



# Employment Court of New Zealand

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## Crimson Consulting Limited v Berry [2017] NZEmpC 106 (29 August 2017)

Last Updated: 30 August 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 106](#)

EMPC 48/2017

EMPC 88/2017

EMPC 150/2017

IN THE MATTER OF challenges to determinations of the

Employment Relations Authority

BETWEEN CRIMSON CONSULTING LIMITED & UNITUTOR LIMITED

Plaintiffs

AND SAMANTHA BERRY First Defendant

AND TALENTWIRE LIMITED Second Defendant

Hearing: 1 and 2 June 2017 (heard at Auckland)

(and on a memorandum dated 28 August 2017)

Appearances: R Harrison QC and R Bryant, counsel for the plaintiffs B O'Callahan and D Yan, counsel for the first defendant R Milne, representative for the second defendant

K M Wilson, counsel for NZME. Publishing Ltd

D Bridgeman, representative for Fourth Estate Holdings (2012) Ltd

Judgment: 29 August 2017

**JUDGMENT (NO 2) OF JUDGE B A CORKILL**

### Introduction

[1] In my judgment of 3 August 2017, I allowed a challenge regarding non-publication orders, in part, indicating that I was satisfied that it would be

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appropriate to make an interim order of non-publication of commercially sensitive information, and of allegations which are alleged to be irrelevant to this proceeding.<sup>1</sup>

[2] Although counsel had drafted and provided a form of interim order for the Court's consideration, it related only to documentary evidence, and would not have protected relevant oral evidence or submissions given in the course of the interlocutory hearing which was held in public.

[3] I therefore directed counsel to confer as to the appropriate form of order. I requested the filing of a joint memorandum within five working days. Unfortunately, counsel were not available to file a joint memorandum within that timeframe. Such a document was filed late yesterday.

[4] The parties are agreed as to the form of a draft order. I largely agree with their proposal, subject to the following points.

[5] The first is, as I indicated in my first judgment, there should be a statement in the order which refers generically to the commercially sensitive information, and to the disputed objectionable material. I have added such a reference to the draft.

[6] Secondly, the draft refers to certain affidavits which were previously filed with the Employment Relations Authority (the Authority). Although I am making orders with regard to that material,<sup>2</sup> counsel will need to consider whether it is necessary to apply to the Authority to make a mirror order with regard to documents on its file.

[7] Finally, I have made a minor editorial change, describing “specific documents” as “specified material”, in the interests of clarity.

<sup>1</sup> *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94 at [128], [133] and [180].

<sup>2</sup> Paragraphs 1 to 5 of the schedule to this judgment.

### **Interim order**

[8] Publication is hereby prohibited of that evidence which is before the Court which relates to commercially sensitive information, and to allegations which are allegedly irrelevant to the proceeding, as follows:

(a) The allegations made by the first defendant in documents which are

listed in the schedule to this judgment (“the allegations”).

(b) The listed paragraphs of affidavits, and their listed attachments, and submissions, memoranda and pleadings, all as specified in the schedule to this judgment (“the specified material”).

(c) The viva voce evidence given by Mr Benjamin Luke Thomas during the hearing on 1 June 2017 where reference was made to any of the allegations and/or the specified material.

(d) The written submissions of:

- counsel for the joint plaintiffs filed on 23 May 2017; and
- counsel for the first defendant filed on 29 May 2017;

where reference was made to any of the allegations and/or the specified material.

(e) The oral submissions of counsel for the parties, including oral exchanges with the Court, where reference was made to any of the allegations and/or the specified material.

[9] This order shall continue until further order of the Court.

[10] The first judgment was directed not to be published until this judgment was issued. I now order immediate publication of that judgment, together with this judgment.

B A Corkill

Judge

Judgment signed on 29 August 2017 at 12.50 pm

### **SCHEDULE**

1. Paragraphs 52, 53, 73, 76, 88, 90, 91, 93, 95, 96 and 100 of the affidavit of Samantha Marie Berry filed in the Employment Relations Authority at Auckland under file ERA 5646122 sworn on 15 December 2016 (“the Berry affidavit”);

2. Exhibits “C”, “D”, “F”, “G”, “I”, “J”, “K”, “Q”, “S”, “T”, “X”, “Z” and “AA”

forming part of the Berry affidavit.

3. Exhibits “JB6”, JB8” and “JB9” forming part of the affidavit of Jamie John Brendan Beaton filed in the Employment Relations Authority at Auckland under file ERA 5646122 sworn on 24 January 2017;

4. Paragraphs 6.3 and 10.4 of the affidavit of Benjamin Luke Thomas filed in the Employment Relations Authority at Auckland under file ERA 5646122 sworn on 22 February 2017;

5. Paragraph 10 of the affidavit of Samantha Marie Berry filed in the Employment Relations Authority at Auckland under file ERA 5646122 sworn on 7 March 2017;

6. Paragraphs 47 and 48 of the Memorandum of Counsel for the First Respondent – Response to the Application for evidence to be struck out, suppressed and/or redacted dated 15 March 2017;

7. Paragraphs 36 and 38 of the affidavit of Benjamin Luke Thomas filed in the Employment Court at Auckland under file EMPC 88/2017 and sworn on 20 April 2017 (“the Thomas April affidavit”);

8. Exhibits “CH F”, “CH G”, “CH H”, “CH I” and “CH J” forming part of the Thomas April affidavit;

9. Paragraph 12 of the affidavit of Benjamin Luke Thomas filed in the Employment Court at Auckland under file EMPC 48/2017 and sworn on 4 May 2017 (“the Thomas May affidavit”);

10. Paragraph 2.1.d. of Exhibit “B” forming part of the Thomas May affidavit;

11. Paragraphs 2 and 4 of the Statement of Claim filed by the joint plaintiffs in the Employment Court under file EMPC 150/2017 on 12 July 2017;

12. Paragraph 4 of the Statement of Defence filed by the first defendant in the Employment Court under file EMPC 150/2017 on 19 July 2017; and

13. Any or all paragraphs or exhibits that form part of any evidence or pleading filed or heard in the Employment Court files EMPC 48/2017, EMPC 88/2017 and EMPC 150/2017 that refers to the allegations and/or specified material listed in this judgment.