

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 144C/08  
5121645

BETWEEN                      TEMPERZONE LIMITED  
Applicant

AND                              OWEN RAYMOND JOY  
Respondent

Member of Authority:      Alastair Dumbleton

Representatives:            David Neutze, counsel for Applicant  
Paul Wicks, counsel for Respondent

Memoranda Received      5 and 11 September 2008

Determination:              12 September 2008

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**DETERMINATION OF THE AUTHORITY (No 2)**

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[1]     In April 2008 application was made to the Authority by Temperzone Limited for an investigation and determination of claims against a former employee, Mr Owen Joy.     Temperzone claimed that Mr Joy had acted in breach of contractual and statutory duties of good faith by receiving secret commission payments from suppliers and customers of the company, and also that he had distributed confidential documents and information in breach of his duty of fidelity and confidentiality.

[2]     To resolve that employment relationship problem Temperzone sought an award of damages against Mr Joy for the loss or harm suffered by the company as a result of his alleged unlawful conduct.     Temperzone also sought a penalty against him for breach of the employment agreement.

[3]     In response to the application Mr Joy denied that he had acted unlawfully in any way as alleged and brought a cross-application against Temperzone claiming that his summary dismissal by the company on 11 April 2008 was unjustified.     He sought remedies in respect of that personal grievance claim.

[4] After preliminary orders made by the Authority and two investigation meetings, in the run-up to a further investigation meeting which had been expected to take up to nine days Temperzone and Mr Joy have been able to settle their claims against each other.

[5] The terms of settlement are contained in a Deed of Settlement dated 3 September 2008 which by consent has been recorded by the Authority. Under the Deed and directions given on 5 September 2008, a Mareva Injunction earlier ordered by the Authority was released from Mr Joy's account in the Temperzone Limited Staff Superannuation Fund to enable \$450,000 to be paid out of the account to the company. That payment has now been received by Temperzone.

[6] Further, under the terms of the Deed recorded by the Authority and as directed on 5 September, the Mareva Injunction was released from the other assets which had been frozen by it. They were Mr Joy's ASB bank account and two house properties in which he had a legal and financial interest.

[7] The proceedings between the parties are therefore now withdrawn from the Authority and the Mareva Injunction made on 16 April (under AA 144/08) and as varied on 6 August (under AA 144B/08) is formally discharged.

[8] The parties have expressly acknowledged in the Deed of Settlement that its execution by them does not affect in any way the investigation by the Serious Fraud Office into the alleged receipt of secret commissions by Mr Joy while he was employed by Temperzone.