

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Phillip Huston (Applicant)  
**AND** Oldco PTI Limited (Respondent)  
**REPRESENTATIVES** Penny Swarbrick, Counsel for Applicant  
Emma Butcher, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 13 October 2005  
**DATE OF DETERMINATION** 13 October 2005

**DETERMINATION OF THE AUTHORITY**

[1] By agreement of the parties the respondent in these proceedings is to be identified as Oldco PTI Ltd.

[2] The respondent applied for a suppression order on 10 October 2005. A telephone conference call was held with the parties on 12 October regarding this application and it was agreed the application would be dealt with at the start of today's scheduled investigation meeting.

[3] Today I received submissions from the parties regarding the application.

[4] Miss Butcher, for the respondent made the following submissions:

- (i) the suppression application was made pursuant to section 160(1)(e) and schedule 2 clause of the Act;
- (ii) the Authority is not bound to strictly apply the formal principals relating to the suppression<sup>1</sup>;
- (iii) the order sought is in the nature of a blanket suppression order to apply to evidence given, pleadings filed, and the names of parties and witnesses;
- (iv) the grounds of this application are that evidence is either commercially sensitive or is so entwined with commercially sensitive evidence as to be unable to be separated;
- (v) the respondent's communications with its customers and suppliers have been strategically manager to limit the effect that the principal shareholder is in receivership and the respondent continues to trade;
- (vi) the disclosure of any of the material for which the suppression order is sought is likely to rock the confidence of customers or suppliers of the respondent's, whose goodwill is the respondent's major asset;
- (vii) the applicant is not disadvantaged by this application; and

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<sup>1</sup> *Davis v BNZ*

(viii) blanket suppression orders issued by the High Court on 17 December 2004<sup>2</sup> in related litigation apply to this day (those suppression orders have been made available to me).

[5] Ms Swarbrick, for the applicant submits:

- (i) the applicant opposes the applicant for suppression;
- (ii) the overriding principle is that justice should be administered in public<sup>3</sup>; and
- (iii) the orders sought are too wide;
- (iv) applications for suppression can be made during the course of the evidence; and
- (v) the suppression orders issued by the High Court followed undertakings from the respondent party to that litigation and the restructuring arrangements are now a year down the track.

[6] Having considered the submissions I have advised the parties that the application was declined for the following reasons:

- (i) the issues around the commercial sensitivity relate to the respondent maintaining the goodwill of its customers and clients;
- (ii) the fact that the principal shareholder is in receivership is in the public domain;
- (iii) the applicant's relationship to that shareholder is in the public domain;
- (iv) the ending of the relationship between the respondent and the applicant and the connection to the receivership of the principal shareholder is also in the public domain;
- (v) these issues are historical and the respondent continues to trade with the support of its bank;
- (vi) in these circumstances I am not satisfied that the *Anderson* test for suppression to the degree sought by the respondent is met;
- (vii) suppression orders may be sought in relation to the evidence during course of the investigation.

[7] Ms Butcher then sought an adjournment on the grounds that she did not have instructions to proceed on this basis. She also advised a challenge to the Authority's declining of the suppression order sought would be lodged. The adjournment was granted.

[8] This determination is only to be distributed to the parties until such time as the outcome of the respondent's challenge to the Employment Court is known. The Authority's file is AEA 251/05 and its contents are not to be released without order of the Authority.

Marija Urlich  
Member of Employment Relations Authority

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<sup>2</sup> *Houston & ors v ANZ National Bank Ltd Ak GV 2004-404-6932 17/12/04*

<sup>3</sup> *Anderson v Employment Tribunal*