

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 175  
5627600

BETWEEN	EDEN GROUP LIMITED Applicant
AND	TIMOTHY JACKSON First Respondent
	PHILLIP KITE Second Respondent
	CHRISTOPHER BLACKMAN Third Respondent
	NEW SPACE LIMITED Fourth Respondent

Member of Authority:	Andrew Dallas
Representatives:	Tony Drake, Counsel for the Applicant Brent O'Callahan, Counsel for the Respondents
Investigation Meeting:	On the papers
Determination:	7 June 2016

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**DETERMINATION OF THE AUTHORITY**

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- A. This matter is removed under s 178 of the Employment Relations Act 2000 for the Employment Court to hear and determine without first being investigated by the Authority.**

**Employment relationship problem**

[1] By Statement of Problem and Application for Orders supported by affidavits lodged with the Authority on 26 and 30 May 2016, Eden Group Limited (Eden) sought removal of Authority proceedings 5627600 to the Employment Court (Court).

[2] Upon review of Eden's application, urgency was granted and Counsel for the four Respondents was provided an opportunity to provide submissions on the Eden's application by 4.00pm on 1 June 2016. The requirement for the Respondents to lodge and serve a Statement in Reply was suspended pending determination of the Eden's application for removal to the Court.

[3] Counsel for the Respondents by way of Memorandum of Counsel lodged on 1 June 2016 advised that they consented to the matter being removed to the Court. Consenting to the removal of a matter to the Court does not form part of the test in s 178 of the Employment Relations Act 2000. However, I proceeded on the basis that the Respondents did not oppose removal.

### **Removal to the Court**

[4] For reasons that follow, I reached the view that this matter should be removed to the Employment Court for hearing and determination. I have done so under the provisions of s 178(1), s 178(2)(a) and s 178(2)(c). In addition, Eden's application would, in my view, satisfy s 178(2)(d) of the Act which allows the Authority to order removal of a matter on its own motion where it is of the opinion that in all the circumstances the Court should determine the matter. If the Court was of the view that such a removal was not proper in this particular case, it could return the matter to the Authority for investigation.

[5] The following aspects or circumstances of this matter were relevant to my opinion that the Court should determine the matter.

#### *Important questions of law*

[6] Having reviewed Eden's application, supporting affidavits and two decisions of the Court<sup>1</sup>, I am satisfied this matter involves important questions of law likely to arise other than incidentally. Counsel for Eden identified these questions of law as:

- (i) What are the correct principles of law which must be applied to assess causation of loss following breach of contract in respect of the particular facts of this case?
- (ii) What is the correct approach to the calculation and measures of special damages in respect to the particular facts of this case?

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<sup>1</sup>*Eden Group Limited v Jackson and Ors* [2016] NZEmpC 58 and *Eden Group Limited v Jackson and Ors* [2016] NZEmpC 60.

- (iii) What is the correct approach to determination of a proper award of penalties against New Space Limited?
- (iv) Were Mr Jackson, Mr Kite and Mr Blackman each under an obligation, pursuant to their contracts of employment or the Act, to report to their employer, during the course of their employment, the known actions of the other two respondents that were contrary to those individuals' duties owed to their employer of fidelity, trust and confidence and good faith?

[7] Questions of law arising in a matter need not be controversial, novel or particularly difficult in order to be important within the context of s 178(2)(a) of the Act. In any event, Counsel for the Respondents did not raise issue with the characterisation of these questions as important questions of law.

*Matters before the Court*

[8] There are currently two proceedings before the Court that concern the same, similar or related issues to those set out in Eden's Statement of Problem. As stated above, the Court has already issued two judgments dealing with freezing and search orders. The Court has scheduled the next hearing of these proceedings for 10am, 10 June 2016.

[9] I have taken into account that removing the matter would deprive the Respondents of a further level of challenge. However, as the Court already has proceedings before it, I put more weight on that than I do the urgency with which the Authority can investigate the matter. To not do so would mean that both the Authority and the Court are hearing proceedings regarding the same or similar issues and that is not satisfactory.

[10] There is also the likelihood of a challenge to the Authority's determination. In some circumstances that may not be a significant factor. However, where there is an overlap between the issues before the Authority and the Court, it may lead to a situation where a challenge to a determination of the Authority deals with same, similar or related issues before the Court. In those circumstances the benefit of an early investigation meeting in the Authority to deal with, what is accepted is an urgent situation, is lost.

[11] One forum should hear all matters before it so that the issues can be addressed in a logical and cost effective manner. In the present circumstances, that forum is the Court.

Andrew Dallas  
Member of the Employment Relations Authority