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Mataura Valley Milk Limited v Scott [2021] NZEmpC 67 (10 May 2021)

Last Updated: 17 May 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 67](#)

EMPC 221/2020

IN THE MATTER OF	an application for an urgent search order without notice
AND IN THE MATTER	of an application to further vary search order
BETWEEN	MATAURA VALLEY MILK LIMITED Applicant
AND	GRAHAM SCOTT Respondent

Hearing: On the papers

Appearances: J Smith QC and B Scotland, counsel for applicant
G Drewitt, counsel for respondent

Judgment: 10 May 2021

INTERLOCUTORY (NO 3) JUDGMENT OF JUDGE K G SMITH

(Application to further vary search order)

[1] On 29 July 2020 Mataura Valley Milk Ltd applied urgently, without notice, for a search order against its former employee, Graham Scott. The application was granted.¹

[2] The search was conducted on 1 August 2020 and certain items were identified and uplifted. The orders made without notice were confirmed and further orders followed, maintaining the search orders and authorising the independent forensic expert, Campbell McKenzie, to search and download information from a Yahoo

¹ *Mataura Valley Milk Ltd v Scott* [\[2020\] NZEmpC 112](#).

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account held and operated by Mr Scott.² Other directions were made for the filing of reports.

[3] The search orders were further varied on 2 September 2020 and 25 September 2020 respectively.³

[4] Mataura Valley has now applied for a further variation to the search orders to enable a more detailed inspection of the documents identified as potentially containing its confidential information. The purpose of this application is to enable Mataura Valley, and its counsel, to be provided with copies of handwritten notes made by Bernard May, its Chief Executive, during earlier supervised inspections of schedules of documents prepared by Mr Campbell. Because of the terms of the search orders, Mr May was required to leave any notes he made during the inspections with the independent solicitor.

[5] This application allows Mataura Valley to eventually access the documents themselves and for them to be used in litigation against Mr Scott and in any potential litigation against Happy Valley Nutrition Ltd or any other person.

[6] Mr Scott has consented to the variation that has been applied for.

[7] It is appropriate to grant the application. I am satisfied that:

(a) The inspections undertaken by Mr May in the presence of the independent solicitor, and Mr McKenzie, on 21 September 2020 and 2 October 2020 have identified files that Mataura Valley has reason to believe contain its confidential information.

(b) Mr May has already reviewed the files to which Mataura Valley now seeks access.

2 *Mataura Valley Milk Ltd v Scott* [\[2020\] NZEmpC 120](#).

3. *Mataura Valley Milk Ltd v Scott* [\[2020\] NZEmpC 140](#); *Mataura Valley Milk Ltd v Scott* [\[2020\] NZEmpC 152](#).

(c) Serious loss to Mataura Valley may result if the search orders are not maintained and varied as requested.

[8] Mataura Valley provided a draft order to vary the existing search orders, the terms of which are acceptable with modifications, as set out in Schedule 1 to this judgment. Orders are made accordingly.

[9] Costs are reserved.

K G Smith Judge

Judgment signed at 3 pm on 10 May 2021

Schedule 1

[1] To the following persons Shane David Campbell and any other solicitor from Wynn Williams, Solicitors, Christchurch:

(a) This order authorises you to provide Mataura Valley and its counsel with copies of the handwritten notes prepared by its Chief Executive, Bernard Graeme May, during the inspections that occurred at the offices of Wynn Williams on 21 September 2020 and 2 October 2020 (as referred to in the reports of the independent solicitor dated 30 September 2020 and 9 October 2020).

(b) This order authorises you to retain the devices seized on 1 August 2020, pending further orders from the Court.

[2] To the following persons Campbell Bryan McKenzie and any other person from Incident Response Solutions Limited, Auckland:

(a) This order authorises you to provide Mataura Valley, Graham Scott, Happy Valley Nutrition Limited, and their respective counsel, with schedules of the inspected documents produced by you regarding the inspections that occurred at the offices of the independent solicitor on 21 September 2020 and 2 October 2020 (as referred to in the reports of the independent solicitor dated 30 September 2020 and 9 October 2020) including Mr May's comments on the files reviewed.

(b) This order authorises you to provide Mataura Valley and its counsel with remote "read only access" to the files identified in the schedules by Mr May as containing its confidential information under the supervision of Incident Response Solutions Limited. Mataura Valley will not use any of the files it reviews except for the purpose of seeking and receiving legal advice.

(c) If, following a five working day period after the provision of the schedules referred to in paragraph [2](a) above, no formal applications have been made to the Court by way of an objection, this order authorises you to provide Mataura Valley with full access to the files identified in the schedules by Mr May as containing its confidential information.

[3] To Graham Scott and Happy Valley Nutrition Limited:

(a) You are prohibited, without further order from the Court, from using or disclosing to any person the schedules provided to you, or the information they contain, for any purpose, other than to apply to the Court.

(b) If, following a five working day period after the schedules are supplied to you, you do not apply to the Court to object, Mataura Valley will be granted full access to the files identified in those schedules by Mr May as containing Mataura Valley's confidential information. Mataura Valley may then use, copy disclose and adduce in evidence the files:

(i) In respect of Mr Scott, for the pursuit of Mataura Valley's proceeding before the Employment Relations Authority (file number 3113973);

(ii) In respect of Happy Valley Nutrition Limited, to raise and pursue any claims regarding the use and retention of Mataura Valley's confidential information, to seek resolution to such claims, and/or to commence legal proceedings in any Court and subject to agreement to that effect to refer any dispute to other forms of dispute resolution such as but not limited to arbitration; and

(iii) To raise and pursue employment-related concerns or claims with persons other than Mr Scott.

