

that, unlike the rest of the staff, Mr Busch was not paid by ZWSL, but rather by ZWGL directly.

[3] Because Mr Busch has not consented to the removal of ZWSL as party, there remains an issue about which entity employed him. I am satisfied that ZWGL, as both the operator of the enterprise and the entity which paid Mr Busch in his employment there, was his employer. ZWSL is therefore removed as party to the proceedings. I note that since ZWSL claims cost that issue is reserved. Also, because Mr Busch has withdrawn his personal grievance, ZWGL is now identified here as the applicant party.

Employment Relationship Problem

[4] In response to the personal grievance, ZWGL made a number of counterclaims against Mr Busch. These were set out in its second amended Statement in Reply, where ZWGL asserted that Mr Busch:

“owed a duty not to convert, steal or interfere with his employer’s right to possession of any of the Park property in [ZWGL]’s possession during the period of employment and, on termination of the employment, the duty required [Mr Busch] to return to the employer all of the said property then held by [Mr Busch.]

[5] ZWGL further asserted that he had breached this duty as follows:

“During the 12 months immediately preceding the date of [Mr Busch]’s dismissal, [he] unlawfully converted, stole or locked away to deprive [ZWGL] possession of the property specified in Schedule A¹ to this second amended statement in reply. The items of property had been in the lawful possession of [ZWGL] ...and were usually kept in or around the Park’s maintenance workshop or elsewhere within the Park’s grounds. All or a substantial number of the items of property converted, stolen or

¹ The final amended Schedule A to the second amended Statement in Reply was provided to the Authority by Mr Drake following the investigation meeting on 29 September. It is annexed as Schedule A to this determination.

locked away by the applicant are held by him in the house he was permitted to occupy while he was an employee...

[Mr Busch], without authorisation, unlawfully converted, stole or locked away to deprive [ZWGL] possession of five vehicles causing the Park's day-to-day operations to be disrupted and additional expense for [ZWGL]. The vehicles...are also specified in Schedule A."

[6] To remedy this alleged breach ZWGL has sought an urgent compliance order pursuant to s.137 of the Employment Relations Act 2000 and in the following terms:

"...Craig Busch is ordered to comply with the obligations under his employment agreement with Zion Wildlife Gardens Limited and in particular,

- (a) [Craig Busch] must return the vehicles, guns, tools, equipment, records and office and filming equipment as listed in the attached Schedule A to the Zion Wildlife Gardens building and maintenance supervisor, John Davis, at Zion Wildlife gardens maintenance workshop; and*
- (b) The items listed in Schedule A must all be returned as ordered within 24 hours of this order being made; and*
- (c) Following return of the items in Schedule A to John Davis, Mr Davis shall store the items in the maintenance workshop or such other place within the Zion Wildlife Gardens Park grounds as he considers a suitable and secure place to store the items ; and*
- (d) [Craig Busch] must not damage, destroy or remove from the Zion Wildlife Gardens Park grounds any of the items listed in Schedule A at any time either before or after they have been returned to John Davis' custody.*

This compliance order shall continue in force until further order of the Authority."

[7] ZWGL makes this claim on the basis that the Park must recover the vehicles and other items in Schedule A in order to be able to operate its business. Some items listed on Schedule A have already been returned to or recovered by ZWGL. ZWGL reserves the right to pursue damages claims for all items on Schedule A ² whether subject to an order for compliance or not.

[8] Because the application for compliance relates to a discrete part of the employment relationship problem, and because the need for prompt resolution of this part of the dispute is accepted, I have agreed to prioritise it. All parties having completed evidence and submissions on it, I now proceed to determine the application for compliance.

Issues

[9] ZWGL does not purport to be the owner of the items in Schedule A. Rather it says it is entitled to possession as bailee, the bailor being in the case of one item ZWGL director Patricia Busch, in two others, staff member John Davis, and in each of the other cases, either Country Developments Limited (CDL) or Wildlife Pictures Limited (WPL.)

[10] Mr Drake has instructions from these parties as well as from ZWGL. He told me that the operation and administration of the wildlife park is structured in such a way that most of the assets involved (principally tools, vehicles and equipment but also certain video and still camera equipment) are owned by CDL³, for the use of ZWGL. ZWGL provides finance to CDL for the purchase and replacement of property as necessary, and pays a nominal rental for its use. In this way, CDL carries the depreciation of the items. Mr Drake's submission was supported by evidence from Mrs Patricia Busch (director of both CDL and ZWGL) and from Mr Michael Neinabaar, accountant for both companies.

² In addition to the claim for damages associated with the loss of the use of the items on Schedule A ZWGL has sought damages in relation to other alleged breaches set out in its amended statement in reply. All the claims for damages (under their several different heads) remain outstanding and will be determined separately.

³ CDL also owns the land on which the Park is situated.

[11] Unlike CDL, WPL does not exist solely for the purpose of holding assets used in the operation of the Park, but is directly engaged in productive enterprises of its own related to filming. ZWGL says it has in the past had the use (although not exclusive use) of certain items of property belonging to WPL (office and filming equipment on Schedule A.) On this basis it was argued that a bailment exists between WPL as owner of those items and ZWGL, and ZWGL is entitled to possession of them.

[12] In submissions for Mr Busch, Mr Erickson referred me to the principles relevant to the making of a compliance order, noting that while a party who has suffered a breach is entitled to a compliance order unless there is good reason to refuse one, the Authority has a discretion whether to make an order for compliance. It must do justice between the parties, and must not order compliance where it would achieve no practical benefit. These submissions are accepted.

[13] Mr Erickson did not argue against the existence of the implied term on which ZWGL relies nor did he dispute that a compliance order pursuant to s. 137 might be used to remedy a breach of such a term. It was also accepted on behalf of Mr Busch that circumstances such as these (where a group of companies effectively operate a business together) could create a bailment, and it was not disputed that CDL owned assets which were used by ZWGL in the running of the park. However it was submitted for Mr Busch that WPL is a stand-alone entity.

[14] Notwithstanding any arrangements in place between CDL and ZWGL Mr Erickson said that Mr Busch set up and equipped the wildlife park in the first place⁴ and a number of the items in Schedule A are his personal property. He submits that despite having allowed them to be used in the running of the wildlife park, he remains entitled to personal possession of them. As for the rest of the items in Schedule A, Mr Busch has acknowledged in evidence that he has some of them under his control, but denies even knowing the whereabouts of others.

⁴ Mr Busch was sole shareholder of CDL when it was incorporated in March 1997 and for some time thereafter. He remains majority shareholder of CDL but is no longer a director.

[15] Mr Erickson therefore identified the relevant issues for the Authority as follows:

“The applicant’s position is that compliance should only be ordered where [ZWGL] can show that in respect of each particular item of property that:

- a. The item of property in question is in fact owned by the purported bailor and not the applicant or any other person or entity;*
- b. There is a valid bailment in respect of the item in question;*
- c. The applicant has actually breached the terms and conditions of his employment by retaining that item, and*
- d. The applicant in fact has that item in his possession or control such that compliance is possible.”*

[16] I accept that the approach proposed by Mr Erickson is the correct one. In the determination which follows I begin with some conclusions about the alleged bailments and then proceed to apply the remaining factors to the items on Schedule A one by one.

Determination

(i) The bailments

[17] ZWGL maintenance staff told me that the tools, equipment and vehicles on Schedule A had been used in the running of the wildlife park for years. I accept this evidence. Although there were issues between the parties as to what items were included in it, the existence of a bailment between CDL and ZWGL was not essentially in dispute. I accept that where CDL has been shown to own an item, and where it was used in the operation of the wildlife park, there is a bailment of that item to ZWGL.

[18] I was similarly told by ZWGL administration staff that the office equipment on Schedule A has been used in the offices at the park for some time. Again this is accepted. It is accepted that bailments exist between WPL and ZWGL and between CDL and ZWGL in relation to any item of office equipment owned by WPL and CDL where that has been used in the administration of the wildlife park.

[19] However, where it has not been established that an item was used by ZWGL in the course of running its business the alleged bailment is not accepted.

[20] WPL films and records activities in the wildlife park using the services of a contracted camera operator. (Like CDL, WPL has no staff.) Footage is used in the making of TV series centred on the park. Revenue from the most recent (third) series has passed directly to a holding company, Primal Productions Limited (PPL) and is then split 50:50 between WPL and another associated company. ZWGL charges WPL in respect of filming done at the park in order to recover costs (principally associated with payment of salaries to park staff being filmed.) It receives no revenue from the sale of the finished TV series.

[21] ZWGL is not engaged in filming or editing. It cannot therefore be said to have had possession of WPL's equipment for that purpose. I have considered whether it could be said that WPL bails equipment to ZWGL to be stored but even this finding is not open to me on the evidence I have. In relation to equipment used exclusively for filming and editing purposes, therefore, the evidence does not support a finding that there is a bailment from WPL to ZWGL. This includes items [52A] to [52F]. The claim for a compliance order in relation to these items fails.

(ii) Property alleged to belong to CDL or WPL.

[22] ZWGL sought to establish that CDL owned certain of the disputed items by reference to their inclusion in CDL's depreciation schedules from 2005 onwards. Mr Erickson submitted that a schedule of this type does not prove ownership. This is correct: such a schedule amounts to nothing more than a statement by the company of what it purported to own at that time. However, in the years ending March 2005 and 2006 CDL had a single director, Mr Craig Busch, and it was he who signed off the accounts for those years. He explained this by telling the Authority that when he

signed off the accounts he was simply doing what his advisors told him to do and had no understanding of the import of his actions.

[23] I do not find this explanation credible. I note that ZWGL provided copies of affidavits Mr Busch swore in relation to Family Court proceedings in 2006. In he attested:

“[26] I have few if any personal assets. I do not even have a bank account currently...

[27] The way that my day to day financial life works is that any expenses, costs or needs are met by Country Developments Limited...

[28] I do not have any personal assets of any significant nature other than the shares in the relevant companies. “

[24] I conclude that whilst sole director of CDL Mr Busch regarded the items in question as company property, and further accept that what the current director knows about what the company owns is derived from information supplied by Mr Busch including the accounts he signed off when he was sole director. In the absence of any reliable evidence to the contrary, I accept that items listed on the depreciation schedules for 2005 and 2006 belong to CDL. As and where relevant these are identified below.

[25] Maintenance and other staff who gave evidence for ZWGL told me that from 2005 onwards most of the items on Schedule A had been stored in a barn used as the Park workshop. They said that from 2007 onwards items had gone missing from that workshop. Mr Busch had been seen taking some of them, had been observed having others in his possession, and it was inferred that he also took the rest. This inference was drawn because he had told staff of his intention to take the items into his safekeeping. In addition, they said, access to and from the wildlife park was via a locked gate which made it unlikely that items could be removed from the park without being observed. Having searched for the items without success the witnesses had concluded that they must be in the locked storage area adjacent to Mr Busch's home, which was located within the park grounds.

[26] The witnesses concerned (principally staff members Mr Davis and Mr Ward) were credible and, I accept, reliable witnesses. Nonetheless, an inference, no matter how reasonable, is not a sufficient basis for the grant of a remedy in the nature of a compliance order. Wherever there is a lack of direct evidence that Mr Busch has an item in his possession or control, the claim for compliance fails. The items concerned are identified below.

Vehicles

[27] The first five items on Schedule A are vehicles. Items [1] (the Ford Transit Van) and [4A] (the Nissan Diesel Dump Truck) have been returned to ZWGL already. The ownership of the Nissan truck is disputed by Mr Busch who says that it belongs to a friend of his however this item is listed on CDL's depreciation schedule from 2005. It is accepted that it belongs to CDL.

[28] Item [2] is a Nissan Patrol, 2005, brown colour, 3.0ST diesel auto, Registration No CPR960. CDL is the registered owner of this vehicle which it purchased in 2005 for the use of the licensed operator (at that time Mr Craig Busch.) It is listed on CDL's depreciation schedules from 2006. Mr Busch and his partner are the only individuals to use the vehicle now or at any time in the past, and ZWGL and Mr Busch have both contributed to the vehicle expenses. It is argued for Mr Busch that he, rather than ZWGL, is the bailee of this vehicle.

[29] Mr Busch's argument is not accepted. I accept that CDL is the owner of the Nissan Patrol, that it has been bailed to ZWGL to be used by the licensed operator (no longer Mr Craig Busch.) I also accept that it is currently in the possession of Mr Craig Busch. **The case for a compliance order in respect of item [2] on Schedule A is therefore made out.**

[30] Item [3] on Schedule A is a trailer used for transporting cats. It appears on CDL's depreciation schedules every year from 2005 on, and CDL is its registered owner. I must conclude that the trailer is the property of CDL and (given the use to which it was put) that it was bailed to ZWGL for animal transportation. Mr Busch acknowledged in his evidence that he has it in his possession. **I am satisfied that the case for a compliance order in respect of item [3] has been made out.**

Guns

[31] It is not in dispute that Mr Busch has, pursuant to an order of the Family Court, removed from the wildlife park all guns he had in his possession. This included a tranquilliser gun (the only one that had ever been kept on the property) and several rifles. ZWGL says that the tranquilliser gun and three of the rifles (Items [5], [6], [7], and [7A] on Schedule A) belonged to CDL. CDL's 2006 depreciation schedule contains two items each described simply as "Gun" and another described as "Tranquilliser Gun."

[32] Mr Busch told the Authority that he knew where the tranquilliser gun was but said that he was not prepared to return it as it did not belong to the park. I am satisfied that it does belong to CDL, that ZWGL is entitled to possession of it under a valid bailment, and that Mr Busch is capable of arranging for its return. **The case for a compliance order in respect of the tranquilliser gun has been made out.**

[33] Mr Busch told the Authority that he personally owns firearms some of which have been used at the wildlife park in the past, but none of which are currently kept there. ZWGL tabled in evidence a Police notice of 22 January 2005 which set out details of three firearms as listed in Schedule A. I was not told which of these three rifles were alleged to be the two listed in the depreciation schedule nor was I told why it was believed that a third rifle was also the property of ZWGL.

[34] I do not consider that I have sufficient evidence on which to base an order for compliance in relation to the return of the rifles.

Tools

[35] Item [8] on Schedule A is a digger and item [8A] a set of augurs for use with it. It is not in dispute that the digger itself has been recovered by ZWGL however the augurs were not. Mr Busch accepts that the digger belongs to CDL but says that the augurs are his personal property. He has given inconsistent evidence of his knowledge of the whereabouts of the augurs; saying first that he had them but subsequently denying this. ZWGL provided the original invoices to show that the augurs were

purchased by “Country Development” in 2002 and 2003. They are also listed in the CDL depreciation schedules for 2005 and 2006. Mr Busch’s earlier evidence (where he acknowledged possession of the augurs) is preferred. **The case for a compliance order for return of the augurs is made out.**

[36] Item [9] is a Makita brand circular saw and [9A] a Makita brand power hammer drill. Mr Busch has a saw and hammer drill of the types described in his possession. He said he had purchased the saw at around the time CDL was incorporated. ZWGL provided no evidence of ownership by CDL. It has not therefore been established on balance that it belongs to CDL and I can make no order for compliance in respect of this item. As for the drill, the authority was provided with an invoice relating to its purchase in October 2005 by Mr Ward, a member of the park staff, who said that he had “put it on account” the account being in the name “*Craig Busch (Zion Wildlife Gardens)*” and one for which a regular monthly invoice was rendered. I conclude that item [9A] is the property of CDL. **The case for a compliance order for the return of item [9A] is made out.**

[37] Item [10] is a power hacksaw. It is not listed on CDL’s depreciation schedules. Mr Busch acknowledged that he has this item in his possession but asserted that it is personal property given to him by his father. Mr Busch senior gave evidence in support of this assertion, which is accepted.

[38] Items [11] – [15] on Schedule A⁵ can be grouped together because Mr Busch gave similar evidence in relation to each of these items. He acknowledged that all were in his possession during the Authority’s investigation but told the Authority that he purchased the items several years ago, in some cases before CDL was incorporated. ZWGL did not put forward any evidence to show that CDL owned the items although ZWGL staff gave evidence that before Mr Busch removed them, they used them in the course of their duties at the wildlife park. On the evidence I have, I cannot be satisfied that these items belonged to CDL. The case for a compliance order in relation to these items fails.

⁵ MIG welder, WIA Weldmatic 320; TIG welder, model TIG200, together with Argoshield cylinder on hire from BOC; Arc Welder, yellow body, silver ends, in a carry bag; Makita belt sander, blue colour; Gas welder with 2 bottles on hire from BOC, and hoses

[39] Item [16] on Schedule A is a *Stihl* brand chainsaw. A chainsaw appears on CDL's 2006 depreciation schedule. Mr Busch told the Authority that he had two chainsaws in his possession, one of which was his own (given to him by his father) but is no longer in working order. Mr Busch senior confirmed having given his son a chainsaw along with other items several years ago. The other, Mr Craig Busch said, was or might be company property. I accept that the chainsaw described in Schedule A belongs to CDL and is in Mr Busch's possession. **The case for a compliance order in respect of item [16] has been made out.**

[40] Mr Busch asserts that item [17] (a drill press and drills) is also personal property given to him by his father several years ago. His father's evidence again confirms this. I accept that item [17] is personal property.

[41] Item [18] is a large Makita hand grinder. Mr Busch told the Authority that he purchased the item about ten years ago, is unsure who owns it and does not know where it is now. ZWGL did not provide evidence relating to the ownership of the grinder itself but did produce an invoice to show that CDL purchased fittings for the grinder in 1997. I accept that this item is more likely to belong to CDL however I note that there is no direct evidence to show that this item is currently in Mr Busch's possession. I am not satisfied that compliance can be ordered.

[42] Item [19] is a smaller Makita brand grinder. Mr Busch told me that there was a grinder of this type on the property but it was burnt out some years ago. Again, there is no direct evidence to show that this item is in Mr Busch's possession at present. I am not satisfied that compliance can be ordered.

[43] Like items [10] and [17] Mr Busch asserts that Item [20], a bench grinder, is personal property given to him by his father some years ago. Again, his father has given evidence to confirm this and again, the company put forward no positive proof to counter this evidence. It has not been established on balance that the bench grinder belongs to CDL.

[44] Item [21] comprises 2 air grease guns and a large tin of grease. Mr Busch conceded that he had one such gun and a tin of grease to go with it. He told the

Authority that it was purchased around the time CDL was incorporated. ZWGL provided no evidence to show that this item belonged to CDL. It has not therefore been established on balance that it did. I can make no order for compliance in respect of this item.

[45] Item [24] is a Ramset commercial drill with drill bits. Mr Busch agreed that he had the drill and drill bits in his possession and did not know whether it belonged to CDL or to him. ZWGL provided the Authority with an invoice for the original purchase of the items in 2001. I am satisfied on balance that it has been established that this item belonged to CDL. **The case for a compliance order in respect of item [24] has been made out.**

[46] Item [25] is a De Walt brand battery drill. Mr Busch agreed that he had this item which he says is old and worthless as it is no longer in working order. Although he did not accept that it belonged to CDL he did not therefore oppose its return to the workshop. I am not prepared to make a compliance order in respect of an item that is unlikely to be in working order.

[47] Item [26] is a fencing tool. Mr Busch told the Authority he did not have it. There is no evidence that CDL owned this item. It has not therefore been established on balance that it did. I can make no order for compliance in respect of this item.

[48] Item [27] on Schedule A is a Laser level. It is listed in the 2006 depreciation schedule for CDL and Mr Busch has admitted he has it in his possession. He conceded that it might be company property. I am satisfied that it is. **The case for a compliance order for the return of the laser level has been made out.**

[49] Item [28] is a crowbar. Mr Busch does not deny having it in his possession but told me that it was another item given to him personally by his father many years ago. His father gave evidence to support that assertion. I accept it.

[50] Item [29] is a Makita brand dropsaw. In his earlier evidence, Mr Busch agreed that he had a saw although he did not concede that it belonged to CDL. Later he said that he did not know what this part of the claim referred to. Several saws of different types are claimed by ZWGL and have not been described in consistent ways during

the course of the investigation. Given that the onus of proof rests with the party seeking compliance, in these circumstances, I am not satisfied that the case for a compliance order in respect of item [29] has been made out.

Equipment

[51] Item [30] is a raceway including weigh machine and leads. One of its principal uses is in weighing and medicating animals. ZWGL provided a receipt dated October 2003 for the final payment for the raceway. Mr Busch acknowledged that he had this item and that it did belong to CDL. He told the Authority that he has kept it because he did not trust others to medicate the animals. **I am satisfied that the evidence establishes that CDL is the owner of the raceway and that a compliance order should be made in respect of this item.**

[52] Item [31] is an air compressor with guns and air gauge. The CDL depreciation schedules from 2005 onwards include a compressor. In relation to this item Mr Busch gave inconsistent evidence. At first he told the Authority that he had taken the compressor that had previously been in use at the park but that it was his personal property. Later he said that he believed there had been two compressors, one of which belonged to the park while the other (currently in his possession) was his own. ZWGL provided an invoice to show that it has recently purchased a compressor which it says is a replacement for the original compressor, which it says Mr Busch took. I prefer Mr Busch's earlier evidence that he took the compressor that had been in use by staff at the park however I am satisfied that it belonged to the park and not to him personally. **The case for a compliance order for the return of item [31] has been made out**

[53] Item [32] is a pump with attachments. Mr Busch acknowledged that he had the item but asserted that it was his personal property, having been given to him by a friend over ten years ago. However a pump is listed on CDL's depreciation schedules from 2005. I accept that the pump is the property of CDL. **The case for a compliance order for the return of item [32] has been made out**

[54] ZWGL has withdrawn its claims for items [33] and [34] on the basis that they were not taken until after the employment had ended and so fall outside the Authority's jurisdiction.

[55] Item [35] is a Sawbench. Mr Busch conceded that he had this item and that it belonged to CDL. **The case for a compliance order for the return of item [35] has been made out**

[56] Item [36] is a large step ladder. As with the previous item, Mr Busch conceded that this 'probably' belonged to CDL and that it was in his possession. **The case for a compliance order for the return of item [36] has been made out.**

[57] Item [37] consists of a quantity of hoop brackets with bolts (used to hold mesh up) in assorted sizes. Mr Busch agreed that he had some hoop brackets in his possession and that they were bought by either CDL or ZWGL. **I accept that the case for a compliance order in respect of this item has been made out.**

[58] Item [38] consists of 4 extension leads. Mr Busch told me that he does have some extension leads but they are his own (given to him by a friend some time ago.) ZWGL provided no evidence to rebut this assertion. I am not satisfied that this item is the property of CDL.

[59] Items [39] and [40] are three large containers of Hansen plastic black pipe fittings, and one container of electrical light switches, 3 pin plug fittings, corners, joiners, and flanges for cat cages. Mr Busch's evidence about these items was initially that he had all of them, but that some were his own and some belonged to CDL. Later he said that he did not have all the items. I prefer his earlier evidence and accept that items of this sort are unlikely to be personal property. **I accept that the case for a compliance order in respect of items [39] and [40] has been made out.**

[60] Item [41] is a large roll of chain mesh fencing wire. Mr Busch acknowledged that this belonged to the company and was in his possession. **I accept that the case for a compliance order in respect of this item has been made out.**

[61] Item [42] consists of silver pole brackets. Mr Busch gave evidence that he had some or all of these brackets in his possession and that they belonged to either CDL or ZWGL. **I accept that the case for a compliance order in respect of this item has been made out.**

[62] Item [43] is four six metre galvanised poles. Mr Busch told the Authority that he had used the poles (which he said may have been the property of ZWGL) in the construction of gates that had since been dismantled by ZWGL. He said he did not know where they were now. ZWGL did not provide any direct evidence of the whereabouts of the poles. The case for a compliance order in respect of the poles fails.

[63] Item [44] is a commercial fire extinguisher. I was told that an outside agency is contracted to the park to provide fire protection services but that it required the park to purchase the extinguishers. Fire extinguishers are listed on the CDL depreciation schedules from 2005 onwards and there is no dispute that there are a number of these stationed around the grounds. One has gone missing. A staff member reported having subsequently seen Mr Busch using a fire extinguisher but did not give precise details of this sighting. Mr Busch denied having one in his possession at present. I am not satisfied that it has been established that he does. The case for a compliance order in respect of the extinguisher fails.

[64] Item [44A] is a set of deer gates. Mr Busch agreed that he had several deer gates in his possession. He told the Authority that although most were owned by him a couple may have belonged to CDL. It appeared that his basis for saying that some were his was that he had built them but it would appear the materials used in construction were purchased by CDL and the labour supplied when he was an employee. I accept that the evidence establishes that the gates belong to CDL. **The case for a compliance order in respect of item [44A] succeeds.**

[65] Item [44B] consists of 6 drums of electrical cabling. Mr Busch acknowledged that he had drums of cabling in his possession. He said it had been purchased for use in the house he occupies and remained there because the wiring work had not been completed. It is not in dispute that the construction of the house was financed by CDL. **I am satisfied that the case for a compliance order in respect of the cabling has been made out.**

[66] Item [44C] is a Chain Block. Mr Busch and his father both gave evidence that Mr Busch senior had given his son two chain blocks several years ago. Mr Craig Busch said that these were used at the wildlife park at one stage however he has not

seen them for some time and does not know where they are. I am not able to accept that the chain block or blocks formerly used by staff at the wildlife park did in fact belong to CDL.

[67] Item [44D] is a “Black and Decker” Jigsaw. Mr Busch denied ever having such an item in his possession and ZWGL did not provide any direct evidence to show that he did, although it provided an invoice for the purchase of what it said was a replacement for the original one taken by Mr Busch. The claim for a compliance order in respect of item [44D] fails.

[68] Item [44E] is a Bandsaw. An item of this description is listed in the depreciation schedules from 2005 onwards. ZWGL staff members told the Authority that the original bandsaw was damaged and CDL made an insurance claim in relation to it, whereupon its insurers arranged for credit at a local retailer where the replacement item was to be obtained. Mr Busch does not deny that he used the credit and uplifted a new bandsaw from the retailer. He retained it for his own use before selling it and keeping the proceeds. Mr Busch’s evidence was that the original bandsaw was his and so therefore was the replacement item however it is not in dispute that the claim was made under a policy which covered ZWGL, CDL and the other companies in the group, but not Mr Busch or any other individuals.

[69] The evidence supports a finding that Mr Busch took a bandsaw that was in fact the property of CDL. However given Mr Busch’s evidence that he has now sold it and used the proceeds, an order for compliance would have no practical effect. **In the circumstances, I decline to order compliance and note that the breach will be capable of being remedied by damages, to be set out in a subsequent determination.**

Records

[70] Item [45] is a file containing animal and zoo records. Mr Busch does not dispute having animal records in his possession but says that they consist “mainly” of documentation relating to the importation of the animals, which was done by him in his capacity as trustee of a trust which owns them. From what I understand neither CDL nor ZWGL purport to own the animals. I do not consider there to be sufficient

evidence to support the making of a compliance order in relation to the animal records. The claim for a compliance order in respect of item [45] fails.

Office Equipment

[71] Item [46], an Apple Mac computer, it is listed on the CDL depreciation schedule from 2005 to 2007 but thereafter appears in the WPL accounts. I conclude that this item belongs to WPL. Mr Busch conceded that he had an Apple Mac which has been in his possession since about 2000. He told me that he thought “*the Park bought it.*” **The claim for a compliance order in respect of item [46] succeeds therefore.**

[72] Item [47] is a laptop. It appears in the depreciation schedule for CDL from 2006 onwards. Mr Busch acknowledged that he has it in his possession but said it was a gift to him personally from his mother and their financial advisor in 2007. This assertion is not credible. **The claim for a compliance order in respect of item [47] succeeds.**

[73] Item [48] is a printer that was purchased by “Zion Wildlife Gardens” in late 2005. Mr Busch acknowledged that he has the item and that he thought “the company” owned it. However he said that he believed it to be “burnt out.” Given the age of the printer this is credible. I am not prepared to make a compliance order in respect of an item that is unlikely to be in working order.

[74] Items [49] and [50] are a set of hand held radios and a mobile phone. These items were purchased between 2002 and 2006 by “Country Developments.” Mr Busch did not deny having been in possession of radios and a mobile phone but told the Authority that none of the items have been in working order for some time, and he is not sure where they all are. As with item [48] I am not prepared to make a compliance order in respect of items unlikely to be in working order.

[75] Item [51] is a television. Mr Busch agreed that he had a television in his home but said that it was his own. Although a television appears on CDL’s depreciation schedules, it must also be noted that a television is to be found in most homes. ZWGL provided no direct evidence of CDL or WPL having purchased the particular

television in Mr Busch's possession. I am not satisfied that it belongs to CDL. The claim for a compliance order in respect of the television fails.

[76] Item [53] is a photo printer. ZWGL witnesses attested to the fact that a photo printer had been sighted in Mr Busch's home and that (like the Apple Mac and the laptop) it were purchased by either CDL or WPL. No invoices or other evidence was provided to show the date of purchase or to confirm the description of the item. Mr Busch agreed that "the company" had such an item and that he may have had it in his possession at one time but is not sure where it is now. The claim for a compliance order in respect of the colour printer fails.

(ii) Single axle trailer alleged to belong to Patricia Busch

[77] Item [4] is a single axle trailer with license plate number J855J. Although ZWGL witnesses attested to seeing a similar trailer within Mr Busch's area of the park, he told the Authority that the trailer which had been seen was one with a different registration number (G866G) and belonged to the Busch Wildlife Foundation. Mr Busch said that although he had that trailer on his property at one time he did not know where it was now. By way of rebuttal, ZWGL produced a LTNZ Renewal of Motor Licence Notice for a trailer with licence number G866G (a twin axle trailer) that was sold by Mr Busch in April 2009.

[78] I am satisfied that the trailer sighted within Mr Busch's area of the park is likely to be the trailer identified as item [4]. **The claim for a compliance order for item [4] succeeds.**

(iii) Tools alleged to belong to John Davis

[79] Items [22] and [23] are respectively a tool box and its contents (all types of tools) and a Ramset Drill. Mr Davis's evidence is that all these items (previously housed in the workshop) belonged to him with the exception of a set of bolt cutters and a hammer in the toolbox; the latter belonged to CDL. Mr Busch said he has a tool box and a drill⁶ but they are his own. He denies having any of Mr Davis's property in

⁶ See paragraph [45] above: the Authority has accepted that the drill in Mr Busch's possession is in fact the property of CDL.

his possession. I do not doubt Mr Davis's evidence that these items belonged to him and that they are missing from the workshop however there was no direct evidence that Mr Busch has these items. The claim for a compliance order in respect of items [22] and [23] fails.

Summary of orders

[80] The list of items in relation to which compliance is ordered is set out at Schedule B attached to this determination. I accept that the draft order proposed by ZWGL is essentially suitable for the purpose however I consider a period of three working days to be a more reasonable timeframe for the return of the list given its length. I was also advised, at the conclusion of the investigation, that Mr Busch planned to travel overseas immediately afterwards and may not therefore be in the country at the date of this determination.

[81] I therefore make the following order:

Craig Busch is ordered to comply with the obligations under his employment agreement with Zion Wildlife Gardens Limited and in particular:

- (e) Craig Busch must return the items listed in the attached Schedule B to the Zion Wildlife Gardens building and maintenance supervisor, John Davis, at Zion Wildlife Gardens maintenance workshop; and**
- (f) The items listed in Schedule B must all be returned as ordered within 3 days of this determination or of Mr Busch's return to New Zealand, in the event that he is overseas at the time of this determination, and**
- (g) Following return of the items in Schedule B to John Davis, Mr Davis shall store the items in the maintenance workshop or such other place within the Zion Wildlife Gardens Park grounds as he considers a suitable and secure place to store the items ; and**

(h) Craig Busch must not damage, destroy or remove from the Zion Wildlife Gardens Park grounds any of the items listed in Schedule B at any time either before or after they have been returned to John Davis' custody.

This compliance order shall continue in force until further order of the Authority.

[82] I note that the issue of costs is reserved pending the determination of the claim for damages.

Yvonne Oldfield

Member of the Employment Relations Authority

Schedule A

Vehicles

1. Ford Transit Van
2. Nissan Patrol, 2005, brown colour, 3.0ST diesel auto, Registration No. CPR960
3. Kea K126 Road Trailer, plate no. 3758N, silver colour, tandem axle
4. Kea Road Trailer Local, plate no. J855J, silver colour, single axle
- 4A. Nissan Dump Truck, 1983, diesel 6 wheeler

Guns

5. Rifle, bolt action Marlin .22
6. Rifle, pump action Browning .22
7. Rifle, bolt action Enfield .303
- 7A. Tranquiliser gun, silver coloured

Tools

8. Sumitomo Excavator/hydraulic drill, including PD12 planetary drive unit, F62000MM outer extension and swivel to suit gearbox
- 8A. Auger drills for excavator:
 - (i) 250mm heavy duty auger
 - (ii) 400mm heavy duty auger
 - (iii) 750mm heavy duty auger
 - (iv) 600mm heavy duty auger
9. Makita circular saw, blue and silver colour
- 9A. Makita power 2 speed hammer drill, 1010w, 20mm [3/4 inch], HP2070F
10. Power hacksaw – commercial, green colour
11. MIG welder, WIA Weldmatic 320
12. TIG welder, model TIG200, together with Argoshield cylinder on hire from BOC
13. Arc welder, yellow body, silver ends, in a carry bag
14. Makita belt sander, blue colour
15. Gas welder, 2 bottles on hire from BOC, and hoses
16. Chainsaw, Stihl brand, model 023C, serial no. 137046208
17. Drill press, approx 1 m high, green colour, and drills
18. Big grinder (hand), Makita, blue colour
19. Makita angle grinder 115mm
20. Bench grinder on stand, green colour
21. Air grease guns (2), MacNaught K45 lever gun bulk or 450gm cartridge; lube extension McNaught KF9; grease point Assy Heca
22. Tool box with all types of tools from screwdrivers to hammer. Some belonged to John Davis
23. Ramset drill, black and orange colour, stamped or inscribed with the letters “JD”, together with drill chuck key
24. Ramset 2kg Dynadrill rotary hammer drill and the following drill bits:
 - 10x 180mm Dynadrill carbide
 - 12x 250mm Dynadrill carbide
 - 16x 200mm Dynadrill carbide
 - Dynadrill flat chisel, 25mm

25. Battery drill, De Walt, DW995K2, 18v
26. Strain Right easy pull 4 in 1 fencing tool
27. Laser level, yellow, in its own box, together with silver coloured tripod stand
28. Big blue crowbar
29. Dropsaw – Makita brand, silver and blue coloured motor, compound mitre saw

Equipment

30. Raceway for Felids, including weigh machine and leads
31. Compressor (air), colour blue, and yellow hoses, and guns air/tire gauge, silver/grey colour
32. Water pump, Kawasaki motor, red colour, and hoses
- 33.
- 34.
35. Sawbench – IMPI BS3001P BS300
36. Ladder, large aluminium step
37. Hoop brackets and bolts (to hold mesh up). Assorted sizes approx 150.
38. 4 Extension leads: ring grip 30m portable cable reel extension lead; PDL extension lead, heavy duty, 15m; PDL extension lead, heavy duty, 20m
39. Hansen black pipe fittings (plastic), numerous, in 3 large containers
40. Electrical light switches, 3 pin plugs fittings, corners, joiners, and flanges for pipes on cat cages, all stored together in one container
41. Chain mesh fencing wire, 1 large roll
42. Silver pole brackets, 250-300 dia., approx 50 in number, made by Gates N Things for Zion Wildlife Gardens
43. Four 6m tanalised poles
44. Commercial fire extinguisher, red colour
- 44A Gates for deer, mesh and pipe construction, grey/silver colour
- 44B 6 Drums of electrical cabling
- 44C Torin Chain Block, 2 ton, purchased from Whangarei Toolshed, 5 May 2008
- 44D Jigsaw, Black & Decker WD/PL, green colour, handheld
- 44E Bandsaw, supplied by Dunninghams in or about June 2008 as replacement under Zion Wildlife Gardens' insurance policy

Records

45. Zion Wildlife Gardens' animal and zoo records held in concertina file

Office and Filming Equipment

46. Apple Mac computer
47. Laptop computer, Acer 2482, with laptop case, mouse and Windows XP professional software loaded
48. Printer – Canon bubblejet with Canon BCI24BK black cartridge
49. Hand held radios, Uniden WHO43SXPRS Twin Pack and Uniden UHPRS charger
50. 3 Mobile phones:
 - Samsung model N171

- Nokia model 252, together with battery, leather case and charger
- Motorola model V550

51. Large television

52A. Film editing suite comprised of the following components:

- Apple Mac Pro 2.66GHz Intel Quad Xeon/2x512MB/250GB/SD, sn – SYM6391RVUQ2;
- 512MB 240 PIN PC5300 1.8V DDR2-667 ECC FB-DIMM (x2);
- Apple Final Cut Studio 5.1 Universal, SN D-338-OOZ-206-RTY-279-IFX-170-RAC-UHY8;
- Roxio Toast 8 Titanium CD/DVD Authoring Software CD Key YV-7MCQQ-66QW8-FBU6R;
- Alsoft Disk Warrior – Software Disk Utility;
- Genelec 8020APM MDE Active Loudspeaker 40W – Black (x2);
- Seagate ST3500630AS 500GB/16MB/7200.10 SATA, sn – 9QG0CWZL;
- Proel STAGE260LU3BK – XLRM-XLRF – 3 metres;
- Dell 2407FPW – 24" UltraSharp Widescreen LCD Monitor;
- AJA Kona LHe PCIe SD/HD 10bit Digital 12bit Analog I/O – sn G86863;
- Focusrite Platinum Range – Twin Trak Pro;
- Violet Design – Black Knight microphone;
- Proel STAGE260BK XLR-XLR Cable – 5 Mtr – Blk;
- Firewire Cable 4-6 PIN 2M CP1010-2.

52B. Sony HVR-M15P Professional Deck HDV/DVCAM/DV

52C. UCR401 Digital Receiver

52D. Ambient QX565 Boom

52E. Sony DSCT3 Digital Camera with Sony Memory Stick Pro Duo 256MB

52F. Video camera together with tripod and camera microphones

53. Minolta colour laser printer 2400W with Belkin USB A to B cable 3M

Schedule B

Item Number

2. Nissan Patrol, 2005, brown colour, 3.0ST diesel auto, Registration No. CPR960
3. Kea K126 Road Trailer, plate no. 3758N, silver colour, tandem axle
4. Kea Road Trailer Local, plate no. J855J, silver colour, single axle
- 7A. Tranquiliser gun, silver coloured
- 8A. Auger drills for excavator:
 - (i) 250mm heavy duty auger
 - (ii) 400mm heavy duty auger
 - (iii) 750mm heavy duty auger
 - (iv) 600mm heavy duty auger
- 9A. Makita power 2 speed hammer drill, 1010w, 20mm [3/4 inch], HP2070F
16. Chainsaw, Stihl brand, model 023C, serial no. 137046208
24. Ramset 2kg Dynadrill rotary hammer drill and the following drill bits:
 - 10x 180mm Dynadrill carbide
 - 12x 250mm Dynadrill carbide
 - 16x 200mm Dynadrill carbide
 - Dynadrill flat chisel, 25mm
27. Laser level, yellow, in its own box, together with silver coloured tripod stand
30. Raceway for Felids, including weigh machine and leads
31. Compressor (air), colour blue, and yellow hoses, and guns air/tire gauge, silver/grey colour
32. Water pump, Kawasaki motor, red colour, and hoses
35. Sawbench – IMPI BS3001P BS300
36. Ladder, large aluminium step
37. Hoop brackets and bolts (to hold mesh up). Assorted sizes approx 150.
39. Hansen black pipe fittings (plastic), numerous, in 3 large containers
40. Electrical light switches, 3 pin plugs fittings, corners, joiners, and flanges for pipes on cat cages, all stored together in one container
41. Chain mesh fencing wire, 1 large roll
42. Silver pole brackets, 250-300 dia., approx 50 in number, made by Gates N Things for Zion Wildlife Gardens
- 44A. Gates for deer, mesh and pipe construction, grey/silver colour
- 44B. 6 Drums of electrical cabling
- 44E. Bandsaw, supplied by Dunninghams in or about June 2008 as replacement under Zion Wildlife Gardens' insurance policy
46. Apple Mac computer
47. Laptop computer, Acer 2482, with laptop case, mouse and Windows XP professional software loaded