

BETWEEN ORCON LIMITED
 Applicant

A N D SIMON LANE
 First Respondent

 QUENTIN READE
 Second Respondent

 CALLPLUS SERVICES
 LIMITED
 Third Respondent

Member of Authority: T G Tetitaha

Representatives: P Kiely/S Worthy, Counsel for Applicant
 B Edwards, Counsel for Respondent

Submissions Received: 12 and 17 February 2014 from Applicant
 17 February 2014 from Respondent

Date of Minute: 18 February 2014

INTERIM DETERMINATION OF THE AUTHORITY

- A. Urgency is granted.**
- B. An interim order that the first and second Respondent's comply with the provisions of clause 4 of the employment agreement until further order of the Authority. This order shall be reviewed on 21 February 2014.**
- C. The matter is set down for a half day investigation hearing in Auckland on 21 February 2014 commencing at 2pm for hearing submissions only.**
- D. The time for filing a statement in reply and evidence is abridged to 19 February 2014 at 3pm.**
- E. Briefs of evidence in reply shall be filed by the applicant on 20 February 2014 at 3pm.**

- F. Submissions can be given orally or in writing at hearing.**
- G. An oral determination shall be given following the conclusion of submissions.**
- H. Further timetabling including the allocation of an urgent 2 day substantive hearing in March 2014 shall be made thereafter.**

Employment Relationship Matter

[1] This matter has come before the Authority today by way of teleconference seeking urgency and an interim injunction until hearing preventing the first and second respondent's from starting work with the third respondent today. The grounds for the application are breaches of clause 4.2 of the first and second Respondent's employment agreements restraining both from working for a competitor for a period of 120 days following termination of employment. The purpose of the restraint is to prevent inadvertent disclosure of confidential information for a period of time. The first and second respondents had access to valuable confidential information and client knowledge during their employment justifying the restraint time period.

[2] The respondents' submit the restraint of 120 days is unreasonable. They say there is no proprietary interest to be protected by this restraint. The respondents' would suffer damage in the form of lost income if the injunction was granted until hearing.

[3] Urgent mediation has been arranged for 20 February 2014. The Authority enquired whether the Respondent's would agree to abide by clause 4 of their agreement until after mediation had occurred. No agreement was forthcoming.

[4] Having heard submissions, the Authority grants the application for urgent interim orders sought. This is because:

- a) There is an arguable case. The respondent's employment agreements both contain a competitor restraint (clause 4.2) for a period of 120 days;
- b) Both first and second Respondents were employed in senior positions as head of residential sales and head of brand and communications. Their positions included access to client and product knowledge;

- c) There is an issue of an agreed variation raised against the second Respondent giving rise to possible estoppel;
- d) The balance of convenience favours the Applicant. The detriment or injury to the Respondent's would be 1 weeks wages given the availability of an early interim submissions only hearing date on 21 February 2013;
- e) The overall justice favours the applicant in the circumstances. Potential breaches of confidential information may occur while the first and second respondents remain employed. Clause 4.2 will be rendered nugatory unless an order is made. The interim order can be reviewed on 21 February 2014 following the filing of further evidence by the Respondents and submissions;
- f) If the Respondent's contested the enforceability of clause 4, an application to Authority could have been filed in advance of starting work, but was not. All of the Respondents were aware of the potential breach of the employment agreements prior to the start of work today;
- g) A substantive hearing before the current member is not available until 15 and 16 May 2014. Another member from either Wellington or Christchurch may be available to deal with this matter in March 2014.

[5] Accordingly the following orders are made:

- a) Urgency is granted;
- b) An interim order that the first and second Respondent's comply with the provisions of clause 4 of the employment agreement until further order of the Authority. This order shall be reviewed on 21 February 2014.
- c) The matter is set down for a half day investigation hearing in Auckland on **21 February 2014** commencing at **2pm** for hearing submissions only.
- d) The time for filing a statement in reply and evidence is abridged to **19 February 2014 at 3pm.**
- e) Briefs of evidence in reply shall be filed by the applicant on **20 February 2014 at 3pm.**
- f) Submissions only can be given orally or in writing at hearing.

- g) An oral determination shall be given following the conclusion of submissions.
- h) Further timetabling including the allocation of an urgent 2 day substantive hearing in March 2014 shall be made thereafter.

T G Tetitaha
Member of the Employment Relations Authority