

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

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

**[2025] NZEmpC 36
EMPC 101/2025**

IN THE MATTER OF a without notice application for search
orders

AND IN THE MATTER OF an application for order restricting access
to Court file

BETWEEN WILSON PARKING NEW ZEALAND
LIMITED
Applicant

AND PETER TURNER
First Respondent

AND ATE PROPERTY LIMITED TRADING
AS MAINLAND PARKING
Second Respondent

Hearing: 10 March 2025
(Heard at Wellington by telephone)

Appearances: K Crossland and T Sung, counsel for applicant

Judgment: 11 March 2025

**JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for search orders)
(Application for order restricting access to Court file)**

Introduction

[1] The applicant, Wilson Parking NZ Ltd, has applied urgently and without notice for search orders against a former employee (Peter Turner) and ATE Property Ltd, trading as Mainland Parking. It is alleged that Mr Turner took steps to set up the

company during his time employed with Wilson Parking, misused data, and commercially sensitive information both during and after his departure from Wilson Parking and then used that data and information to compete with his previous employer, while subject to a restraint of trade.

[2] The orders sought relate to a search of Mr Turner's home and the business premises of the company. The orders are said to be necessary to enable Wilson Parking to retrieve its commercial and confidential information, to preserve critical evidence that is at risk of destruction or concealment and to mitigate the risk of ongoing harm.

[3] The search order application is supported by a number of sworn/affirmed affidavits, as well as:

- (a) a draft Order;
- (b) a written undertaking as to damages and costs;
- (c) a draft statement of problem to be filed in the Employment Relations Authority;
- (d) a draft statement of claim to be filed in the High Court.

[4] Also before the Court on a without notice basis is an application for orders restricting access to the Court file. I deal with both applications below but first set out the background as it emerges at this early stage, from the untested affidavit evidence.

Background

[5] Mr Turner was employed by Wilson Parking on 8 July 2013. His terms and conditions of employment were set out in an individual employment agreement. Prior to his employment Mr Turner had no prior experience in owning or operating a business.

[6] While Mr Turner was initially employed as an Operations Manager within the business, he subsequently became the Regional Manager, Southern. As a senior

executive Mr Turner had authority to negotiate and commit Wilson Parking to legally binding lease and management contracts with clients; he also determined the rental levels payable to each client under each contract.

[7] Mr Turner's employment agreement contained a 12-month restraint of trade provision: cl 31. Also contained within the agreement was a clause prohibiting the use of confidential information for his own benefit, to use or attempt to use any confidential information in any manner that may injure or cause loss to Wilson Parking, and to use his personal knowledge of or influence over any clients or customers, suppliers of contracts for his own benefit.¹ The clause was expressed to continue past employment with the company.

[8] The Executive Chief Officer at Wilson Parking, Mr Orchard, has sworn an affidavit setting out, amongst other things, the company's operating model. He says that the success and sustainability of the company's business are intrinsically linked to securing long tenure for the properties it operates. In part that is because long term contracts provide the security necessary for the company to make substantial capital investments into a car park's operation. Mr Orchard also explains that obtaining the necessary resource consents to operate carpark sites is a time-consuming and resource-intensive process; short-term contracts significantly hinder the company's ability to plan and invest strategically and create business uncertainty. All of this, he says, reinforces the critical nature of tenure, which all executives within Wilson Parking understood. It is also for this reason that relevant staff engage with clients to negotiate and secure further terms well ahead of contract expiry dates and maintains detailed schedules containing key information about each contract, commencement dates, property address, landlord name and expiry date.

[9] The company's focus on tenure, which Mr Orchard refers to as a very important and well understood aspect of Wilson Parking's operating model, is reflected in the use of carefully crafted termination clauses, allowing for lease termination only under specific circumstances.

¹ Clause 20.2. See also cl 31 (trade connections).

[10] During Mr Turner's time with the applicant company, he was responsible for maintaining landlord relationships and serving as their on-the-ground contact. He had direct access to property owners and decisionmakers and built-up strong relationships with them. By virtue of his role within the company, he also had access to confidential and commercially sensitive information, including consents, pricing strategies and the company's revenue and profit margins.

[11] On 4 August 2023, Mr Turner provided written notice of his resignation with a final day of work being Friday 1 September 2023 to take up a position elsewhere. Twelve months from that date (in terms of the restraint of trade clause) expired on 1 September 2024.

[12] Evidence is given by a colleague who worked with Mr Turner that, shortly before his departure, he requested (and she gave him) a schedule containing key information about Wilson Parking's business in the South Island. The schedule included key information about landlords and lease expiry information. The previous month he had requested (and she had provided) a copy of Wilson Parking's consolidated list of sites which, amongst other things, recorded the profitability of each site. It is said that on his scheduled last day of work Mr Turner told the same colleague that he was taking his laptop home for the weekend to finish up some work-related tasks. He returned it to her on Monday morning.

[13] On 8 April 2024 a domain name was registered for Mainland Parking; on 11 April 2024 ATE Property Ltd was registered with the registrar of companies. The sole director and shareholder was listed as Mr Turner. Mainland Parking was subsequently approved and ATE Property Ltd updated the Companies Office records to begin trading as Mainland Parking.

[14] During his time with Wilson Parking, Mr Turner worked closely with another senior employee, who had been with the company for many years. That employee left the company towards the end of 2024. It was around this time that Mr Orchard says he became increasingly concerned about clients terminating their contracts with Wilson Parking. This prompted him to review the relevant contracts. This revealed that favourable client termination clauses had been inserted into the agreements,

which, he says, are very uncommon. An internal review was instigated and then an independent external investigator was engaged to undertake a more detailed, forensic review of the company's Southern region contracts and their associated negotiations. Affidavit evidence has been filed by forensic investigators setting out the basis of their investigations and what they say emerged.

[15] There is evidence that all of the terminated leases went to Mr Turner's company, Mainland Parking. Sitting alongside this evidence is other affidavit evidence, including from a client who says he attended a meeting with Mr Turner and the senior employee in April 2023 and understood them to be setting up a business. The client wrote to Mr Turner in February 2025 seeking to cancel a lease with Mainland Parking, referring to discussions which are said to have occurred while Mr Turner was subject to his restraint of trade.

[16] There is also evidence of client favourable exit clauses being inserted into contracts which Mr Turner was involved with, negotiated shortly before his departure.

[17] The evidence is that Wilson Parking held a significant number of Temporary Accommodation Consents in Christchurch following the 2011 earthquakes. Those consents required approved resource consents on or before 30 June 2021, necessitating substantial investment. Such investments were only economically viable if supported by long-term lease tenure, which was understood by everyone at Wilson Parking (including Mr Turner). It is alleged that Mr Turner undermined this by negotiating short-term leases or inserting flexible termination clauses in the lead up to his departure.

[18] Mr Orchard estimates that Wilson Parking has lost 18 contracts in the Southern region since Mainland Parking has been established and that the only sites they have lost to competition is to Mainland Parking. His evidence is that the financial losses incurred have been (and continue to be) very substantial (estimated, in respect of the 18 sites lost to Mainland Parking, at an annualised profit loss of \$4.9M).

[19] Wilson Parking wrote to Mr Turner on 23 December 2024 alleging serious breaches of his employment agreement, including unauthorised alteration of

termination clauses in lease agreements to benefit his own business, Mainland Parking; misuse of confidential information; breach of fiduciary duty; and inciting landlords to terminate their agreements. The allegations were denied the next day, and supporting evidence was requested. Wilson Parking responded and sought undertakings as to evidence preservation. A substantive, detailed, response was provided by Mr Turner through his solicitors, including a denial of all allegations, on 30 January 2025. Mr Turner maintained through his solicitor, in a later response dated 13 February 2025, that he had not accessed, destroyed or deleted any relevant evidence and was willing to provide a written undertaking to this effect. He declined a request for imaging of his devices through his solicitor on 19 February 2025.

[20] Mr Orchard says that he was surprised by the level of detail in respect of particular projects that Mr Turner was able to provide in his responses to the company's concerns, given the lapse in time since Mr Turner had left the company.

[21] The evidence filed in support of the application includes forensic analysis of Mr Turner's work laptop. That is said to reflect a significant amount of activity very shortly before his departure, to access and download Wilson Parking commercial information. The forensic report refers to 528 files having been deleted from Mr Turner's laptop on his last day of work (1 September 2023), around 5pm. The forensic analysis refers to car park agreements, consent-related material and internal financial data being the subject of downloading and deletion, with 27 files downloaded relating to Wilson Parking's highest performing car park sites, 18 of which are said to have been targeted or secured by Mainland Parking.

[22] The forensic analysis also suggests that on 3 September 2023 (Sunday) Mr Turner accessed 158 files in a manner that is said to be consistent with data exfiltration; some of these files were later referenced by Mainland Parking in correspondence to the Christchurch Council in respect of projects it was pursuing.

[23] There is also evidence before the Court that Mr Turner contacted various clients of Wilson Parking following his departure.

Proposed proceeding

[24] A draft statement of problem has been filed with the application. Mr Turner is cited as first respondent; the other senior employee as second respondent and ATE Property Ltd trading as Mainland Parking as third respondent. The second and third respondents are named as parties who allegedly incited, instigated, aided or abetted a breach of Mr Turner's employment agreement.

[25] The draft statement of problem sets out allegations that Mr Turner breached several clauses in his employment agreement, including cls 20 (confidential information), 22 (conflict of interest) and 31 (restraint of trade); and that he breached his obligations of good faith to Wilson Parking, and his fiduciary duties.

Legal framework

[26] The principles applicable to an urgent without notice application for a search order are well-established. The Court has jurisdiction to make search orders under s 190(3) of the Employment Relations Act 2000, and by applying the procedure set out in pt 33 of the High Court Rules 2016.²

[27] A search order is a draconian tool. It is made to secure or preserve evidence and to require a respondent to permit entry to premises to secure the preservation of evidence.³ Breach of a search order may amount to contempt.⁴

[28] As HCR 33.2 makes clear, a search order may only be made if the evidence is, or may be, relevant to the proceedings or anticipated proceedings. The proceedings must be within the jurisdiction of the Court.

[29] The requirements for the grant of a search order are set out in HCR 33.3. The Court may only make a search order if it is satisfied that:

² "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 8.

³ High Court Rules 2016, r 33.2.

⁴ Refer, for example, to *Chain & Rigging Supplies Ltd v Nikorima* [2023] NZEmpC 133 at [29].

- (a) An applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) The potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) There is sufficient evidence in relation to a respondent that-
 - (i) The respondent possesses relevant evidentiary material; and
 - (ii) There is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

[30] As will be evident, the threshold requirements are cumulative. The onus is on an applicant to establish that the threshold requirements are met.

[31] Also reflective of the draconian nature of search orders is the requirement for comprehensive undertakings to be given by the applicant, including as to damages; an independent solicitor must supervise the execution of the order; and a mandatory review is to be undertaken by the Court after the order has been executed. It is via these means that the Court maintains oversight of the process. At the commencement of the process particular care must be taken to ensure an applicant has complied with and can satisfy all necessary requirements.

Strong prima facie case

[32] There is evidence of a concerted series of actions taken by Mr Turner towards the end of his employment with Wilson Parking with a view to setting up, and preparing for, a new business, including in respect of negotiations with lessors to shorten termination clauses. There is evidence that, on the Friday evening and weekend following what was to be his last day of work, Mr Turner used his work laptop to access and download Wilson Parking confidential commercial information, which he then used to his advantage. There is also evidence that he acted in breach of

the restraint of trade provision in his agreement following his departure from Wilson Parking.

[33] I have considered whether there may be defences available to the respondents that might impact the apparent strength of the case against them.

[34] First, it is, as counsel for Wilson Parking points out, possible that an argument might be made that the restraint of trade clause was unlawful because it was excessively long.

[35] The restraint of trade was for 12 months; Mr Turner was a senior employee with access to a significant amount of commercially sensitive information, access to key clients and an ability to bind the company to contractual terms. The term, in the circumstances, appears to sit within the range and is distinguishable from cases where, for example, a less senior employee has been restrained. At this stage it appears that a defence based on the lawfulness of the restraint of trade would be unlikely to succeed.

[36] Mr Turner has advised, through his solicitor, that he did not take or use any of Wilson Parking's confidential information. The forensic analysis suggests otherwise.

[37] A further possible defence that has been identified through earlier correspondence with Mr Turner's solicitor is that reference to "client" in Mr Turner's individual employment agreement did not extend to lessors of car park sites; rather it referred to members of the public who use the company's parking services. Having regard to the commercial context this interpretation seems unlikely.

[38] I accept that at this untested stage, there is a strong prima facie case that Mr Turner has breached his employment agreement and duties owed to Wilson Parking.

Potential or actual loss or damage will be serious if search order not made

[39] It is submitted for the company that significant losses have already been incurred by it as a result of Mr Turner/Mainland Parking's alleged breaches and that there is a serious risk of harm were a search order not to be made. The potential harm

that may be caused if the search order is not made relates to the destruction or concealment of devices, and the information held on them. It is said that such information is of evidential importance to the proceedings against the respondents, and that the forensic analysis and other circumstantial evidence supports the company's concerns. The company is also concerned that if confidential information remains in Mr Turner's possession, or has transferred to Mainland Parking, that gives rise to an ongoing unfair competitive advantage and permanent disruption to key client relationships.

[40] For prima facie purposes, I accept that there is a serious risk of serious harm and that damages would not be an adequate remedy.

Evidence of relevant evidentiary material held by the respondent

[41] I have already referred to the results of the forensic analysis. I accept that a clear inference can be drawn from the material before the Court that there is further information held by the first and second respondents which would be relevant to the applicant's intended claims. And if, for example, material has already been deleted, forensic analysis will likely identify what has been deleted and when – information which too would be of relevance in the proceedings.

Real possibility of evidence being destroyed/unavailable for use in evidence

[42] It is submitted that there is a real risk that information may not survive or be disclosed in the absence of an order.

[43] The evidence lends weight to the assessment of risk in this case, including because of the evidence as to the downloading and deletion of company files shortly after Mr Turner's last official day at work.

[44] There is a need for caution in assessing risk. There will rarely be conclusive evidence of intention to destroy or conceal evidence, so the Court is entitled to use common sense.⁵ As has previously been observed, not everyone who is misusing

⁵ *Busby v Thorn EMI Video Programmes Ltd* [1984] 1 NZLR 461 (CA) at 467.

confidential information will destroy documents in the face of a court order to preserve them.⁶ There must be some proportionality between the perceived threat to an applicant and the consequences for the respondents of such an order being executed.⁷ In other words, a search order should not be excessive to the circumstances; consideration should be given to whether a less draconian alternative may suffice to meet the risks arising in a particular case.

[45] I have considered whether the matter could adequately be addressed via other (less draconian) means (for example, disclosure, interrogatories and the like). I have concluded that it cannot. In the circumstances, including having regard to the forensic evidence before the Court of deliberate concealing, downloading and deletion of company information, and the responses made by Mr Turner through his representatives on the queries and concerns raised by Wilson Parking, I am satisfied that making the orders sought (as amended following the telephone hearing) is proportionate.

Other matters

[46] Counsel has set out possible defences which may exist. I have already referred to those possible defences and concluded that they appear weak.

[47] I am satisfied that full and frank disclosure of all relevant material has been made. Undertakings as to costs and disbursements of any independent solicitor have been given; undertakings have also been given in respect of damages, the provision of evidence, to inform the respondents of their rights and to retain items removed in safe custody have been given.

[48] Following the telephone hearing the draft orders were reduced in scope, including to reflect issues raised as to the identity and number of people proposed to attend to execute the search orders (execution of a search order should be limited to as few persons as possible), the interests of the other senior employee, timing and the steps that would be undertaken to minimise unnecessary distress or disruption.

⁶ See, for example, *Lock International Plc v Beswick* [1989] 1 WLR 1268 (Ch) at 1281.

⁷ *Columbia Picture Industries Inc v Robinson* [1986] 3 WLR 542 (Ch), cited in *Chain & Rigging Supplies Ltd*, at [53].

Next steps

[49] A copy of this judgment, the draft statement of problem, the affidavits, the application for an order, counsel's memoranda and undertakings are to be served on the first respondent and at the registered address of the second respondent, along with the search orders, before they are executed simultaneously.

[50] The statement of problem is then to be finalised and filed with the Authority as soon as possible thereafter.

[51] The applicant's intention is to execute the search orders on Wednesday 12 March 2025 between 9.30am and 2.30pm in order to minimise any distress for Mr Turner and his family. On that basis, at 10 am on Monday 24 March 2025, the Court will consider the report from the independent solicitors, which is to be filed and served by 4 pm on Friday 21 March 2025.

[52] Memoranda seeking directions from any party intending to appear at the review hearing are to be filed and served by the same time and date. At the date of review, the applicant, the respondent, and the independent solicitors will be heard.

[53] This judgment is not to be published other than to the parties, their representatives, and to the authorised persons who are to execute the search order, until further direction from the Court.

Application for Order Restricting Access to the Court File

[54] The applicant sought an order restricting access to the Court file. The scope of the order was discussed at yesterday's telephone hearing.

[55] In the circumstances it is appropriate that an order restricting access to the Court file be made. An order is made that the Court file is not to be searched without leave of a Judge. If anyone seeks access to it, the parties are to be given notice of that application so they can be heard before it is dealt with.

[56] In the meantime, 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.

[57] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 1.30 pm on 11 March 2025