



Employment Court of New Zealand

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Crimson Consulting Limited v Berry [2017] NZEmpC 148 (23 November 2017)

Last Updated: 29 November 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 148](#)

EMPC 48/2017

EMPC 88/2017

EMPC 150/2017

IN THE MATTER OF challenges to determinations of the
Employment Relations Authority

AND IN THE MATTER of proceedings removed from the
Employment Relations Authority

AND IN THE MATTER of an application for non-
publication orders

BETWEEN CRIMSON CONSULTING LIMITED &
UNITUTOR LIMITED
Plaintiffs

AND SAMANTHA BERRY First Defendant

AND TALENTWIRE LIMITED Second
Defendant

Hearing: On the papers dated 13 October 2017, 13 and 15
November
2017

Representation: B R Edwards and R Bryant, counsel for the plaintiffs
B O'Callahan, counsel for the first defendant
R Milne, representative for the second defendant

Judgment: 23 November 2017

JUDGMENT OF JUDGE B A CORKILL ON NON-PUBLICATION

[1] Notices of discontinuance of proceedings have been filed by the plaintiffs in respect of all causes of action brought against each defendant on file EMPC 150/2017. The Court is advised that all matters have been resolved, and there are no issues as to costs between the parties.

CRIMSON CONSULTING LIMITED & UNITUTOR LIMITED v SAMANTHA BERRY NZEmpC AUCKLAND [\[2017\] NZEmpC 148](#) [23 November 2017]

[2] The plaintiffs also seek orders permanently sealing the Court's file on the proceedings which are before it; and for orders that the interim non-publication orders made previously now be made permanent.¹

[3] That application is supported by an affidavit of Benjamin Thomas, Chief Executive Officer of Play Atlantic and Senior Academic Advisor of Crimson Consulting Ltd. In his affidavit, he referred to the fact that evidence as filed in this Court for interlocutory purposes contains references to information that is commercially sensitive, and to allegations which are allegedly irrelevant to this proceeding.

[4] Mr Thomas said that publication of this evidence could lead to adverse consequences.

[5] The Court is advised that the first defendant does not oppose the applications, and the second defendant consents to them.

[6] The evidence which is referred to in Mr Thomas' affidavit was fully reviewed by the Court in its judgment of 3 August 2017.² It is unnecessary to repeat the findings reached on that occasion, which are of just as much force now as they were then.

[7] In the circumstances which now pertain, I consider that the interests of justice require the making of a permanent order of non-publication of commercially sensitive information, and of allegations which were alleged to be irrelevant to this proceeding, in the terms which were described in my judgment of 29 August 2017.³

[8] Turning to the issue of whether the Court's files should be permanently sealed, I previously directed that the Court's files may not be searched by any

non-party without leave of a Judge.⁴

1 *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94; *Crimson Consulting Ltd v Berry (No 2)*

[2017] NZEmpC 106.

2 *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94 at [112] – [113].

3 *Crimson Consulting Ltd v Berry* [2017] NZEmpC 106 at [8].

4 *Crimson Consulting Ltd v Berry*, above n 2, at [27].

[9] In my view, it is appropriate for an order of that type to continue, given the protection provided by the permanent non-publication order which I have just made. I amend it, however, so that no person may search any of the files which are referred to in the above intitutment without leave of a Judge.

B A Corkill

Judge

Judgment signed at 11.00 am on 23 November 2017