

**ORDER PROHIBITING PUBLICATION OF NAME AND IDENTIFYING  
DETAILS IN THE CONTEXT OF THIS JUDGMENT**

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 73  
EMPC 469/2023**

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| IN THE MATTER OF | an application for search and ancillary orders  |
| BETWEEN          | MGE NEW ZEALAND 2010 LIMITED<br>First Applicant |
| AND              | MCKAY LIMITED<br>Second Applicant               |
| AND              | JAMES LIMERICK CAMPBELL<br>First Respondent     |
| AND              | JAYCEE ELECTRIX LIMITED<br>Second Respondent    |

Hearing: On the papers

Appearances: D Grindle, counsel for applicants  
J Browne, counsel for respondents  
P Magee, independent solicitor

Judgment: 10 May 2024

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**JUDGMENT (NO 3) OF JUDGE M S KING**

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[1] On 19 January 2024, a search order was granted.<sup>1</sup>

[2] On 12 February 2024, by consent, the orders were varied and extended.<sup>2</sup> A review hearing was scheduled to occur today.

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<sup>1</sup> *MGE New Zealand 2010 Ltd v Campbell* [2024] NZEmpC 5.

<sup>2</sup> *MGE New Zealand 2010 Ltd v Campbell (No 2)* [2024] NZEmpC 13.

[3] In advance of the review hearing, the parties have filed a joint memorandum of counsel advising that they are working collaboratively. They have agreed on search terms and have applied these to the cloned devices. The search terms have been further refined and resulted in a search yield of 7,051 documents.

[4] Counsel for the respondents is still undertaking an analysis of the search yield documents.

[5] Counsel for the applicants has undertaken an analysis of the search yield documents. They have identified and marked 1,268 documents as “Responsive”, on the basis that the Responsive documents appear both relevant and admissible to the proceedings.

[6] Counsel for the applicants has advised that the Responsive documents are technical and industry specific and they do not have the expertise to determine how these documents fit into the applicants’ business and what they mean in terms of intellectual property. Whereas the search order provides that the respondents’ counsel has been able to seek input from the respondents in relation to determining the relevance and admissibility of documents in the search yield.

[7] The parties seek consequential orders to vary the search order to advance counsel for the applicants’ review of the Responsive documents so that their further relevance can be determined. However, counsel have appropriately identified that the parties are commercial competitors and it is appropriate that conditions are put in place to ensure any confidential information is maintained. Conditions have been agreed by the parties.

[8] In the circumstances, the following consequential orders are made by consent:

- (a) The applicants’ general manager, Mr M McGinley, and two technical engineering staff are allowed to review the Responsive documents with counsel for the applicants so that their further relevance can be determined on the following terms and conditions:

- (i) The computer consultants will be directed to create a separate database solely containing the 1,268 documents marked “Responsive”.
  - (ii) Access to such database will be provided to counsel for the applicants, counsel for the respondents, and to Mr Campbell.
  - (iii) Mr M McGinley and the two technical engineering staff will only have access to the database in the presence of counsel for the applicants.
  - (iv) Copies of the documents will not be taken by Mr M McGinley or the two technical engineering staff without the written consent of the respondents or order of the Court.
  - (v) Mr M McGinley and the two technical engineering staff will sign a confidentiality and non-disclosure agreement in respect of the Responsive documents, in particular providing that the information in the documents (including pricing information) will not be provided to other staff of the applicants or used by the applicants in any way unrelated to the litigation.
- (b) The review hearing scheduled for today is vacated and appearances are excused.
  - (c) For the avoidance of doubt, there will be a continuation of the interim order for non-publication and the order that the file is not to be searched except by leave of a Judge.

[9] The parties will confer with the registry to ensure a review hearing is scheduled promptly after the parties have completed their searches of the documents from the search yield of the cloned devices.

[10] Leave is reserved for the parties to apply on reasonable notice for further or other orders.

[11] Costs are reserved.

M S King  
Judge

Judgment signed at 5 pm on 10 May 2024