

[3] Specifically, the respondent requested an order be made for a prohibition that the content of the respondent's accounts or any part of them, be:

- Published;
- Used by the applicant other than for the purposes of this action;
- Disclosed to any third party by the applicant, including specifically Steve Barker and anyone at Steve Barker Limited and people in the respondent's and applicant's local communities.

[4] The respondent's application was made pursuant to Schedule 2, clause 10 of the Employment Relations Act 2000 (the Act). The grounds advanced by the respondent in support of its application included:

- The information contains sensitive commercial information about the respondent;
- The applicant works for a direct trade competitor to the respondent and disclosure of the financial information to the trade competitor is likely to be harmful to the respondent;
- The information is confidential to the respondent, its advisers, and relevant government agencies and is not in the public domain;
- The respondent operates its business in a very small community and disclosure of its financial position could adversely affect its business and reputation of the respondent and its sole shareholder/director, Mr Wright personally;

[5] The applicant did not oppose the application.

[6] At the investigation meeting in Hamilton on 25 August 2015, I directed the parties that the financial information referred to above was subject to a non publication order and that I would issue a written determination following the investigation meeting with my reasons.

Determination

[7] Schedule 2, Clause 10(1) of the Act confers a broad discretion on the Authority to make non publication orders. It states:

10 Power to prohibit publication

(1) *The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.*

[8] In the recent Employment Court decision in *H v A Ltd*¹ Judge Inglis had the following to say about applications for non publication orders:

*The Court of Appeal has repeatedly stated that the principle of open justice is an appropriate starting point in cases involving non-publication orders and that this applies in both civil and criminal proceedings. In **R v Liddell**² the Court emphasised the importance of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as “surrogates of the public.*

[9] Later in the decision Judge Inglis refers to *Peters v Birnie*³ a decision of the High Court in which Asher J states:

There is then, in civil proceedings, an onus on a party to establish a proper foundation for a confidentiality order, just as there is in criminal proceedings. Given the paramount principle of open justice, it is necessary for a person seeking confidentiality orders to point to some public interest such as particular circumstances relating to the privacy of an individual, to justify a departure from the open justice process,...I conclude, therefore, that a party seeking to justify a confidentiality order will generally have to show specific adverse consequences that are exceptional.

[10] I am persuaded that there are satisfactory reasons in the circumstances of this particular case that justify the orders sought by the respondent. The parties live and work in a very small community and have done so for many years. The applicant now works for a direct trade competitor of the respondent in that small community. The respondent is seeking to protect the confidentiality of its sensitive commercial

¹ [2014] NZEmpC92 ARC 3/14 at para 33

² [1995] 1 NZLR 538(CA) at 546

³ HC CIV-2009-404-8199,19 March 2010 at [22]

information. That information is only necessary to assist the Authority with its investigation into the applicant's claims against the respondent. There is no reason why that information would be of interest other than for the purpose for which it was sought by the Authority.

[11] Weighing both the particular circumstances of the parties and evidence given during the investigation meeting and the fact that the applicant does not oppose the application, I grant the orders sought by the respondent.

[12] I grant the respondent's application for non publication, non use and non disclosure orders as set out in paragraph [3] above.

Costs

[13] There is no issue as to costs.

Anna Fitzgibbon
Member of the Employment Relations Authority