

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Enterprise Recruitment Christchurch Limited (Applicant)

AND Caron Palmer (Respondent)

REPRESENTATIVES Patrick McPherson, counsel for the applicant
Application investigated ex parte

MEMBER OF AUTHORITY Philip Cheyne

INVESTIGATION MEETING 14 December 2004

DATE OF DETERMINATION 14 December 2004

DETERMINATION OF THE AUTHORITY

[1] This is an ex parte application for an Anton Pillar order and interim injunctions against Caron Palmer who very recently gave one months notice of resignation from her employment with Enterprise Recruitment Consultants Limited (Enterprise).

[2] Enterprise is a recruitment agency based in Christchurch. Ms Palmer worked as a recruitment consultant from late 2003. She gave one months notice of her resignation on 13 December 2004.

[3] Enterprise then accessed Ms Palmer's work computer and discovered a number of emails and attachments sent from that computer to proscapex@xtra.co.nz. That email address is believed to be Ms Palmer's or her husband's Mr Geoffrey Palmer. He runs a landscaping business from home called Proscapex. It is apparent from one of the emails that the Palmers have a computer at home and it is thought that Ms Palmer will have used that computer to access the emails including various attachments.

[4] The attachments include various form documents relating to the business of recruitment consulting. Enterprise says that those documents are its confidential information. On their own, they would not warrant an Anton Piller order or the other orders being sought on an ex parte basis.

[5] Of more concern, one email includes CVs belonging to three of Enterprise's clients. There is another email to a further client inviting that person to contact Ms Palmer in the new year, by which time she would apparently have commenced her new employment. Another email has an attachment that shows Enterprise's key client organisations and relevant contact people who are to receive a Christmas gift from Enterprise. Finally, there are several attachments relating to a tender currently being prepared by Enterprise who seeks appointment as the tenderor's preferred provider of recruitment consultant services. That tender, if it succeeds, will be a major source of business for Enterprise.

[6] Ms Palmer was offered and has accepted a position with Response, a division of a business called Brannigans to start early in the new year. Response and/or Brannigans are direct competitors of Enterprise. Brannigans and/or Response are competing with it for the major tender just mentioned.

[7] The Court of Appeal has set out what must be established for an Anton Piller order to be granted: see *Busby v Thorn EMI Video Programmes Limited* [1984] 1 NZLR 461 (CA). The application must show:

- (a) a sufficiently strong prima facie case to justify an extreme remedy;
- (b) the damage, potential or actual, must be very serious for the applicant;
- (c) clear evidence that the respondent must have in her possession the applicant's confidential information and/or intellectual property in some physical form; and
- (d) a real possibility that such material may be destroyed before an inter partes application can be made

[8] I am satisfied that these grounds are made out by the affidavit of Warwick Neutze and his additional oral evidence. Much suspicion must attach to Ms Palmer sending herself Enterprise's confidential information when she is about to commence work for a competitor. At this point, it is difficult to quantify the damage that might flow from Brannigans obtaining Enterprise's tender information in advancement of the tender closing tomorrow. However, there is real potential for very serious commercial damage should there be any misuse of the confidential information that Ms Palmer emailed to herself.

[9] While it is sufficiently clear that Ms Palmer has emailed material to herself, there can be no certainty that she has actually yet received that material. The concerning emails were sent over the space of some days so it is a reasonable assumption that Ms Palmer has picked up some or all the material. The proof of that most likely lies on the hard drive of the home computer. There is evidence that suggests that there is a fault with the hard drive and that the computer is currently in the hands of a computer technician engaged by Ms Palmer to fix the fault. There is a real risk that evidence will be destroyed unless an Anton Piller order is granted. That may be a by-product of work done by the computer technician or it might be achieved intentionally by Ms Palmer. The reason to suspect the latter is Ms Palmer's improper behaviour in sending herself Enterprise's confidential material especially material that was not normally part of her work for Enterprise, particularly in light of her express contractual obligations concerning that material and post employment dealings with Enterprise's clients.

[10] For the above reasons, I granted the Anton Piller order.

[11] The interim injunction applications will be investigated on notice. There will be an investigation meeting on Tuesday 21 December 2004 at 10.00 am. Ms Palmer may lodge and serve any affidavit in reply by 1.00 pm on Monday 20 December 2004. The applicant is to serve this determination and the notice of investigation meeting on Ms Palmer without delay.

Philip Cheyne
Member of Employment Relations Authority