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Mataura Valley Milk Limited v Scott [2020] NZEmpC 120 (10 August 2020)

Last Updated: 14 August 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2020\] NZEmpC 120](#)

EMPC 221/2020

IN THE MATTER OF	an application for an urgent search order without notice
AND IN THE MATTER	of an application to vary search order
BETWEEN	MATAURA VALLEY MILK LIMITED Applicant
AND	GRAHAM SCOTT Respondent

Hearing: 10 August 2020
(Heard at Christchurch)

Appearances: B Scotland, counsel for applicant
G Drewitt, counsel for respondent
S Campbell, independent counsel

Judgment: 10 August 2020

ORAL JUDGMENT OF JUDGE K G SMITH

[1] This morning I heard from Mr Campbell, the independent solicitor appointed to carry out the search order made on 30 July 2020.¹ The search was conducted on 1 August 2020 and the following items were seized:

- (a) Western Digital Elements hard drive;
- (b) ADATA USB;

1 *Mataura Valley Milk Ltd v Scott* [\[2020\] NZEmpC 112](#).

- (c) four Babbage USB's;
- (d) a red USB;
- (e) a white ADATA USB;
- (f) a GEA USB;
- (g) two hard copy documents;
- (h) one laptop and charger, described as belonging to Happy Valley Nutritional; and
- (i) a personal laptop and charger

[2] Mr Campbell reported that Mr Scott cooperated fully in the search and provided assistance to enable the order to be executed expeditiously. The items seized remain in Mr Campbell's possession. Two clones were made of storage devices and

they are held by the independent forensic expert, Mr McKenzie.

[3] In addition to Mr Campbell's report I have heard from Mr Scotland, for Mataura Valley, and Ms Drewitt for Mr Scott.

[4] Mr Scotland advised that Mr McKenzie has inspected the clones and has prepared a draft report that was supplied to Mr Scott last evening. The final report is anticipated to be completed by this Wednesday, 12 August 2020.

[5] Before turning to the orders that might be necessary as a result of that report, and what it discloses, two other matters need to be addressed. First, Mr Scotland confirmed that a proceeding has been lodged in the Employment Relations Authority. Second, during the search a Yahoo account held by Mr Scott was identified that was not previously known about and was not within the terms of the search order. I have been advised that Mr Scott cooperated in making access to that Yahoo account available, but its existence has prompted an application by Mataura Valley seeking to

vary the search order to enable the account to be accessed and for information to be copied.

[6] Mr Scotland sought three orders as follows:

- (a) To allow for the continuation of the search order so that the items seized and copied remain in the possession of Mr Campbell and Mr McKenzie. This application was made to maintain the status quo pending Mr McKenzie's report and the outcome of the search of the Yahoo account.
- (b) To vary the search order to allow access to be obtained to the Yahoo account and for it to be downloaded and copied.
- (c) To timetable the application in relation to that varied search order and Mr McKenzie's final report.

[7] Part of the application at [6](c) was a request to timetable an application seeking to allow the Chief Executive of Mataura Valley an opportunity to inspect certain information that has been obtained as part of this search order, which I will turn to shortly.

[8] Mr Scott did not object to the variation of the search order to deal with the Yahoo account or to the proposed timetable I am about to make. He consented to a continuation of the orders as sought by Mr Scotland.

[9] Before turning to those orders the Court has received an application on behalf of Happy Valley Nutrition Ltd. Counsel were not present at today's hearing but it seems the company intends to seek to be joined as a party in the proceeding, presumably in anticipation of being heard over its laptop seized during the search. I have subsequently, during a brief adjournment, received a memorandum from Happy Valley's counsel which I anticipate has not yet been seen by either Mr Scotland or Ms Drewitt but is about that laptop. I am only mentioning that now because a copy of this decision will be available to Happy Valley and, if it intends to pursue an application

to be joined as a party and to be heard, it will need to take formal steps that have not been taken so far.

[10] The following further orders are made:

- (a) The search order made on 30 July 2020 is continued and the items seized, and copied, are to remain in the custody of the independent solicitor and forensic expert (Mr Campbell and Mr McKenzie respectively) until further order of the Court.
- (b) The search order is varied so that the independent forensic expert, Mr McKenzie, is permitted to search and download information from the Yahoo account held or operated by Mr Scott. I record that Mr Scott has cooperated by making his password available.
- (c) Mr McKenzie's report is to be filed and served no later than **12 August 2020**.
- (d) Any further applications by Mataura Valley (such as about access to the seized items) are to be filed and served by **12 August 2020**.
- (e) Any notice of opposition to the further applications anticipated by (d), or applications by Mr Scott, are to be filed and served no later than **14 August 2020**.
- (f) At this stage, because the report from Mr McKenzie contains personal information about Mr Scott, his computer accounts and passwords, I direct that the Court file is not to be searched unless pursuant to leave granted by a Judge.
- (g) The hearing of this application will be resumed at 10 am on 20 August 2020. As a result of a significant criminal sentencing matter due to be heard in the Christchurch High Court in the following week, there are security issues and other considerations which mean that the resumed hearing will be by AVL. I record that AVL participation is consented to

by all parties. If Mr Scott wishes to participate and he is not with counsel on that day he may be separately connected to the hearing. The parties are referred to the Court's website which provides further information about AVL participation that may be of assistance.

[11] I reserve leave to any party to apply urgently for further or other orders as may be required.

[12] Costs are reserved.

K G Smith Judge

Judgment delivered orally at 10.42 am on 10 August 2020

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