



# Employment Court of New Zealand

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## Precision Tracking (NZ) Limited v Tait [2010] NZEmpC 7 (26 January 2010)

Last Updated: 29 January 2010

### IN THE EMPLOYMENT COURT

CHRISTCHURCH [\[2010\] NZEMPC 7](#)CRC 36/09

BETWEEN PRECISION TRACKING (NZ) LTD  
Plaintiff

AND JEFFREY DAVID TAIT  
Defendant

Hearing: Hearing by way of telephone conference on 22 January 2010

(Heard at New Plymouth)

Appearances: Sherridan Cook, counsel for plaintiff  
Andrew Marsh, counsel for defendant

Judgment: 26 January 2010

### INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff has applied by way of an interlocutory application for further and better discovery by the defendant. The application required the defendant to serve upon the plaintiff within 1 working day a series of documents which the plaintiff claimed were relevant to matters in the proceedings before them and in particular to the plaintiff's allegation that the defendant has used the plaintiff's confidential information. Because this matter was set down for an urgent hearing in Christchurch starting on Wednesday 27 January 2010, the application was dealt with urgently in chambers by way of a telephone conference call.

[2] After receiving submissions from Mr Cook for the plaintiff and Mr Marsh for the defendant, I made the following orders in relation to the documents sought.

[3] The defendant sought an unredacted copy of the software development agreement ("SDA") between the defendant and Minorplanet (New Zealand) Pty Ltd ("Minorplanet"), a redacted and undated copy having already been supplied to the plaintiff.

[4] Mr Marsh contended that the matters redacted from the SDA were irrelevant whereas Mr Cook contended they went to motive and proof of the likelihood that the plaintiff's confidential information had been misused. I directed the defendant to have available in Court unredacted copies of the SDA and reserved the plaintiff's application for the disclosure of this document for further argument once cross-examination of the defendant commences. The application will be heard in a closed Court and it is likely that I will require to examine the document in question.

[5] The defendant sought copies of any correspondence or documents relating to the negotiation of the SDA. Mr Marsh undertook to examine that correspondence again and to confirm whether or not any of that documentation contained material relevant to the current proceedings. He will use his best endeavours to advise Mr Cook by 5pm today, 22 January 2010, as to whether or not there is any relevant documentation. If there is any relevant documentation it is to be disclosed to the plaintiff, subject to any arguments about commercial sensitivity.

[6] The defendant sought an unredacted and executed copy of the Independent Contractors Agreement ("ICA") between the defendant and Minorplanet. This document is to be treated the same as the SDA and be made available in Court where it can be the subject of a further application for disclosure on the same terms as applied

to the SDA.

[7] The defendant sought copies of any correspondence or documents relating to the negotiation of the ICA. Mr Marsh has undertaken to review that correspondence in the same way as he has undertaken to review the correspondence or documentation relating to the negotiation of the SDA. The correspondence or documents relating to the negotiation of the ICA will be dealt with in the same manner as the correspondence or documents relating to the SDA.

[8] The defendant sought disclosure of copies of proposals and documents relating to a number of third parties listed in paragraphs 1(e) to (j) inclusive.

[9] Mr Marsh advised that his instructions were that in accordance with the direction of the plaintiff all such documents have been deleted. He will undertake a review of the material and confirm whether these are still his instructions and advise Mr Cook by 5pm today, 22 January 2010. If the documents still exist Mr Marsh will advise whether they are relevant or not. If they are relevant they are to be produced subject to any arguments about commercial sensitivity and third party rights.

[10] The defendant sought disclosure of documents exchanged between the defendant and third parties and described in paragraphs 1(k) to (n) inclusive. Mr Marsh will review these documents in precisely the same manner as he reviewed the documents relating to the SDA and will advise Mr Cook whether the documents are relevant. If they are relevant they will be disclosed subject to any arguments relating to commercial sensitivity and third party rights.

[11] The plaintiff obtained a complete version of an email dated 27 August 2009 from the defendant to Mr Trethewey delivered to the plaintiff on 23 December 2009 in what was described as a 'pen' drive. This document having been disclosed by accident in a complete form, it is available solely for the purpose of this litigation and again subject to any questions of commercial sensitivity and third party rights.

[12] Leave is reserved to the parties to make further application in relation to matters of disclosure.

#### **Costs**

[13] The costs of this interlocutory application for further and better discovery are reserved.

B S Travis

Judge

Judgment signed at 8.30am on 26 January 2010