

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 469  
5405421

BETWEEN AB LIMITED (an employer)  
Applicant

A N D XY (an employee)  
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Charlotte Parkhill and Courtney Walker, counsel for  
Applicant  
Respondent in Person

Date of Determination: 20 December 2012

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**DETERMINATION OF THE AUTHORITY (No 2)**

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- A. Interim orders of injunction and non-publication made by the Authority in its determination of 14 December 2012 are now made permanent.**
- B. Costs are reserved.**

**Employment relationship problem**

[1] In its determination dated 14 December 2012 - [2012] NZERA Auckland 456 – on the application of AB Ltd the Authority ordered an interim injunction against XY restraining him from using, disclosing or copying confidential information of AB Ltd.

[2] The Authority also ordered that the proceedings filed by AB Ltd and the Determination issued by the Authority not be published until the substantive claim had been heard and determined by the Authority. The names of the parties were the subject of a non-publication order made until further order of the Authority. XY was also ordered to return all confidential information and copies of it to AB Ltd by Saturday 15 December 2012. He was required to provide the company with details of

any incidences of disclosure of that information to third parties prior to the order. Compliance was also ordered with the terms of [a provision] of his employment agreement with AB Ltd relating to the confidentiality of information.

[3] The Authority directed AB Ltd to personally serve XY with the Determination dated 14 December 2012 and a copy of accompanying documents including an affidavit of [an officer] of AB Ltd.

[4] The parties were ordered by the Authority to attend mediation on an urgent basis.

[5] XY was served on the afternoon of Friday 14 December and he attended mediation with AB Ltd on Monday 17 December. Before then, on Saturday 15 December, he had met with [an officer] of AB Ltd and returned certain information and advised what had happened to other information held by him.

### **Consent application**

[6] On 17 December 2012, the Authority received in writing from the solicitors for AB Ltd a request for permanent orders to be made by consent. This was signed by counsel Ms Parkhill and also by XY. The basis of the consent application is that XY has admitted having in his possession confidential information relating to AB Ltd and has also admitted that allegations of wrongdoing he made against that company were baseless and without foundation. XY has acknowledged that AB Ltd will suffer real harm if its name or details of his false allegations are published.

### **Permanent orders**

[7] That request is granted and accordingly the following orders are made:

- (a) An injunction is issued to permanently restrain XY from:
  - (i) Using confidential information of AB Ltd, as defined in [a provision] of XY's employment agreement with AB Ltd and as further particularised in Annexure A to these orders in any way other than authorised by AB Ltd;
  - (ii) Disclosing any of the confidential information of AB Ltd to any person, organisation or third party; or
  - (iii) Copying any material containing any confidential information of AB Ltd;

- (b) XY is ordered to return all the information and copies of it, if any, belonging to AB Ltd by handing it to [an officer] of the company, or to another manager at AB Ltd nominated by [an officer];
- (c) XY is required to provide AB Ltd with details of any incidences of disclosure of the information to third parties prior to the order of 14 December 2012 , including particulars of the time and scope of any such disclosure, and he is to verify this by affidavit;
- (d) XY is required to immediately comply with the terms of [a provision] of his individual employment agreement;
- (e) The interim non-publication orders made in the determination of 14 December 2012 shall become permanent, as follows:

The proceedings filed in the Authority and the names of the parties in this matter shall not be published. The determination of 14 December 2012 may be published but with reference to the parties only as 'AB Ltd' and 'XY' and without reference to any detail that may identify either of them.

### **Costs**

[8] Any application for costs is to be made by AB Ltd by written memorandum filed in the Authority by 15 January 2013. Any response or reply from XY is to be made in writing to the Authority by 29 January 2013.

A Dumbleton  
**Member of the Employment Relations Authority**

## **ANNEXURE A**

1. Confidential information includes, but is not limited to:

[Details of information]