposes of the proceeding only and that no copies are to be retained.

[68] I accept Mr Davis' submission that the time span is unnecessary. The accusation is that Mr Hardy breached duties owed to his employer causing damage. If that loss was incurred it must have been in the year following his departure in May 2020. Comparisons between the accounts for the year before his departure and the one following are likely to be sufficient and proportionate.

[69] As amended, disclosure of the financial accounts in the year prior to Mr Hardy's departure and for the year following is required.

Category 10

[70] In category 10, Mr Hardy asked for communications to Precision Solutions' staff by that company or Premium Home Builds following his departure from the business. To attempt to narrow the scope of this disclosure it was confined in the

amended notice to giving instructions to staff as to how the business would operate in his absence and/or about reporting lines and client management approaches. The span of time sought is May 2020 to October 2020.

[71] Mr Hardy assumed that these documents exist because he considers them to be part of sensible business practice. He deposed to evidence before the Authority suggesting to him that Precision Solutions took no steps after his departure to contact what he referred to as “live leads” or to instruct staff to follow up with referral sources. He considers that the absence of this follow up was a key reason explaining why some builders chose to refer work to Hardy Projects.

[72] It is an integral part of Mr Hardy’s case that Precision Solutions’ inaction, rather than his alleged conduct, caused work to be directed to his company. That information is relevant.

[73] However, there are two problems with the category. First, the reference to “communications” is beyond the regulations and it must be confined to “documents”. Second, the category cannot compel Premium Home Builds to disclose documents.

[74] As amended, disclosure in this category is required.

Category 11

[75] In the amended notice what is sought in category 11 is all communications by Precision Solutions with customers, contractors or “referrers” following Mr Hardy’s departure from the business. The first part of the request was qualified by saying that the communications referred to are those which give advice to the recipient about how the relationship with Precision Solutions will be managed, or to “introduce a new key contact person”. The span of time sought is May 2020 to October 2020.

[76] As has already been noted, the objection was based on the requirement in the regulations to seek disclosure of documents whereas what is asked for in this category is communications.

[77] The scope of the pleadings is sufficiently broad to encompass why Precision Solutions did not get work it was expecting to perform. Ascertaining steps taken by Precision Solutions to effect a transition from Mr Hardy following his departure is relevant.

[78] Where the notice falls down is the broad reference to “all communications”. I am satisfied that should be changed to “all correspondence” by Precision Solutions with customers or contractors following Mr Hardy’s departure from the business which gave advice about how the relationship with Precision Solutions will be managed.

[79] As amended, the category is approved and disclosure is required.

Category 12

[80] Category 12 seeks communications by Precision Solutions with third parties about the departure of another employee (presumably a person responsible for managing or sourcing work). The category ran into the same criticism from Mr Davis, about the reference to communications.

[81] Mr Hardy’s evidence was that information before the Authority made clear that when Precision Solutions’ employee, Mr Porter, left in October 2020 there was little follow up or attempt to maintain contact with clients. The significance of this disclosure was said to lie in being relevant to explaining why work initially scoped by Precision Solutions was later performed by other businesses including Hardy Projects. I accept Ms Keir’s submission that the handling of the departure of key personnel responsible for liaising over potential work is relevant to ascertaining whether any decline in business was attributable to the alleged breaches.

[82] The reference to communications is, however, problematic. It will need to be amended to be a reference to correspondence with third parties.

[83] As amended, disclosure in this category is required.

Category 13

[84] Category 13 asks for all financial documents associated with three projects.

[85] Mr Hardy said an area of conflict was a decision by Mr Wood and Mr Breward to take “large cash” payments for jobs. The properties referred to in this category of the notice are ones where Mr Hardy alleges payments were made in cash. He went on to say that he believes information about these payments will address concerns he has about the accuracy of any financial information relied on by Precision Solutions in this litigation.

[86] An inference invited to be drawn is that cash payments were not shown in the company’s accounts. That is, of course, a very serious allegation and it would appear to be one that is denied by Mr Wood and Mr Breward.

[87] This information might form at least part of an explanation if Precision Solutions’ financial records suggest that it was not as successful after Mr Hardy left compared to before he departed. Mr Davis’ opposition drew, at least in part, on this aspect of the case being about liability. As previously mentioned, I prefer Ms Keir’s analysis that it is not always possible to draw such a brightline distinction.

[88] Expressed slightly differently, if Mr Hardy supports his allegation that cash payments were made, but not properly shown in the accounts, that may go some way to undermining the claim that he breached his duties to the defendant.

[89] Disclosure in this category is required.

Category 14

[90] As revised, this category seeks all documents in emails or text messages showing the defendant’s communication with listed “builders/partners” for referrals of work. The names of five building companies or businesses were listed.

[91] Mr Hardy explained that the listed building companies or businesses were those responsible for building jobs where it is claimed he improperly acquired the

associated releveling work. In anticipation of the claim against him, Mr Hardy put forward the proposition that Precision Solutions was aware that those builders were key sources of work. Further, he says that the documents being sought will demonstrate the extent to which these business relationships were personal ones and that Mr Wood and Mr Breward made little effort to acquire or maintain them before and after he left the business.

[92] The relevance of this information, according to Mr Hardy, is in evaluating why those builders chose to refer work to his company when it was established.

[93] The span of time in the category, January 2019 to December 2020, was not explained by Mr Hardy. Presumably, it is designed to show the nature and extent of the relationship in the period immediately before he left the business and shortly afterwards.

[94] Opposition to this category rested, as it did with many of the others, on it being irrelevant, unnecessary or oppressive.

[95] Given the critical element of this litigation is an accusation that Mr Hardy misused his position, I accept that it is relevant to assess what steps if any were taken by the company after his departure to secure the work it said it had prospects of undertaking.

[96] The limitation now proposed to confine the scope of this category is reasonable. As amended, disclosure in this category is required.

Category 15

[97] Category 15 seeks all documents showing Precision Solutions engagement with the “homeowner/client” or any third party in respect of 13 properties. For all of them, the disclosure required is for documents between January 2019 and December 2020, a span of nearly two years. Mr Hardy explained that these properties relate to jobs Precision Solutions claims he improperly diverted or stockpiled.

[98] The relevance of the correspondence is said to be to demonstrate the work he did, to obtain those jobs for Premium Solutions before his departure, and the extent to which the defendant failed to work with those clients to secure it after he left.

[99] The scope of this request was the subject of special criticism in Mr Davis' submissions. Mr Woods said that the task involved in securing this information, and providing it for inspection, is likely to be extremely time consuming and expensive. He described those 13 jobs as likely to have hundreds of emails and other documents relating to them. Tracking down and collating them he thought might take between 50 and 100 hours of his time and come at a direct loss of productivity to Precision Solutions.

[100] This part of the notice is a significant development from the statement of claim. As pleaded, Mr Hardy referred to allegations by Precision Solutions that he had secured for his new company specific jobs in breach of his obligations. The statement of claim listed eight properties not 13.

[101] While the statement of claim only refers to eight properties, it is apparent from the statement of defence, and the allegations made against Mr Hardy, that more claims will be made. In fact, as will be analysed shortly in relation to the company's notice for disclosure, it is seeking information to establish whether more work is involved than stated in the pleadings.

[102] Ms Keir explained that the scope of this category was communication establishing the relationship as between the defendant and the property owners. She went so far as to say that it covered speculative communication prospecting for work.

[103] During submissions Ms Keir proposed that an alteration reducing the scope of this category could be made to make it more palatable. What was proposed was "all documentation seeking work or establishing an arrangement to work on a specific job" or words to that effect. That suggestion has not been brought down into the amended version of the notice.

[104] What really is being looked for is how any client relationship was initiated and/or followed up by Premium Solutions. Confined in the way proposed, I do not accept Mr Davis' submission that what is sought is too broad and will involve an unnecessarily lengthy or costly search. Nor is it a fishing expedition, at least in relation to the properties listed at paragraph [18] of the statement of claim.

[105] As amended, category 15 is approved, provided that it refers to documents seeking work in relation to, or asking for work to be done in relation to, the properties listed at paragraph [18] of the statement of claim.

Category 16

[106] As confirmed by Mr Davis, category 16 is no longer disputed.

Category 17

[107] The last part of this notice is category 17. It seeks communication between Precision Solutions and RNP Homes or any representative of that business, about certain work referrals. Mr Hardy said that the defendant's evidence in the Authority about the referral arrangement between Precision Solutions and Premium Home Builds was that it was never appropriate for Premium Solutions to refer work to another building company. He said, however, that he learned in December 2020 that one of the defendant's employees was approaching customers for releveling work and referring them to RNP Homes. The relevance of this disclosure is said to lie in demonstrating the true nature of the referral relationship.

[108] Mr Davis said that this category was too broad, in particular that the reference to communications went beyond documents and therefore falls outside the ambit of the regulations. Further, he submitted, the timespan was too long and that what was requested was oppressive, unnecessary or undesirable.

[109] An integral part of the pleadings, in establishing the alleged breaches attributed to Mr Hardy, is whether there was some referral system giving preference for work as between Precision Solutions and Premium Home Builds. The possibility that other

companies were used may be relevant to establishing the existence of any business arrangement between them and its ambit.

[110] I accept Mr Davis' submission that the reference to "communications" is outside the regulations, but not the balance of the objection. There is no reason to conclude that the task of providing this disclosure will be burdensome or difficult. It is necessary and there is no reason to exercise the Court's discretion against requiring disclosure.

[111] However, the disclosure must be confined to correspondence or other documents between Precision Solutions and RNP Homes. As amended, disclosure in this category is required.

What Precision Solutions seek

[112] Mr Davis explained that the disclosure sought from Mr Hardy was appropriate. He referred to paragraph [16] of the statement of defence, where the defendant alleged that without the disclosure requested in the notice, Precision Solutions will not be able to know, and to demonstrate, the full extent of the breaches relied on to establish its case.

[113] Anticipating a response from Mr Hardy, Mr Davis acknowledged several potential grounds of opposition, that:

- (a) the request was for information held by Hardy Projects which is not a party to the proceeding;
- (b) meeting the request would do nothing to demonstrate what actions it is alleged Mr Hardy took while an employee of the defendant and would only show what work he performed later;
- (c) the request does not relate to any fact the defendant has alleged against him but rather is about the scope of Hardy Projects' business; and
- (d) the notice requires new documents to be created.

[114] Wrestling with those propositions, Mr Davis first said that reg 40(1)(a) requires Mr Hardy to disclose documents which are in his possession, custody or control. Relying on *Nelson v Katavich*, the submission was that as a director and shareholder of Hardy Projects the documents are within his power or control.¹³

[115] As to the second anticipated response, the submission was that the documents may provide evidence of jobs that originated from Precision Solutions and were diverted and stockpiled by Mr Hardy. There is a reality recognised in this submission, however, that Precision Solutions cannot identify whether that happened without the information. Nevertheless, Mr Davis argued that this request could not be dismissed as an impermissible fishing expedition.

[116] As to the third anticipated response, Mr Davis said that the defendant has no intention of trying to understand Hardy Projects' business. What is being sought, he said, does not give any insight into the business. All that is being asked for is addresses of jobs which would allow the defendant to see if they originated with Precision Solutions. As an allied submission, it was pointed out that there was no evidence from Mr Hardy demonstrating why disclosure of addresses would be injurious to him or his company.

[117] The most contentious part of the disclosure request was dealt with next, namely whether what is asked for requires the compilation of documents that do not already exist. The answer to that anticipated objection was reg 38(2)(b). Under that regulation a document includes information stored on a computer and any material subsequently derived from it. Mr Davis agreed that Mr Hardy could not be forced to create a document but said that is not what is being asked for. He was being asked to produce a document held in a computer he controls.

[118] In response, Ms Keir said that the defendant's notice failed to meet the test of relevance. First, because the defendant's case is limited to a claim for breach of the duty of fidelity which focuses on his actions before the conclusion of the employment relationship. If that is accepted, a list of all jobs performed by a competing company does nothing to establish the specific breach.

¹³ *Nelson v Katavich (No 2)* [2014] NZEmpC 8, [2014] ERNZ 12 at [27].

[119] Second, the information sought is not information the defendant knows to exist but is sought in the hopes of revealing a new (or perhaps, more correctly, expanded) cause of action. It could therefore only be regarded as entirely speculative. That was because there may be many explanations for jobs which were once expected to be performed by the defendant and were later performed by someone else.

[120] In addition to those responses, Ms Keir submitted that business records for three years is disproportionate. The disclosure of three years of client records to a competitor was described as no small ask, noting that the information is clearly commercially sensitive.

[121] Information about the work undertaken by Hardy Projects must be relevant to claims that work was stockpiled and diverted to it. While it is correct, as Ms Keir submitted, that the claims involved alleged breaches of duty prior to 15 May 2020, that does not constrain the evidence that may be relied on to attempt to prove what the defendant alleges. While there is some weight in the submission that providing a list of jobs performed by Hardy Projects does not establish the specific breach, it may support it and therefore falls within reg 38.

[122] There is an element of fishing in the notice. However, that is not to say that it falls outside the regulations. It could be said that there is an element of opportunism in all disclosure given that the very purpose is to obtain documents that may assist the case of the party seeking it or damage the opposition's case. I consider it is entirely proportionate for the defendant to be able to ascertain whether its suspicions about work being diverted can be supported by at least beginning to ascertain what jobs were undertaken by Hardy Projects.

[123] The last point is whether the lead time of three years is reasonable. There is a dispute in the evidence as to how long a releveling prospect might take to materialise. That appeared to depend on a combination of circumstances including the identification of the need for the work, sourcing contracts, and other reasons that sometimes defer building projects. The evidence was equivocal: it could take two to three years.

[124] Bearing in mind the observations just made about the nature of this application, I consider it would be appropriate for three years' worth of information to be provided.

[125] That brings me to whether what is being asked for is information held by a third party. Ms Keir did not seek to put much if any weight on the difference between Mr Hardy and Hardy Projects. In any event, I accept Mr Davis' submission that, given Mr Hardy is a director and shareholder of his company, the documents are under his control.

[126] As amended, both applications are granted.

[127] Leave is reserved to seek further orders.

[128] Costs are reserved.

K G Smith
Judge

Judgment signed at 12 pm on 16 December 2025

Category	Date Range	Description	Disclosure Required?
1.	1 January 2014 – 30 March 2015	<p>Documents relating to the shareholders' intentions at the establishment of Precision Solutions Limited (PSL), specifically:</p> <p>(a) all communication between the shareholders about intended arrangements for the business and allocation of responsibilities between them; and</p> <p>(b) any documents describing the intended relationship between PSL and Premium Home Builders Limited (PHB).</p>	Satisfied
2.	January – August 2017	<p>All documents created in connection with the drafting and execution of Paul Hardy's Employment Agreement on 25 August 2017, specifically:</p> <p>(a) any documents referring to or recording discussions between the shareholders about how responsibilities would be allocated across PSL and PHB, and</p> <p>(b) and document between the shareholders addressing the referral of work between PSL and PHB.</p>	Satisfied
3.	May – July 2019	All communication between PSL directors and staff regarding releveling of 5 Hanmer Street.	Yes, as amended

4.	2019 – 2020	All correspondence with PSL directors with Placemakers regarding stoppage of credit for PHB and PSL.	Yes, as amended
5.	2018 – 2019	Communications between PHB and IAG regarding pricing variations, and any communication from IAG, including following an internal audit regarding removing PHB from IAG preferred builder's list.	No
6.	May 2019 – August 2019	All documentation regarding PHB's tender for work at 60 Purchas Street, and the performance of releveling work for this job.	No
7.	February 2019 – May 2020	All correspondence (text messages, emails, meeting notes etc) regarding possible sale of PSL business by/to any of the shareholders.	Satisfied
8.	October 2019 – May 2020	All information provided and accounting advice given in relation to valuation for sale of PSL shares in May 2020.	No
9.	March 2017 – May 2022	Financial accounts for Precision Solutions Limited - Including year end and any part year accounts prepared by any accounting firm	Yes, as amended
10.	May 2020 – October 2020	All communications to PSL staff by PSL or PHB following Paul Hardy's departure from PSL which: (a) Give instructions to staff as to how the business will operate in Mr Hardy's absence (on either a permanent or temporary basis); and/or	Yes, as amended

		<p>(b) Give instructions to staff about reporting lines or management approaches within PSL; and/or</p> <p>(c) Give instructions about any process that is to be followed for managing client, supplier and referrer relationships.</p>	
11.	May 2020 – October 2020	All communications by PSL with customers, contractors or referrers following Paul Hardy's departure from the business which give advice to the recipient about how its relationship with PSL will be managed, or introduce a new key contact person.	Yes, as amended
12.	October 2020 – March 2021	All communications by PSL with third parties, including customers and contractors, regarding Charles Porter's departure from the business.	Yes, as amended
13.	2015 – 2019	All financial documentation associated with PSL projects at 6 Teal Close, and Brightstone Terrace (two properties for same owner) and Nairn Street, including invoices and receipt of payment	Yes
14.	January 2019 – December 2020	<p>All documentation in email or text message showing PSL's communication with the builders/partners listed below about:</p> <p>(a) Referral or potential referral of work by either PSL or the named builder to the other;</p> <p>(b) Agreements to work together on</p>	Yes, as amended

		<p>any job or for any purpose.</p> <ul style="list-style-type: none"> - Woodend Builders / WD Build - Unique Building Limited - Cube Contracting Limited - Morel Construction - Metzger Builders 	
15.	January 2019 – December 2020	<p>All documentation showing PSL engagement with the homeowner/client or any third party in respect of the following jobs:</p> <ul style="list-style-type: none"> - 6 Northaw Street - 112 Westminster Street - 78 Oxford Street - 241 Weston Road - 1 Newport Street - 762A Gloucester Street - 420 Mairehau Road - 29 Fisher Avenue - 31 Petrie Street - 8 Dudley Street - 68a Hills Road - 4 North Parade - 234 Cranford Street 	Yes, as amended
16.	1 January 2018 – 31 December 2021	PSL Monthly Job Reports	No longer disputed

17.	October 2019 – May 2021	Communications between PSL and RNP Homes or any representatives thereof regarding referral of building work and any communication in which PSL suggests RNP Homes as a builder to releveling clients.	Yes, as amended
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