

**Attention is drawn to the order prohibiting publication of certain information in this determination.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 130  
3079461

BETWEEN                      STROUDE LIMITED  
Applicant

AND                              KENT JULVE  
Respondent

Member of Authority:      Rachel Larmer

Representatives:              Gillian Service and June Hardacre, counsel for Applicant  
Respondent in Person

Investigation Meeting:      On the papers

Submissions and other      16 March 2020 from Applicant  
information:                      20 March 2020 from Respondent

Date of Determination:      26 March 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      Stroude Limited provides structural engineering services. From 28 September 2018 to 20 September 2019 Mr Julve was employed by Stroude as a structural engineer based in Auckland. His role included producing structural engineering designs, in-house project

management, preparing documentation for projects, construction project management and liaising with clients and contractors.

[2] Stroude claims that its former employee Kent Julve breached his employment agreement by copying its confidential information and intellectual property from its systems onto a personal file on his computer for him to retain after his employment had ended. Stroude says that Mr Julve also admitted he had taken other information.

[3] On 18 September 2019 Stroude's Managing Director asked Mr Julve for his computer password at around 5.45pm as he was leaving the office for the day because Stroude intended to back up the computer overnight.

[4] Immediately after that request Mr Julve went back and turned on his work computer and started deleting files. He was asked not to, but persisted in doing so. The Managing Director instructed Mr Julve to desist and he (Mr Julve left for the day).

[5] The Managing Director found that Mr Julve had a folder named "Kent" on his personal C Drive and had copied designs and technical spreadsheets that had been developed by Stroude and customer/client billing information from a number of years into that folder. The billing information had been stored securely in Stroude's Dropbox. Mr Julve had not been given the password for the account and he had not been authorised to access it. He had also renamed the billing information.

[6] Stroude claims this information was confidential information covered by the confidentiality obligations in clause 19.9 of Mr Julve's employment agreement.

[7] Mr Julve refused to sign an undertakings drafted by Stroude regarding the confidential information in Mr Julve's C Drive.

[8] Stroude has prepared and filed a bundle of documents for use at the investigation meeting scheduled for June. It has also supplied additional documents by way of a USB stick that contains its intellectual property and commercially sensitive and confidential information that was filed in support of its claims.

## **Application for non-publication order**

[9] Stroude is concerned to ensure the continued confidentiality of the sensitive material contained on the USB stick, so it has sought a non-publication order for it. Mr Julve does not oppose that application.

## **Authority's power**

[10] The Authority's discretion to grant non-publication orders is contained in clause 10 of the Second Schedule of the Employment Relations Act 2000 (the Act). Clause 10(1) of the Second Schedule of the Act states:

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.

[11] This discretion must be exercised on a principled basis.

[12] The onus is on the applicant to show that a non-publication order should be made. The Employment Court in *Crimson Consulting Limited v Berry* reviewed and summarised a recent Authority's order regarding non-publication in the employment jurisdiction<sup>1</sup>.

[13] The Court recognised that the general principle that justice should be administered openly was a strong one and that a party seeking to depart from that fundamental principle of open justice was required to provide evidence identifying specific adverse consequences that should result in a non-publication order being issued.

[14] The Employment Court recognised that every case would be very fact specific and that the employment institutions had to weigh and assess all of the competing factors carefully and in a principled manner.

[15] The employment institutions have recognised that the overall public interest regarding non-publication orders prior to the resolution of substantive claims may be different than the public interest considerations that exist after substantive claims have been determined.

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<sup>1</sup> [2017] NZEmpC 94.

## **Outcome**

[16] This is an appropriate matter in which to issue a non-publication order regarding the material on the USB stick Stroude has filed. Stroude has legitimate commercial interest to protect and there is no public interest in this sensitive material being made public, particularly before the substantive matter has been determined.

[17] The Authority orders that a copy of the USB stick Stroude filed is not to be provided to Mr Julve at this time. He is however to be provided with an index to the documents that are on the USB stick. Mr Julve was the person who shifted these documents into his personal C Drive so he should already know what the documents recorded in the index relate to.

[18] If Mr Julve and/or his representative (should one be instructed) was to review any of the material on the USB stick then an application needs to be made to the Authority, so that can be managed in a way that protects and preserves the confidentiality of the material on the USB.

[19] At this stage, the Authority does not consider Mr Julve needs to see this material on the USB stick again prior to the investigation meeting. However if specific issues arise in terms of his ability to adequately prepare for the investigation meeting, then the Authority is prepared to revisit its view about that on an as required basis.

[20] Until further order of the Authority, the information contained on the USB stick Stroude has prepared is subject to a non-publication order issued under clause 10(1) of the Second Schedule of the Act.

## **Costs**

[21] Costs are reserved pending the outcome of the substantive matter.

**Rachel Larmer**  
**Member of the Employment Relations Authority**