

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 165A/10
5301894

BETWEEN OCS LIMITED
 Applicant

AND SHELLEY HAYNES
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Paul McBride for Applicant
 Stuart Webster for Respondent

Submissions received: 30 April 2010 from Applicant
 30 April 2010 from Respondent

Determination: 3 May 2010

**DETERMINATION OF THE AUTHORITY ON APPLICATION FOR
FURTHER INTERIM ORDERS**

Employment Relationship Problem

[1] This matter was the subject of a determination dated 12 April 2010 in which I made interlocutory and interim orders in relation to alleged breaches by the Respondent of her employment agreement. The fourth of the orders set out in the determination of 12 April restrained the Respondent from:

“undertaking any engagement, employment or other activity in conflict with the Applicant’s interests and the Respondent’s duties under the employment agreement, for the period until 30 April 2010.”

[2] 30 April is the day upon which the Respondent’s notice period was purported to expire.

[3] Since that determination I have conducted a series of telephone conferences with the representatives (15 April, 23 April and 30 April 2010.) They informed me today that discussions between the parties have not resolved the differences between them and they confirmed that they have arranged to attend mediation on 7 May. Having been advised by me that no permanent orders would be considered without a formal investigation meeting on notice, they also agreed to the substantive matter being set down for investigation on 17 May.

[4] The Applicant now seeks further orders to safeguard its interests in the meantime. Mr McBride argued for orders which:

“(a) strictly reflect the provisions of the employment agreement as to confidential information and its use/misuse after employment.

(b) strictly reflect the provisions of the employment agreement containing specified limitation in the post-employment period; Clause 16 (2) (b) and (d).”

[5] Clause 14 (the confidentiality provision) and Clauses 16 (2) (b) and (d) are set out in my earlier determination.

[6] Mr McBride also submitted that these further interim Orders be made *“pending further order of the Authority”* in order that they might cover the period until the matter is resolved, either by agreement or by determination of the Authority.

[7] In response Mr Webster indicated that (at this stage) his client offered no opposition to the making of interim orders in the terms sought but reserved her position as to whether variation might be sought at a later date.

Determination

[8] I am satisfied that further interim orders are appropriate provided they strictly reflect the terms of the employment agreement. On that basis, and given that the Respondent offers no opposition at this stage, the orders sought are made on terms very similar to those proposed by the Applicant.

[9] Accordingly, I now order that:

- i. the Respondent is restrained from any use or disclosure to any person of any confidential information of the Applicant's. For the purposes of this order "confidential information" includes:
 - a. all trade and business secrets and other confidential information and documents relating to the affairs or business of the Applicant and its subsidiaries, or relating to any person with whom the Respondent came into contact as a result of the employment agreement, and
 - b. information which came into the employee's possession in the course and by reason of the employment, whether or not the same were originally supplied by the Applicant or its subsidiaries;
- ii. the Respondent is required to use her best endeavours to prevent the unauthorised use or disclosure of any confidential information by any third party;
- iii. save with prior written consent of the Applicant, the Respondent (and her servants or agents) are restrained from breaching clause 16.2 of the employment agreement and in particular are restrained from:
 - a. canvassing, soliciting or endeavouring to entice away from the Applicant any person who or which at any time during the parties' employment relationship was or is a client or customer of or supplier to the Applicant or any subsidiary of the Applicant or in the habit of

dealing with the Applicant or any such subsidiary; and

- b. counselling, procuring or otherwise assisting any person to canvass, solicit or endeavour to entice away from the company any person who or which at any time during the employment or at the date of termination of the employment was or is a client or customer of or supplier to the Applicant or any subsidiary of the Applicant or in the habit of dealing with the Applicant or any such subsidiary.

[10] Leave is reserved for either party to seek to vary these orders at any time.

[11] The issue of costs is reserved.

Yvonne Oldfield

Member of the Employment Relations Authority