

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 165B/10
5301894

BETWEEN OCS LIMITED
 Applicant

AND SHELLEY HAYNES
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Paul McBride for Applicant
 Stuart Webster for Respondent

Memorandum of parties 10 May 2010

Determination: 11 May 2010

CONSENT DETERMINATION OF THE AUTHORITY

[1] In determinations dated 12 April 2010 and 3 May 2010 orders of an interim or interlocutory nature were put in place pending the investigation of the substantive matters between the parties.

[2] On 7 May the parties attended mediation in respect of those substantive matters. Yesterday their representatives lodged a joint memorandum in which they advised that settlement has been reached and asked that the Authority issue an Order, by consent, in terms attached to that memorandum, and set out in paragraph [6] below.

[3] Further to that memorandum therefore and further to the interim injunction issued by the Authority in its determination dated 12 April 2010 (AA165/10) the following are by consent the permanent orders of the Authority in this matter.

[4] While admitting sending the emails recorded in the Authority's previous determination (and including the Applicant's confidential information), the Respondent, by her solicitor, warrants that:

- a. she has not further disclosed or used any of the Applicant's confidential information for purposes other than her employment by the Applicant; and
- b. the only computer access that she has, or has had, to the emails was on the laptop owned by Environment Waikato and used by her husband.

[5] Strictly in reliance upon the accuracy of those warranties, the following matters have been agreed.

[6] By consent there are permanent injunctions:

- i. requiring that the Respondent deliver up to the Applicant all documented information of the Applicant's including (without limitation) all of that in, or attached to, the emails highlighted on document 4.1 to the Statement of Problem. For the avoidance of doubt, although attached to one such email, the Respondent's curriculum vitae is not confidential information;
- ii. requiring that the Respondent delete all copies of all such documented confidential information from any computer system under her control;
- iii. requiring that the Respondent forthwith (and in any event within 3 working days) disclose to the Authority and the Applicant by affidavit full detail of any use or disclosure of the Applicant's confidential information, including (without limitation) the provision of any of the documented confidential information to any third party, including (without limitation) New Zealand Hygiene Limited or any company or entity associated with New Zealand Hygiene;

- iv. restraining the Respondent from undertaking any other employment or engagement (save with the Applicant's specific written consent) down to the close of 30 April 2010 (being the period of garden leave);

- v. restraining the Respondent from any use or disclosure to any person of any confidential information of the Applicant's. For the purposes of this injunction "confidential information" includes all trade and business secrets and other confidential information and documents relating to the affairs or business of the Applicant and its subsidiaries, or any person with whom the Respondent came into contact as a result of the employment agreement, or which came into the employee's possession in the course and by reason of the employment, whether or not the same were originally supplied by the Applicant or its subsidiaries;

- vi. requiring that the Respondent use her best endeavours to prevent the unauthorised use or disclosure of any confidential information by any third party;

- vii. restraining the respondent (by herself, her servants or agents) from breach of clause 16.2 of the employment agreement, and in particular, save with prior written consent of the Applicant, and during the period of three months from termination of the employment:
 - 1. from canvassing, soliciting or endeavouring to entice away from the Applicant any person who or which at any time during the parties' employment relationship was or is a client or customer of or supplier to the Applicant or any subsidiary of the Applicant or in the habit of dealing with the Applicant or any such subsidiary; and

2. from counselling, procuring or otherwise assisting any person to canvass, solicit or endeavour to entice away from the company any person who or which at any time during the employment or at the date of termination of the employment was or is a client or customer of or supplier to the Applicant or any subsidiary of the Applicant or in the habit of dealing with the Applicant or any such subsidiary.

Yvonne Oldfield

Member of the Employment Relations Authority