

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 20  
5391884

BETWEEN	MIU LING CHAU Applicant
AND	LOTSA GOODIES QUEENSGATE LIMITED Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Ms Miu Ling Chau in person No appearance for the Respondent
Investigation Meeting:	20 December 2012
Determination:	19 February 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Chau had an employment relationship problem with her former employer, Lotsa Goodies Queensgate Limited (Lotsa Goodies), which was resolved in the course of mediation in February 2011. The parties signed a Record of Settlement under s 149 of the Employment Relations Act (the Act), one provision of which was that the terms of settlement and all matters discussed at mediation would remain confidential to the parties.

[2] Ms Chau claims the owner of Lotsa Goodies, Ji Yeon Yang (also known as Christen), breached the confidentiality of the Record of Settlement in an email to a third party. Ms Chau claims the breach has damaged her reputation and created a problem for her in obtaining other employment in Queensgate Mall. She seeks

remedies including a compliance order and costs. She also asks the Authority to impose a penalty on Lotsa Goodies.

[3] Mrs Yang acknowledges sending the email in question on 12 April 2012 but denies breaching the confidentiality of the Record of Settlement, saying the email did not reveal any confidential information. She says she simply replied to a request for information from the manager of another shop in Queensgate Mall. The manager had asked about Ms Chau, whom she said had lodged a complaint to the Employment Relations Authority for compensation against the shop she managed. The manager had asked about Ms Chau in relation to Mrs Yang's business in Queensgate Mall.

[4] Mrs Yang, who lives in Auckland, did not attend the investigation meeting but filed evidence by way of statutory declaration stating her position and advising her inability to attend the investigation meeting due to business and childcare commitments.

### **Issue**

[5] The issue I have to determine is whether Mrs Yang's email of 12 April 2012 breached a term of the Record of Settlement dated 21 February 2011. If it did, I will need to consider what remedies are appropriate.

### **Did Mrs Yang's email breach a term of the agreed settlement?**

[6] The Record of Settlement entered into by the parties contained 6 numbered clauses, only one of which Ms Chau alleges was breached by Mrs Yang. That term is:

- 1. These terms of settlement and all matters discussed at mediation shall remain confidential to the parties.*

[7] Mrs Yang's email dated 12 April 2012 reads as follows:

*Hi Maggie,*

*I am afraid to hear your pitty situation with Ling.*

*I used to have same situation with her.*

*When she worked with me,*

- 1. She were not good with another worker because she change her shift so many time between with colleague. She is very selfish.*

2. *When she meet a problem with employer, she didn't try to solve problem with owner.*

*Just seeking for owner weak point, and terminate job. After that, she goes to Mediation, and ask compensation.*

*When she worked with me, she lost her bag in our shop. After few weeks later, she lost her bag again. Once she lost first time, I gave her recommand do not bring valuable thing to shop, and keep it safe place. But she lost again her bag, and said the bag value is over \$1,000 and include other thing (like phone, and change key etc) it comes to over \$1,500 (I can't remember exact amount). I should pay that amount even I couldn't get any proof of those things.*

*Because that time I didn't make a agreement with her. That's the my weak point. Mediation people said its illegal. So if I go to Court, I need to pay more. Because I need to pay to lawyer more money. He recommand to pay back to her, and terminate the case is better, even I don't have to pay back only her loss (bags).*

*So I paid around \$2,000 include travel to wellington for attending Mediation.*

3. *She knows very well about owner's weak point. Just catch it, terminate job and ask compensation through Mediation.*

4. *After she quit the job, I knew she had lots of bad reputation around the Lower Hutt mall since she worked before.*

*That's a brief story but there are so many bad thing to tell you. But not enough time to describe.*

*Please understand my explanation.*

*I hope it will help your problem solving.*

*Good luck to you.*

*Thanks.*

*Best regards*

*Christen*

[8] The Record of Settlement signed between the parties on 21 February 2011 was a standard Mediation Service document. It contained the usual certification by the Mediator that he had been requested by the parties to sign the agreed terms of settlement and that, before he had signed those terms of settlement, he had explained to the parties the effect of s.149 (1) and (3).

[9] In essence s 149 (1) states the mediator's general authority to sign agreed terms of settlement and s 149 (3) provides that the terms of settlement:

- are final, binding, and enforceable by the parties;

- are not able to be cancelled under s 7 of the Contractual Remedies Act 1979; and
- may not be sought to be brought before the Authority or the court by the parties except for enforcement purposes.

[10] Ms Chau informed me the Mediator had explained to the parties the need for keeping confidential the terms of settlement and all matters discussed at mediation. I accept her evidence.

[11] In her Declaration to the Authority Mrs Yang expressed surprise at having received a letter from the Employment Relations Authority regarding Ms Chau's claim that she had breached confidentiality. Mrs Yang maintains she did not reveal the contents of the Record of Settlement. She says she simply told another business person, in answer to a query, *what happened to me and my company because of [Ms Chau]*.

[12] I find parts of Mrs Yang's email did breach the confidentiality of the Record of Settlement signed by the parties and the Department of Labour Mediator. It is not necessary for me to set out the terms of settlement in full, but they included the reimbursement of money for Ms Chau's lost property. Ms Chau's loss of her bag in the shop and her claim for compensation were clearly part of both the discussion and settlement at mediation, and Mrs Yang's reference to these matters was in breach of the confidentiality.

[13] Mrs Yang's email also referred to statements made by the Mediator in relation to the lack of an employment agreement with Ms Chau, and to the Mediator's recommendation that she pay for Ms Chau's loss. The disclosure of the Mediator's statements and recommendation, as well as the information disclosed in the email about money paid by Mrs Yang, further breach the confidentiality of the Record of Settlement.

## **Remedies**

### *Compliance Order*

[14] As Mrs Yang has breached a term of the Record of Settlement, it is appropriate that I order compliance with that term and I do so accordingly.

***Penalty***

[15] A penalty is imposed for the purpose of punishment of a wrongdoing which will consist of breaching the Act or another Act or an employment agreement<sup>1</sup>. Not all breaches will result in the imposition of a penalty and, as was noted by the (then) Chief Judge in *Xu*, the first question should be how much harm the breach has occasioned and how important it is to bring home to the party in default that such behaviour is unacceptable or to deter others from it.

[16] Ms Chau told me she had found it difficult to find employment in Queensgate Mall, and gave her inability to obtain a position in a Sushi shop as an example. She provided no compelling evidence of the reason for her failure to secure employment either at that shop or any other in the Mall.

[17] Ms Chau strongly believed Mrs Yang had damaged her reputation. However her only evidence was the email Mrs Yang admitted sending to one shop manager who had previously employed Ms Chau and who was also involved in an employment relationship problem with her. I find there is insufficient evidence to link Ms Chau's difficulty in obtaining employment in Queensgate Mall to Mrs Yang's breach.

[18] Mrs Yang may genuinely believe she was not breaching the confidentiality of the Record of Settlement when she responded to a request for information from a Queensgate shop manager. She is wrong in that belief but I find her breach to be misguided rather than flagrant and deliberate.

[19] It is important the employer realises its disclosure of confidential information from the mediated settlement was wrong. The imposition of a modest penalty is appropriate, both to indicate the breach of the settlement and to act as a deterrent to others who enter into such mediated settlement agreements. Accordingly I impose a penalty of \$500 against Lotsa Goodies, all of which is to be paid to the Crown.

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<sup>1</sup> *Xu v McIntosh* [2004] 2ERNZ 228 at464

**Costs**

[20] Ms Chau seeks the reimbursement of costs she has incurred. As she represented herself in the Authority, the only cost I can reimburse is the Authority filing fee.

**Orders**

[21] The following orders are made:

- (i) Lotsa Goodies Queensgate Limited is ordered to comply with clause 1 of the Record of Settlement it entered into with Ms Chau on 21 February 2011, with immediate, and ongoing, effect, pursuant to s 137 of the Employment Relations Act.
- (ii) A penalty of \$500 is imposed on Lotsa Goodies Queensgate Limited under s 149 (4) of the Employment Relations Act.
- (iii) Lotsa Goodies Queensgate Limited is ordered to reimburse Ms Chau the cost of the Employment Relations Authority filing fee in the sum of \$71.56.

Trish MacKinnon  
Member of the Employment Relations Authority