

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 202
5601277

BETWEEN X LIMITED
 Applicant

A N D Y
 Respondent

Member of Authority: Helen Doyle

Representatives: Tim MacKenzie, Counsel for the Applicant (*Ex Parte*)

Investigation Meeting: 18 December 2015 at Christchurch

Date of Determination: 18 December 2015

**DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. An interim injunction is ordered against Y in relation to the confidential information of X Limited.**

- B. Publication is prohibited of the names of all persons referred to in this matter, until further order of the Authority.**

- C. Costs are reserved.**

Employment relationship problem

[1] X Limited has applied to the Authority *ex parte* on 18 December 2015 for an interim injunction restraining Y from using, disclosing or copying confidential information of X Limited alleged to have been acquired by Y during his employment.

[2] X Limited seeks an order that Y return all of the information and copies of it belonging to the applicant.

[3] X Limited say that Y has breached clause 29 of his employment agreement in that he has retained confidential information, stated that he is not subject to any confidentiality restraint, and has declared an intent to contact clients.

[4] The application for an interim injunction was made on an urgent without notice basis. This means that the requirement that Y be advised of the application and given an opportunity to be heard will not be available if such an application is granted. I consider that this is one of the very unusual cases where I have been persuaded by the affidavit of an officer of X Limited that some urgent intervention is necessary. If Y is given notice of the application it would have a consequence of delay which has to be weighed against some threats to disclose confidential information by Y and with Y's expressed knowledge that to disclose information may have far reaching consequences for X Limited. I will deal with the application on an *ex parte* basis.

[5] The application for an interim injunction proceeded on the basis of affidavit evidence. An undertaking as to damages was provided as part of the application.

[6] The respondent was employed by the applicant, a global supplier of secure document services and solutions between October 2007 and 28 November 2014. He resigned on 28 November 2014 and his employment agreement contained a confidentiality clause which provided:

29. Any confidential information including trade secrets relating to business connections, technical information and processes, customer or supplier lists and private information acquired by the employee in the course of their employment shall not be divulged to any individual or company or used in an unauthorised manner either during the course of their employment or after the cessation of their employment with the employer.

[7] On the respondent's departure from his employment he was asked to sign a document which was a reminder of his confidentiality clause, and he duly did this on 28 November 2014.

[8] On 2 December 2014 an email was received from the respondent where he stated:

I no longer want to sign the contract.

[9] X Limited then, over a year later, received an email on 15 December 2015 which was unexpected. The email attached various screen shots of information the respondent had purportedly taken during his employment and it appeared to relate to storage of employee credit check information and some allegedly lost files. The respondent gave X Limited 48 hours to respond before he was going to contact clients with concerns which appeared to be that information about employees was not stored securely and that other information may not be and the clients should know about this.

[10] In the affidavit evidence the officer of X Limited says he is confident that there are no security concerns with client information, but the allegations made and the documents that have been taken would cause concern to clients and significant damage.

[11] There was some communication with Y undertaken by Mr McKenzie acting on behalf of the company. Y did advise he would not be proceeding with notifying any client in the 48 hour window as he had stated before. X Limited remained concerned that there had earlier been reference to Y wanting to disseminate the information and that Y appeared to not consider himself bound by any confidentiality requirements.

[12] The Authority is required to consider the usual tests for an interim injunction.

Arguable case

[13] I am satisfied from the affidavit evidence that there is an arguable case that Y has breached clause 29 of his employment agreement in that he has retained confidential information. I am satisfied that there is an arguable case that he had threatened to disclose that information.

Balance of convenience

[14] I find that the balance of convenience strongly weighs in favour of granting the interim orders sought. There will be significant inconvenience to X Limited and a risk of significant damage if the orders are not made and the confidential information is disclosed to clients.

Other remedies

[15] I am not satisfied that damages would be sufficient to remedy the breaches.

Overall justice

[16] I am satisfied, standing back, that overall justice does support the making of orders for a reasonably limited period until the Authority can hear from both parties. An investigation meeting is to be held on 22 December 2015 at which the Authority can hear from Y on a limited basis.

Orders

[17] I make the following orders taking into account the undertaking as to damages:

- (a) I order that the names of the parties not be published.
- (b) An interim injunction is issued to restrain Y until further order of the Authority from:
 - (i) Using confidential information of X Limited in any way other than as authorised by X Limited.
 - (ii) Disclosing any of the confidential information of X Limited to any person, organisation or third party.
 - (iii) Copying any material containing any confidential information of X Limited.
- (c) Y is further ordered to return all of the information and copies of it, if any, belonging to X Limited by Tuesday 22 December 2015 at 10.30am at the offices of the Employment Relations Authority.
- (d) Y is to comply with clause 29 of the employment agreement.

[18] The orders that the Authority has made are to take effect immediately and will remain in force until further order and until an investigation meeting to be held in Christchurch at 10.30am on Tuesday 22 December 2015 at the offices of the Employment Relations Authority 53 Victoria Street, Christchurch – a notice of investigation meeting is attached.

[19] Y is to attend that meeting and may be represented at that time. The Authority will hear any further evidence at that time and will review these orders and

whether they should be discharged or continue for a longer period. Discussions will also take place about whether mediation would be constructive and whether Y should be ordered to provide details by affidavit of any disclosures of confidential information to this point in time.

[20] The Authority directs that X Limited is to serve Y personally and by email with this Determination, a copy of the application and all other documents including the affidavit lodged in the Authority on 15 December 2015.

[21] Y may contact the Senior Authority Officer, Ms Liz Allan, by ringing 03 964 7850 if a telephone conference or further advice is required about the orders given above.

Costs

[22] Costs are reserved.

Helen Doyle
Member of the Employment Relations Authority