

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 80/07  
5081521**

	BETWEEN	Eagle Technology Group Ltd Applicant
	AND	Steve Maskell First respondent
	AND	Julie Coppins Second respondent
	AND	Trilogy Solutions Ltd Third respondent
Member of Authority:	James Wilson	
Representatives:	Mark Ryan for the applicant Rod Smith for the first and third respondent Andrew Steele for the second respondent	
Determination:	20 March 2007	

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**DETERMINATION OF THE AUTHORITY**

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**Eagle Technology Group Limited's application**

[1] On 14 March 2007 Eagle Technology Group Limited filed a Statement of Problem with the Authority seeking:

(1) An injunction against all three respondents preventing them from continuing to damage Eagle Technology's business interests brought about by a breach of the first and second respondent's employment agreements with the Eagle Technology.

(2) An injunction restraining the first and second respondents by themselves or through the third respondent from having any involvement whatsoever directly or indirectly with Epicor, PA, SLS and other customers or associated strategic suppliers of Eagle Technology.

(3) An injunction requiring the first and second respondents to comply with the terms and conditions of their employment agreement with Eagle Technology.

(4) An injunction requiring that the third respondent ceases aiding and abetting the first and second respondents in breach of the employment agreement.

(5) A penalty against the first and second respondents in the sum of \$5,000 in respect of each day on which they breach the employment agreement.

(6) A penalty against the third respondent in the sum of \$10,000 for each day on which it knowingly continues to employ the first and second respondents in breach of the employment agreement.

(7) An order under section 136(2) of the Employment Relations Act 2000 that the whole of the penalties awarded be paid to Eagle Technology.

(8) General damages in the amount of \$500,000 which is calculated to be the amount of total loss incurred by Eagle Technology as a result of the first respondent's breach.

(9) A penalty in the amount of \$10,000 to be imposed on the first and second respondents for breaches of good faith.

This statement of problem was accompanied by an application for urgency and an application requesting that this matter be removed to the Employment Court.

### **Application for urgency**

[2] The application for urgency is not opposed by the respondents. I understand that Eagle Technology has also filed an identical application in the Employment Court and that the Employment Court will, within the next few days, be considering whether or not the Court has the appropriate jurisdiction to consider the injunctions sought. (Employment Court proceeding ARC 6/07) It is appropriate that I address the

question of removal prior to that hearing. In any event, because of the nature of the application i.e. injunctive relief to prevent what Eagle Technology asserts is a breach by the first and second respondents of their employment agreements, I am satisfied that this is a matter where the granting of urgency is appropriate.

### **Application for removal**

[3] The grounds on which the Authority may order the removal of a matter to the Court are set out in the Employment Relations Act at section 178. Subsection 178(2) of the Act says:

*(2) The Authority may order the removal of the matter, or any part of it, to the Court if -*

*(a) an important question of law is likely to arise in the matter other than incidentally; or*

*(b) the case is of such a nature and of such urgency that it is in the public interest that it should be removed immediately to the Court; or*

*(c) the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*

*(d) the Authority is of the opinion that in all the circumstances the Court should determine the matter.*

[4] Both the first respondent (Steve Maskell) and the second respondent (Julie Coppins), have consented, by way of written memoranda from their respective representatives, to the application for removal. Mr Smith, for the third respondent, (Trilogy Solutions Ltd) has advised that:

*Trilogy Solutions Ltd do not consent on the grounds that no complaint is before the Authority, or cause of action pleaded in the Employment Court proceeding ARC 6/07, that would support it being a party to either proceeding.*

[5] In the application to the Authority Mr Ryan, for Eagle Technology has pointed out that in *Axiom Rolle Valuation Services Ltd v Kapadia* [Employment Court Auckland, AC 43/06 4 August 2006] Chief Judge Colgan commented, at paragraph 70:

*The Employment Relations Authority has no power to prevent a breach of, or otherwise require compliance with, an employment agreement or employment law except by statutory compliance order...where urgent injunctive relief is appropriate in the employment field, it is the Court that is empowered, not the Authority.*

Given this comment by the Chief Judge, and in the light of the upcoming hearing regarding the Employment Court's jurisdiction in this matter, there is no doubt that *an important question of law is likely to arise in (this) matter other than incidentally.*

[6] Despite Trilogy Solutions' withholding their consent to the application for removal, their objection to being named as a party in these proceedings is a matter best dealt with by the Employment Court as a part of their progression of this case.

### **Determination**

[7] In terms of s178(2)(a) this matter is to be removed in its entirety to the Employment Court. Given the proximity of the Courts next hearing on this matter the Authority Support Officer is requested to forward a copy of this Determination to the Court Registrar in Auckland as soon as possible.

### **Costs**

[8] Costs are reserved on the assumption that these will be dealt with by the Court at the appropriate time.

James Wilson

Member of the Employment Relations Authority