

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 145
3355303

BETWEEN	NZME PUBLISHING LIMITED Applicant
AND	RISHI ANKUS Respondent

Member of Authority:	Alex Leulu
Representatives:	Daniel Erikson, counsel for the Applicant Emma Butcher, counsel for the Respondent
Investigation Meeting:	6 March 2025 in Auckland
Submissions received:	4 March and 6 March 2025 from the Applicant 4 March and 6 March 2025 from the Respondent
Determination:	10 March 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] NZME Publishing Limited (NZME) is a national media company operating across digital, print and radio platforms. NZME owns and operates OneRoof Limited (OneRoof) which specialises in advertising real estate for printed and online sale.

[2] Rishi Ankus was employed by NZME for over 12 years with his most recent role being the Sales Director for OneRoof. At the end of 2024 Mr Ankus resigned with the intention of working for a new employer RealEstate.co.nz (Re.co).

[3] NZME lodged a claim against Mr Ankus in the Authority for breach of a three-month restraint of trade provision within his employment agreement. It sought a

compliance order and penalty against Mr Ankus for the alleged breach (the substantive claims).

[4] Mr Ankus disputed NZME's claims arguing the restraint of trade clause within his employment agreement was not enforceable and that he had not breached any enforceable term of his employment agreement.

[5] Further to its substantive claims, NZME also applied to the Authority for an interim injunction preventing Mr Ankus from being employed by Re.co until April 2025. Re.co opposed the application. This determination is in respect of NZME's application for an urgent interim injunction order.

The Authority's investigation

[6] I investigated NZME's application for interim injunction on 6 March 2025. The evidence I considered included sworn affidavits from OneRoof Head of Sales, Nicholas Hammond and OneRoof Director, Greg Hornblow. Mr Ankus also lodged an affidavit in support of his case along with an affidavit from Re.co representatives, Chair of the Board, Donald Cotterill and Chief Executive Officer, Sarah Wood.

[7] Mr Hornblow, Mr Ankus and Ms Wood also gave oral evidence at the investigation meeting in support of their respective cases. The representative for each party also made oral closing submissions.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Context

Mr Ankus' employment history with NZME

[9] Mr Ankus commenced his employment for NZME in October 2009 (which at the time was known as APN News and Media). He worked several roles throughout his career for NZME. All his roles were sales based.

[10] His initial role was as an Outbound Sales Consultant where his primary role was to sell advertising spaces across the business' media platforms. Mr Ankus then received

a number of promotions throughout his career including a promotion to the role of Account Director - Real Estate in 2018 and on to a further promotion as Sales Director in 2023.

Sales Director role

[11] As Sales Director for OneRoof, Mr Ankus lead a sales team in the Auckland region which he managed and trained. He also helped members of his team structure deals and prices for OneRoof customers.

[12] Although Mr Ankus was not part of the NZME senior leadership team (SLT), he reported to Mr Hammond who in turn reported to Mr Hornblow who was a direct report to the NZME Chief Executive Officer.

Approach from Re.co

[13] Around late November 2024 Mr Ankus was approached by Re.co about a General Manager of Sales role. This led to a job interview on 7 November 2024, and confirmation as the successful candidate on 8 November 2024.

[14] On 11 November 2024 Mr Ankus informed Mr Hammond about the job offer from Re.co and told him he was considering whether to accept it. Mr Hornblow was also later informed about Mr Ankus' job offer which led to a further meeting with both Mr Ankus and Mr Hammond on 12 November 2024 (the 12 November meeting).

[15] The parties dispute aspects of what was discussed during the 12 November meeting. Mr Ankus said although NZME was unable to match his remuneration offer from Re.co, Mr Hornblow offered to consider a way to both raise his remuneration and allow him to be a part of the SLT. Mr Ankus also claimed he was told by NZME if he resigned, his restraint period would start on the date of his resignation and he would also be 'walked' immediately. This latter term taken to mean he would be put on garden leave for the remainder of his notice period of two months.

[16] Although NZME acknowledged there was a discussion about when his three-month restraint period would start, it said no decisions were made as to when Mr Ankus' employment would end and when his restraint period was due to begin.

Mr Ankus' resignation

[17] On 13 November 2024 Mr Ankus sent a letter via email confirming his resignation from NZME. He also advised he would begin employment with Re.co on 13 February 2025. On this day Mr Ankus arrived at work early and packed up his work belongings. Mr Ankus believed he would be on garden leave until the end of his notice period. On the same date, Mr Ankus accepted the offer from Re.co and signed and returned the employment agreement.

[18] On 14 November 2024 Mr Ankus did not attend work. He was also contacted by Mr Hammond who informed him verbally the restraint provisions of his employment agreement would take effect from the end of his notice period. This meant he would not be able to commence employment with Re.co until 13 April 2025. Mr Hammond also told Mr Ankus he would be assigned work while on garden leave.

[19] On the same day, Mr Ankus also said his access to OneRoof's operational systems and information were revoked.

Confirmation of the enforcement of the restraint provisions

[20] On 20 November 2024 Mr Hammond emailed Mr Ankus a letter which formally acknowledged and accepted his resignation on 13 November 2024 (20 November letter). The letter also confirmed NZME's intention to enforce the restraint provisions which meant Mr Ankus was restricted from:

- (a) working for a competitor of NZME for a period of three months concluding on 8 April 2025;
- (b) soliciting any customers of NZME for a period of six months concluding on 8 July 2025; and
- (c) soliciting people of NZME for a period of twelve months concluding on 8 January 2026.

[21] Earlier on the same day, Mr Hammond contacted Mr Ankus and discussed his ongoing work while on garden leave. The nature of the work was in respect of a specialist car section of the New Zealand Herald, a part of NZME's print division. This was a work division Mr Ankus had not previously worked within. This arrangement was also confirmed by NZME in its 20 November letter.

[22] From 11 November 2024 the representatives for both parties became engaged in ongoing communications in respect of Mr Ankus' objection to the restraint provisions of his employment agreement and the proposed work he was required to undertake during his notice period.

[23] Prior to the end of Mr Ankus' employment with NZME, the last of the communication between him and NZME was a letter from Mr Ankus' representative to NZME's representative on 13 December 2024. From 13 November 2024, Mr Ankus' did not carry out any further work for NZME up until his employment ended on 12 January 2025. On 4 February 2025 NZME lodged its claims and application at the Authority. Mr Ankus started his employment with Re.co on 13 February 2025.

The issues for determination

[24] The Authority has jurisdiction to make interim orders.¹ The Court of Appeal and the Employment Court provided well established guidance on how the law is applied for applications for interim injunctions.² In considering NZME's interim application, the Authority must determine whether:

- (a) There is a serious question to be tried, that Mr Ankus had breached the relevant restraint of trade provision in the IEA;
- (b) Where does the balance of convenience lie pending a substantive investigation and a final determination on the alleged breaches of the restraint of trade provisions in the IEA; and
- (c) Where does the overall justice of this case lie from now until the completion of the substantive investigation and issuing of a further determination?

A serious question to be tried

What is the relevant restraint of trade provision?

[25] Clause 8 of Mr Ankus' individual employment agreement with NZME contained a restraint of trade clause (the restraint clause) which stipulated three restraints with the following restraint being the subject of NZME's interim injunction application:

¹ *Credit Consultants Debt Services NZ Ltd v Wilson* [2007] ERNZ 252 and *WN v Auckland International Airport Ltd* [2021] NZEmpC 153 at [22].

² See for example, *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90; and *Western Bay of Plenty District Council v Jarron McInnes* [2016] NZEmpC 36.

You covenant and agree that during your employment, and for a specified period defined below (the Restraint Period) from the date of termination of your employment, you will not directly or indirectly, alone or with any other person (other than in the proper performance of your duties under this Agreement):

- (a) Work (as an employee, independent contractor, consultant, director, or in any capacity) for any other organisation or business which competes with NZME or any Group Company within New Zealand.

Unless otherwise agreed by NZME the Restraint Period for this work restraint is three (3) months;

Does NZME have a serious or arguable substantive case?

[26] Determining whether a case is “serious or arguable” is a relatively low threshold and does not require an analysis as to whether a case has a certain prospect of success.³ NZME submitted it had an arguable case on the basis the restraint clause was legally enforceable and it was breached by Mr Ankus when he commenced employment with Re.co on 13 February 2025.

[27] NZME also said the restraint of trade clause was reasonably necessary to protect its proprietary interests. These claimed property interests are addressed later in this determination when assessing the balance of convenience.

[28] Mr Ankus disputed NZME’s claims against Mr Ankus in respect of the lawfulness of the restraint clause. However it acknowledged the threshold for establishing whether there is an arguable case was low and accepted NZME had an arguable case. I agree and accept in this case, there was an arguable question to be tried as to whether Mr Ankus breached the relevant clause.

Balance of convenience

Factors to consider

[29] Establishing the balance of convenience requires consideration of the impact on the parties of either the granting or refusal to grant, an order for interim injunction.⁴ In my view there are three things that are relevant to the balance of convenience in this case:

³ *X v Y and the NZ Stock Exchange Ltd* [1992] 1 ERNZ 863.

⁴ *Pottinger v Kelly Services (New Zealand) Ltd* [2012] ERNZ 411 at [76] and [77].

- (a) The harm that will follow if I grant the injunction or not (and whether that resulting harm can be adequately compensated by damages).
- (b) The strength of NZME's case.
- (c) The effect of granting an injunction now?

NZME's arguments

[30] NZME argued the balance of convenience was in its favour because it said Mr Ankus did not provide sufficient evidence to show any actual hardship to him if the interim injunction is granted. It also said there was no evidence to confirm whether Re.co would not support him during any period of restraint.

[31] In assessing the harm to itself, NZME said there was a risk of disclosure by Mr Ankus of its proprietary interests to Re.co in the form of confidential information and NZME customer relationships. It said these risks were significant and would be present throughout Mr Ankus' three-month restraint period.

[32] It said, any disclosure of its confidential information may allow Re.co to target customer areas in NZ where OneRoof had the least success. NZME said it also identified 12 transactions which it claimed were at risk due to Mr Ankus' ongoing breach of the restraint clause. It said the transactions were approximately valued at \$500,000.

[33] In terms of customer relationships, NZME said Mr Ankus was a senior staff member for OneRoof and had established important relationships with NZME customers. It said these relationships could be leveraged to obtain an advantage on certain types of commercial arrangements with customers. This was especially important in what NZME maintained was a competitive environment.

[34] NZME submitted the harm caused by a breach of the restraint provision would be difficult, if not impossible, to quantify. Because of the nature of the customer market NZME would have no way of knowing whether Mr Ankus' knowledge of sensitive information and customer relationships have changed customer behaviour. Although not specifically referred to by NZME, it is assumed these views were tendered in support of an argument that damages could not be quantified and therefore would not be an appropriate remedy if an interim injunction was not granted.

Mr Ankus' arguments

[35] Mr Ankus said any interim restraint order would have a great impact on him. He referred specifically to the financial impact which included the potential for him not to receive income for around five weeks during a restraint.

[36] Mr Ankus emphasised the detriment he faced from being away from the real estate industry and submitted the status quo of being employed should remain as is. Specifically, Mr Ankus referred to being denied access to OneRoof's systems on 13 November 2024 and leading to:

- (a) initially being away from real estate work for three months up to starting with Re.co; and
- (b) including, the one month without pay from the end of his NZME employment on 12 January 2025 up to the commencement of his Re.co; and
- (c) potentially a further 5 weeks if the interim injunction is granted.

[37] In terms of the strength of NZME's case and its views about the impact on NZME (caused by the alleged breach), Mr Ankus argued NZME had a weak case in respect of its substantive claims against him. Firstly, he said NZME did not have any proprietary interests requiring protections. This was because:

- (a) The customer relationships relied on by NZME were not relationships specifically with Mr Ankus. They were relationships with his NZME sales team; and
- (b) Most of the confidential information referred to by NZME was either publicly available or out of date by the time Mr Ankus had commenced work for Re.co in February 2025.

[38] Secondly, since Mr Ankus started his employment with NZME up to the time of the investigation meeting, there had been no evidence of any loss to NZME after commencing his employment with NZME.

[39] Thirdly, Mr Ankus relied on his substantive argument of the restraint period commencing at the time of his employment on 13 November 2024. Along with his restricted access to the OneRoof system he also referred to actions of clearing his desk and accepting the Re.co offer on 13 November 2024 as sufficient reasons to show his

recollection of the 12 November 2024 discussion confirmed that he had been told his notice period started from the date of his resignation.

[40] For damages, Mr Ankus submitted NZME should be able to identify any customer losses to Re.co from 12 February 2025 to 12 April 2025. He also asked the Authority to consider the delay from when NZME was last contact with him about the restraint in December 2024 up until the time it lodged its claims with the Authority in February 2025 (which was just before he was due to start with Re.co).

Assessing the balance of convenience

[41] I accept Mr Ankus will suffer some financial and emotional impact if an injunction is granted. Furthermore, he would also suffer some form of impact arising from being out of work from the real estate business for a further five weeks. From the available evidence, New Zealand's real estate market appears to be a competitive and everchanging market which relies on familiarity and relationships.

[42] Given Mr Ankus has only worked in this sales market, any impact from being out of this market to him would be significant. This is especially given he has already been out of the market for three months prior to commencing his employment with Re.co.

[43] I acknowledge NZME's arguments about the risks to its proprietary interests. However, some of these property risks are mitigated by a significant amount of general business information which is publicly available (for example through NZME's annual and interim reports). Although acknowledging the publicly available information, NZME said its concern was in respect of Mr Ankus' knowledge of confidential information at a 'granular' level. There was insufficient evidence to show what this information could be and what it looked like. I accept Mr Ankus' views that such granular information would be voluminous and would be difficult to recall in a way any risk of use would be realised. Any potential use of such information may potentially be diluted further due to the apparent everchanging nature of the real estate advertising industry.

[44] I am also satisfied there is sufficient information to assess any potential damages because of this risk being realised. As NZME stated, it has detailed information which supports the information disclosed as part of its publicly available reports. Such

detailed or granular information may go some way to assess what if any loss has been incurred by NZME from Mr Ankus' employment with Re.co from 12 February to 12 April 2025.

[45] Finally, although NZME's case is not weak, sufficient analysis will be needed to determine what was discussed during the 12 November meeting. This includes close assessment of the actions of both parties after the 12 November meeting. Based on these preliminary views, the strength of NZME's claims against Mr Ankus is not sufficiently strong to support the balance of convenience being in its favour. Due to impact on Mr Ankus, and the contentious aspects of Mr Ankus' claims, the balance of convenience is in Mr Ankus' favour.

Overall justice

Views of the parties

[46] The overall justice assessment is essentially a check on the position reached following the analysis of the earlier issues of serious question to be tried and balance of convenience.

[47] Together with its previous arguments, NZME reiterated the risk of Mr Ankus taking advantage of his customer relationships with NZME for the purpose of his work for Re.co. NZME also submitted it was entitled to rely on what it described as a post-employment restraint of modest scope and for a modest duration.

[48] In standing back and looking at the matter in totality, Mr Ankus said an order restating his employment with Re.co for a further five weeks would not be a just outcome.

The Authority's decision

[49] An important aspect in this case is about the market share between both OneRoof and Re.co. In principle, both companies along with one other company all share the same real estate customers. Although most if not all customers use the three company's platforms to advertise their real estate at a base level, their differences lie in the sales packages each platform provides to enhance advertisements above the base level. Although the planning and strategic information of NZME is not available to the other companies, information about its sales packages and services may be known by

the other companies through other means (for example customer disclosure). The same applies for the other two companies.

[50] NZME's arguments in the protection of their proprietary interests focuses on Mr Ankus' knowledge of these packages and his relationship with customers in engaging with NZME's services. I accept these interests are significantly important to NZME. However, a significant amount of information is already made available to the other parties. The important information appears to be strategic and planning information which as I can tell, sits mostly at the SLT level of NZME. Although I accept Mr Ankus engaged with SLT as part of his obligation to his sales team, he was not part of the SLT and likely not privy to key future strategic and planning information that would have been available to those at the level of Mr Hornblow and Mr Hammond.

[51] Stepping back and assessing Mr Ankus' previous role for NZME and the assessment of an arguable case and balance of convenience, the overall justice weighs in favour of not making an order for interim injunction. Accordingly, I decline NZME's application for interim injunction.

Costs and Next Steps

[52] The Authority will convene a case management conference to set timetable directions for the investigation of NZME's claims. Costs are also reserved pending the outcome of the Authority's investigation of NZME's substantive claims.

Alex Leulu
Member of the Employment Relations Authority