

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 583
3390825

BETWEEN JAMES LAW REALTY
LIMITED
Applicant

AND TARUN MARWAH
Respondent

Member of Authority: Sarah Blick

Representatives: James Law, for the applicant
Max Gunawan, counsel for the respondent

Investigation Meeting: On the papers

Information and submissions received: 8 August, 29 August and 2 September 2025 from the applicant
25 August and 29 August 2025 from the respondent

Determination: 19 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tarun Marwah was employed by James Law Realty Limited JLR as a Real Estate Sales Specialist until his resignation on 10 April 2025. Mr Marwah now works for another company, JK Realty Limited, which JLR says is a direct competitor to its business. In doing so, JLR says Mr Marwah has breached non-competition, non-solicitation, and confidentiality provisions of the parties' employment agreement (IEA), thereby causing, and continuing to threaten to cause, significant harm and financial loss to JLR.

[2] JLR seeks an interim injunction pending the Authority's determination of its substantive claims for which damages are sought. Mr Marwah seeks interim orders

preventing him from continuing to breach clause 18 of the IEA, specifically prohibiting him from:

- (a) working for the competitor or any other competing business as defined in the IEA for the remainder of the restraint period (until 8 November 2025);
- (b) using JLR's confidential information; and
- (c) soliciting JLR's clients or staff.

[3] Mr Marwah denies the relevant restraints around non-competition, non-solicitation of clients and non-solicitation of staff are enforceable but otherwise denies he has breached the relevant IEA clauses or has knowingly breached them.

The Authority's process

[4] The Authority directed the parties to mediation on an urgent basis. However, mediation was unsuccessful in resolving the matters between them.

[5] JLR's director James Law has provided an affidavit in support of the application for orders. Affidavits have been provided by Mr Marwah, former salesperson for JLR, Anastasiia Dotsenko, and manager and part-owner David Findlay of JK Realty Limited, Mr Marwah's current employer.

[6] The investigation was conducted by way of affidavits and written submissions from the parties. It has been determined on the papers, with the agreement from the parties.

[7] This determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received and considered.¹ In saying that, the nature of this interim matter has not allowed for the testing of evidence. Conclusions drawn are tentative and not necessarily what will be decided at the substantive investigation after a full examination of all available evidence is able to be undertaken.

Issues

[8] This determination deals with the application for an interim injunction. The issues for determination include:

¹ As permitted by s 174E of the Employment Relations Act 2000.

- (a) whether JLR has an arguable case;
- (b) where the balance of convenience lies;
- (c) where the overall justice lies; and
- (d) whether costs should be awarded in relation to the interim application.

Relevant law

[9] The legal framework for determining interim injunctions is to assess whether there is a serious question to be tried, the balance of convenience and where overall justice lies.

[10] The starting point is that restrictive covenants that attempt to limit an employee's ability to earn a living are contrary to public policy and therefore prima facie unenforceable. However, the law permits restraints if an employer can establish it has a legitimate proprietary interest to protect, and that the restraint is reasonable and no wider than was necessary in order to protect that legitimate proprietary interest.

Background

[11] JLR says it made substantial investments in Mr Marwah's training and professional development (culminating in his receipt of the REINZ Rising Star Award 2024), marketing, provision of resources (including a company vehicle and proprietary software), access to a client database comprising approximately 162 properties, and support for his work visa.

[12] The IEA sets out post-employment obligations, including:

- (a) a non-competition restraint within 20km for six months (clause 18.4)
- (b) non-solicitation of clients (clauses 18.1 and 18.5)
- (c) non-solicitation of staff (clause 18.2), and
- (d) ongoing duties of confidentiality (clause 12).

[13] Clauses 18.8 and 18.9 of the IEA recorded the obligations are expressly acknowledged as reasonable and that Mr Marwah would be liable in damages for any breach.

[14] JLR says upon resigning on 10 April 2025, Mr Marwah stated his intention to join competing firms and departed overseas immediately, failing to serve his four-week notice period as required under the IEA. Mr Marwah's evidence is that upon advice of

his intention to resign, he was locked out of JLR's systems. He says he intended to work his notice period, and made plans to travel after JLR's actions, which he says repudiated their employment agreement, resulting in his constructive dismissal.

[15] Mr Marwah's counsel subsequently confirmed, via email dated 18 April 2025 his intent to join another real estate agency.

[16] JLR says on or about 13 May 2025, it confirmed via the Real Estate Authority (REA) register that Mr Marwah was licensed with another realty group which is direct competitor, and that he was working at one of its branches operating within 3.5km of JLR's Mt Eden office, in breach of clause 18.4. Mr Marwah acknowledges commencing employment with JK Realty Limited in May 2025.

[17] JLR says then discovered that Mr Marwah is actively marketing property listings for the competitor, including properties and client contacts derived from JLR's confidential information and proprietary database. It says this constitutes breaches of clauses 12, 18.1, and 18.5 of the IEA.

[18] JLR sent a number of "cease and desist" type demands to Mr Marwah. On 10 April 2025 JLR asserted a right to withhold all outstanding entitlements for six months as "security" for alleged restraint breaches, and within days went further by conditioning the payment of wages, holiday pay, and the employment bond on Mr Marwah providing undertakings and a statutory declaration. It appears to have resiled from the position and subsequently paid Mr Marwah his entitlements, although that is not established clearly on the evidence provided. Mr Law believes Mr Marwah is now actively leveraging JLR's confidential information and client relationships to market over 60 competing listings as identified in his affidavit and schedule of breaches.

[19] Mr Marwah lodged his own statement of problem on 21 May 2025, pursuing a constructive dismissal grievance, disadvantage grievance regarding the withholding of final pay and entitlements, and findings in relation to a \$40,000 bond paid, which he says was paid by his father as a condition of employment.

[20] JLR estimates its direct net revenue loss resulting from Mr Marwah's breach of clause 18.4 to be \$133,131.48 over the six-month restraint period, in addition to significant unquantifiable damages.

Whether there is a serious question to be tried

[21] The threshold for a serious question is that the claim is not frivolous or vexatious and the decision on the serious question issue is based on a judicial assessment of the evidence, albeit untested, and the submissions advanced.²

Reasonableness of restraints

[22] The restraints at issue are the non-compete and non-solicitation of clients and staff. Assessing the reasonableness of the contractual restraint is essentially a balancing exercise. The prima facie position is restraints of trade are contrary to public law and not enforceable. To overcome this JLR must establish it has a legitimate proprietary interest that the restraint protects, and that the restraint is no wider than is reasonably necessary to protect that interest.³

[23] On the one hand are legitimate commercial proprietary concerns and the undesirability of unfair competition by a former employee. On the other hand, there is the necessity to uphold and preserve the right of the former employee to obtain employment or otherwise engage in business in the field in which that former employee is qualified and experienced.⁴

Non-competition restraint

[24] JLR says with Mr Marwah's admission he is employed by a direct competitor, JK Realty, within the contractually proscribed 20km radius, the breach of clause 18.4 is clear.

[25] JLR submits its proprietary interest is in its long-term, ongoing relationships with major commercial landlords, which yield repeat business. These relationships are fundamentally different from transient, one-off sales. It was said a restraint is reasonable to give the employer adequate time to establish new relationships with those clients.

[26] JLR submits the non-competition restraint is "manifestly reasonable", in that it allows JLR a reasonable period for the confidential information Mr Marwah possesses to "become stale" and to attempt to establish ongoing relationships between Mr

² *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90; and *Western Bay of Plenty District Council v Jarron McInnes* [2016] NZEmpC 36.

³ *Air New Zealand v Kerr* [2013] NZEmpC 153 at [23].

⁴ *Walley v Gallagher Group Ltd* [1998] 3 ERNZ 1153.

Marwah's replacement and the clients.⁵ JLR further submits "crucially", Mr Marwah explicitly acknowledged in writing that the restraint was reasonable (IEA clause 18.8).

[27] Mr Marwah submits the non-competition restraint is unreasonable. Clause 18.1 provided for a 20km radius from multiple sites (including JLR's North Shore/Whangaparāoa location). This would, in effect, block Mr Marwah, a junior, commission-based salesperson from working across a large part of the greater Auckland region for six months. Mr Marwah says on its face, the covenant exceeds what is necessary to protect any legitimate proprietary interest and is therefore prima facie void unless it is reduced.

[28] Mr Marwah submits JLR has failed to demonstrate proprietary interest in the relevant clients. He argues the relevant commercial leasing work is conducted under general agency arrangements only; listings are non-exclusive, publicly advertised, and frequently administered via third-party property managers. On that matrix, the covenant protects no legitimate proprietary interest, or only in a materially narrower form than pleaded by JLR.

[29] JLR submits its investment in Mr Marwah was profound. Mr Law refers to extensive support from technical and creative staff, considerable direct mentorship in a niche market, and access to proprietary systems. This investment created the very goodwill and professional standing Mr Marwah now seeks to "exploit" for a competitor's benefit. It says an employer has a legitimate interest in protecting its "human capital" and client relationships from being exploited by a departing employee. JLR submits Mr Marwah is actively leveraging JLR's confidential information and client relationships to market over 60 competing listings as identified in Mr Marwah's affidavit and schedule of breaches - causing immediate and irreparable harm to JLR's legitimate proprietary interests.

[30] Mr Marwah dismisses JLR's claim to have made a "profound" investment as bare assertions without a factual foundation. He points out that Mr Law's affidavit does not particularise any specific confidential information, proprietary systems, or enduring client relationships beyond what is publicly available. Mr Marwah submits that any claim by JLR to a proprietary interest is undermined by the evidence that Mr Marwah personally bore significant costs and effort to grow and maintain his own clientele. He

⁵ *Reekie v Blackfoot New Zealand Limited* [2013] NZERA Auckland 564 was cited.

says he paid for his own vehicle expenses, client entertainment, marketing and advertising, professional development and licence renewals, and he routinely worked after hours (including evenings and weekends) to build relationships and progress deals. These features emphasise that the value lies in his personal investment and work ethic, not in any proprietary platform or resource supplied by JLR.

[31] Confidential information has been recognised as a propriety interest and restrictive covenants may be necessary, in addition to confidentiality obligations, to protect the disclosure of confidential information in the course of further employment.⁶ The confidential information over which JLR seeks to impose a restraint are stated to be its curated database, landlord contacts, transaction histories, and internal strategies, which are the product of years of labour and investment. JLR submits Mr Marwah's claim that client information is in the "public domain" is misconceived – such organised information is confidential and protectable even if some constituent parts may be publicly ascertainable.

Non-solicitation of clients

[32] Mr Marwah has provided email responses from individuals and companies he previously worked with while employed at JLR. The responses each confirm that Mr Marwah never asked, suggested, or encouraged them to move their business away from JLR; their decisions to place or retain business elsewhere were made independently; and at no point did Mr Marwah interfere with their pre-existing relationship with JLR. Mr Marwah says the evidence indicates that decisions to place or retain business elsewhere were made independently.

[33] The statements confirm that since leaving JLR, Mr Marwah has not initiated contact to solicit their business, has never implied that Harcourts might serve them better, and has not provided his new details in a way intended to invite their custom. They responded that he has not sought to match or beat JLR on commission rates, facilitated any transfer of listings, or communicated in a way that might be interpreted as inviting their business.

[34] JLR says Mr Marwah's own evidence is fatal to his defence. In an attempt to exculpate himself, he has produced "self-serving statements" from the very JLR clients

⁶ *Credit Debt Services NZ Ltd v Wilson* [2007] ERNZ 252; and *Transpacific Industries Group (NZ) Ltd v Harris* [2013] NZEmpC 97.

with whom he has now signed new agency agreements for his new employer, a direct competitor to JLR. The act of contacting these specific clients to procure these statements is, it says, a manifest breach of his non-solicitation obligations and a clear demonstration of his use of the client relationships JLR seeks to protect.

[35] JLR refers to an agreement between JK Realty and a JLR client dated in February 2025 as being evidence that Mr Marwah acted against its interests while still employed by JLR. The agreement pre-dates Mr Marwah's employment with JK Realty. Mr Marwah says this reflects that a pre-existing relationship existed wholly independent of Mr Marwah. He says he no involvement in procuring or executing it. There is no evidence before the Authority of his involvement with JK Realty at the relevant time. I can give no weight the JLR's assertion absent such evidence.

[36] The untested evidence suggests Mr Marwah has respected the boundaries of his former employment and has not diverted, attempted to divert, or interfered with JLR's client relationships. These written confirmations from landlords and property managers provide a rebuttal to JLR's unparticularised allegation of solicitation.

Non-solicitation of JLR staff members

[37] JLR says the risk to its interests is compounded by a pattern of staff departures that creates a powerful inference of a coordinated team move, orchestrated in breach of clause 18.2 of the IEA. It says shortly after Mr Marwah left, two other employees resigned, with one immediately commencing employment with the exact same competitor. It says the sequence is beyond coincidence.

[38] Mr Marwah has provided affidavit evidence from former JLR employee Ms Dotensko who gives evidence her departure from JLR was not connected to any approach, encouragement or solicitation from Mr Marwah. She says while she initially accepted in employment with JK Realty Limited, she then chose to take employment with another employer as a result of JLR's threats of litigation. She says at no time before or after her resignation from JLR did Mr Marwah ask her, encourage her or suggest she should join JK Realty Limited. This direct evidence outweighs JLR's conjecture. No evidence links Mr Marwah to the decisions of other staff. JLR has provided no direct evidence from any employees saying the converse is true.

[39] The evidence of a coordinated departure by employees in support of the interim application is insufficient to establish even a weakly arguable case. There may well be

additional evidence that would alter the Authority's position on that, but it must assess this application based on the evidence available.

Findings on arguable case

[40] I am satisfied there is at least an arguable case that the non-competition restraint is enforceable, with propriety interests capable of being protected, such that Mr Marwah's actions in working for a competitor would be in breach of the relevant clause.

[41] It is at least arguable the non-solicitation restraints are reasonable and enforceable. However, the evidence presented by JLR was insufficient to show an arguable case that Mr Marwah has breached the non-solicitation restraint in respect of JLR's clients, given the feature of general agency agreements in the commercial leasing context. There is no arguable case on the evidence in respect of him soliciting JLR staff members, based on the evidence presented.

[42] I accept JLR holds, and Mr Marwah had access to, confidential information during his employment capable of protection. There was however no direct or compelling evidence that Mr Marwah has taken, kept or using confidential information in his new employment.

Balance of convenience

[43] Assessing the balance of convenience requires consideration of the impact on each party and third parties if the interim orders sought are granted or not. I must also consider what happens if the interim position is reversed in any substantive determination. Relevant considerations include the adequacy of damages to both sides, preservation of the status quo, relative strength of each parties' case, the conduct of the parties, and the effect on innocent third parties (if any).

[44] JLR says it is suffering immediate and irreparable harm, with Mr Marwah exploiting a "classic springboard" advantage, gaining an inequitable head-start that goes beyond legitimate competition, which is causing damage to client relationships and goodwill that cannot be adequately compensated by damages. It refers to damages being notoriously difficult to quantify in such cases.

[45] Despite this, JLR's case is framed primarily in monetary terms. It has already adopted a quantified loss approach and has provided the Authority with its estimated

losses for the restraint period. Mr Marwah says where an applicant can estimate loss with specificity, that tends to indicate that monetary relief is capable of addressing the alleged harm. This appears to be the case here and militates against JLR's claim that damages will necessarily be an inadequate remedy.

[46] JLR has provided an undertaking for damages. While JLR will likely have sufficient financial means to pay damages that may be awarded against it in the substantive determination, Mr Marwah may not have sufficient financial means to do so. Allowing him to continue in his chosen industry will mean he will more likely be in a position to meet any potential damages awards.

[47] JLR says the harm to it has been exacerbated by Mr Marwah's own conduct; not only, it says, has he re-contacted JLR's clients to solicit new agency agreements for his new employer, but he has also attempted to procure "self-serving" statements denying solicitation, an act which causes further reputational damage. Mr Marwah says this is misconceived. He submits it is proper and routine for respondents to gather independent evidence to answer allegations. He says the statements were provided voluntarily and contacting clients for the limited purpose of obtaining evidence in these proceedings is not solicitation; it was a necessary and legitimate step in mitigating litigation risk, which has, in fact, materialised. It is not clear what how the harm has been exacerbated by Mr Marwah's actions in contacting the clients for this purpose. This is a neutral factor, at least on the evidence presented.

[48] JLR says any prejudice to Mr Marwah is a direct and foreseeable consequence of his own "calculated decision" to breach his contract. Mr Marwah is a "businessperson" who can be "expected to have planned for the risk" associated with his decision to compete against his former employer Mr Marwah enjoyed secure employment, a good income, and a significant bonus shortly before his departure. It says Mr Marwah could have avoided legal action by providing a "simple undertaking" to comply with his obligations - an approach encouraged by JLR before litigation. This refusal underscored his intention to continue his breach, making its injunction application necessary. JLR says he cannot now use his self-inflicted visa issues or the burden of legal costs as a shield.

[49] In relation to Mr Marwah's own application in the Authority, JLR suggests the entire proceeding is a manufactured counterclaim, or tactical and retaliatory response

by Mr Marwah for being held accountable for his breaches, initiated in an attempt to create leverage and pressure JLR into abandoning its legitimate claims. It says it is an abuse of process and should be given no weight. Mr Marwah's application is in its early stages. No witness statements have been received, and no meeting date has been set down, as is the case with JLR's matter. I can give this submission no weight.

[50] Mr Marwah has referred to allegedly "bad faith" actions by JLR involving its request for a further bond payment from him during negotiations in which he sought a salary increase and JLR's support for a visa application. JLR says these negotiations are "privileged" and irrelevant to his breaches of the existing agreement.

[51] JLR apparently considered Mr Marwah a restraint risk as early as 10 April 2025 (the day it revoked his system access). Although it liaised with Mr Marwah and later his counsel directly, it did not lodge its own statement of problem in the Authority until around six weeks after Mr Marwah lodged his statement of problem. The relevant delay arguably is not six weeks but nearly 12 weeks before it lodged its Authority application. Mr Marwah says such delay sits uneasily with the premise of urgency and weighs against the grant of discretionary interim relief. I agree. While JLR says it took steps to secure its position directly with Mr Marwah, I agree that the delay tends to undermine its current argument that not granting interim injunctive relief would cause irreparable harm to its business.

[52] Mr Marwah cites additional considerations as relevant and weighing in his favour:

- (a) Imposing a restraint for the remaining months would remove Mr Marwah's only source of income at JK Realty, leaving him unable to meet rent, bills, and daily living cost, leading to a loss of financial independence.
- (b) The hardship would be compounded by the fact that, having worked at JK Realty for less than 12 months, he has no entitlement to annual leave pay as a fallback.
- (c) Any order restraining him from performing that role risks immigration consequences because there is no alternative role at JK Realty, and a change in work circumstances may trigger mandatory notifications to Immigration New Zealand and jeopardise his visa stability.

- (d) Mr Marwah is progressing with family settlement plans in New Zealand which depend on him maintaining lawful, productive employment.
- (e) Imposing a restraint for the remaining months would have the effect of stopping projects which JK Realty has assigned to Mr Marwah, even those that have no causal connection to JLR's claim against Mr Marwah.

[53] I accept that these tangible and immediate prejudices to Mr Marwah if restrained, being loss of income, career setback, and immigration uncertainty, materially outweighs JLR's position which is, on its own case, redressable in damage.

[54] I have taken into account that the substantive investigation meeting will likely be a few months away, and outside the remainder of the restraint period.

[55] Overall, the balance of convenience weighs in favour of Mr Marwah in not granting interim orders.

The overall justice

[56] The overall justice assessment is essentially a check on the position that has been reached after analysis of the serious question to be tried and the balance of convenience.⁷

[57] Mr Marwah submits JLR's conduct surrounding the employment bond, the escalation of the bond tied to salary and visa negotiations, and the same-day lockout from systems upon resignation (with no opportunity for a handover) are relevant to the discretionary, equitable nature of relief.

[58] Additionally, email correspondence evidence shows JLR went further by purporting to withhold outstanding entitlements for six months as "security", and conditioning payment of wages, holiday pay, and the bond on Mr Marwah providing written undertakings and a statutory declaration relating to the post-employment restraints. Mr Marwah says such actions constitute repudiation of the employment agreement, and where repudiation is accepted, the common-law bar to enforcing restraints is engaged. He further submits equity should not assist a party whose own breaches and coercive conduct undermined the very bargain it now seeks to enforce.

⁷ *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90.

[59] JLR submitted that Mr Marwah has attempted to conflate this restraint matter with the separate, and now resolved, bond agreement. In submissions it said the bond agreement was with a third party, and JLR has refunded the bond in full. It says the sole remaining issues are Mr Marwah's "serious and ongoing" breaches of the IEA.

[60] While the Authority is not in a position to make findings about these matters, the evidence being limited as well as untested, it is concerning that JLR appears to have attempted to leverage Mr Marwah's entitlements on termination, including any ability for return of the bond, on the provision of undertakings and a statutory declaration.

[61] Stepping back and looking at the assessment of an arguable case and balance of convenience, the overall justice weighs in favour of not making an order for an interim injunction. Accordingly, I decline JLR's application for interim injunction.

Costs

[62] Mr Marwah had requested that if JLR's interim injunction application was dismissed, costs should follow the event on an interlocutory basis. This was on the basis Mr Marwah is already under financial strain as a direct result of having to respond to JLR's interim injunction application, and the costs incurred at this stage would have been better directed toward preparing for and litigating the substantive proceeding; JLR pursued interim equitable relief despite delay, and having elected to quantify the alleged monetary loss suitable for damages; the application required substantial affidavit preparation by witnesses to meet unparticularised allegations of solicitation/confidentiality; and Mr Marwah has incurred material, necessary expenses to respond.

[63] Mr Marwah further says a costs order should not come as a surprise to JLR, given that as part of its application for interim relief it was required to, and did, file an undertaking as to damages, acknowledging responsibility for costs if its application proved unsuccessful.

[64] In the circumstances, the Authority is willing to determine costs relating to the interim injunction application prior to its determination of the substantive matters.

[65] First, however, the parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed Mr Marwah may lodge, and then should serve, a brief memorandum on costs

within 14 days of the date of this determination. From the date of service of the costs memorandum JLR would then have 7 days to lodge any brief reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[66] If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.

Next steps

[67] The Authority will be in contact with the parties to confirm a telephone conference for the purpose of progressing the substantive matter.

Sarah Blick
Member of the Employment Relations Authority