

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 181
5381252

BETWEEN PFP MANAGEMENT
LIMITED
Applicant
AND JING LIANG
Respondent

Member of Authority: Rachel Larmer
Representatives: Stephen Langton, Counsel for Applicant
Paul Wicks, Counsel for Respondent
Investigation Meeting: On the papers
Submissions: 30 May 2012, Respondent's submissions
30 May 2012, Applicant's submissions
Determination: 30 May 2012

DETERMINATION OF THE AUTHORITY

A Ms Jing Liang's application to vary the consent determination issued by the Authority on 21 May 2012¹ is declined.

[1] On 11 May 2012 PFP Management Limited (PFP) applied for urgent interim injunctions and interim orders:

- a. To prevent Ms Jing Liang from disclosing any of its confidential information;
- b. To prevent Ms Liang from using information gained in the course of her employment;
- c. That she return its property and confidential information.
- d. That she file an affidavit disclosing the details of any use or disclosure of its PFP confidential information, including the provision of

¹ [2012] NZERA Auckland 172

confidential information to any third party, the date on which any disclosure was made, and how that disclosure occurred.

[2] The matter was granted urgency and the parties attended mediation on 18 May 2012, but did not resolve the interim issues.

[3] A timetable was set and the parties agreed that the Authority would determine the matter (by consent on the papers) on 22 May 2012.

[4] On 21 May 2012 the parties advised they had settled the interim matter on agreed terms, and the Authority was asked to issue a consent determination which made those terms orders of the Authority. The terms of settlement are the subject of a non publication order.

[5] However, the consent orders required Ms Liang to deliver certain information to PFP by 12pm tomorrow, 31 May 12. Ms Liang is currently in China, but has been in communication with counsel over the relevant period.

[6] Ms Liang has applied to vary the deadline by which she is to provide certain information to PFP by extending her time for doing so to 5pm 11 June 2012 on the grounds that she has decided to extend her stay in China for personal and family reasons. She will now not be returning to New Zealand until 9am on 10 June 2012.

[7] Mr Wicks submits that PFP will not be prejudiced by the short delay the proposed variation will result. Ms Liang has instructed her counsel that she does not currently have access to the property in issue (because she is in a remote part of China) and is therefore unable to return it until she returns to New Zealand.

[8] Mr Wick's submits the interim injunction in place provide significant and adequate protection to PFP until Ms Liang returns to New Zealand.

[9] PFP opposes any variation to the consent orders. It says Ms Liang was always scheduled to return to New Zealand on 29 May 2012 and that she now appears to have unilaterally changed that to 10 June 2012. Mr Langton submits Ms Liang's actions are evidence of a deliberate intention not to comply with the existing consent orders.

[10] Ms Liang did not file an affidavit in support of the variation application. She did however file an affidavit on 21 May 2012 which admits that:

- a. She sent a number of emails from her PFP work email to her personal email on her last day of employment;
- b. One of the above emails contained confidential information;
- c. Some of the information which was the subject of PFP's injunction application was provided by her to three named third parties;
- d. She did not return all PFP property upon termination, as required under her employment agreement;
- e. She may still have PFP property.

[11] I accept Mr Langton's submission that PFP is likely to be prejudiced if the variation Ms Liang seeks is made because the longer its information remains at large, including in the hands of third parties, the greater the risk of prejudice to it.

[12] I am concerned about the timing of this application, which was filed less than 24 hours before she was due to return PFP's property. No explanation was given for the lateness of the application and it was not supported by affidavit evidence.

[13] Ms Liang did not advise the Authority of the date on which she changed her flights nor the reasons for doing so (other than a broad reference to personal and family reasons). No explanation was given about why she agreed to interim orders that she is now not in a position to comply with.

[14] Ms Liang has not taken any steps to minimise any prejudice to PFP, for example by making arrangements for her lawyers to uplift her computer or for some other person to ascertain what if any PFP information remains within her control in New Zealand.

[15] I am not satisfied there is good reason to vary the consent determination which was issued as recently one week ago. Accordingly, Ms Liang's application is declined.

[16] I further order Ms Liang to comply with the Authority's orders as per its determination [2012] NZERA Auckland 172.

Costs

[17] PFP has been successful. It is entitled to costs.

[18] Costs are reserved sine die.

Rachel Larmer
Member of the Employment Relations Authority