

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Turkish House Limited t/a Techloom Carpet & Rug Creations
(Applicant)

AND Christopher Goris (First Respondent)
AND The Interior Design Company Limited (Second Respondent)
AND Melanie Stewart-Eder (Third Respondent)

REPRESENTATIVES Andrew Swan for the applicant
Christopher Goris in person
Todd Strathdee for the second and third respondents

MEMBER OF AUTHORITY James Wilson

DATE OF DETERMINATION 26 January 2005

INTERIM DETERMINATION OF THE AUTHORITY

Background

[1] In June 2003 the applicant, Turkish House Ltd t/a Techloom Carpet and Rug Creations (Turkish House) lodged a statement of problem with the Authority seeking compliance orders, injunctions and damages against the first respondent, Christopher Goris. In this statement Turkish House alleged that Mr Goris had breached restraint of trade and confidentiality provisions of his employment agreement and was copying Turkish House designs in relation to custom-made rugs and carpets and utilising contacts made while he was employed at Turkish House. In July 2003 Mr Swan, for Turkish House, advised that this matter had been settled.

[2] In March 2004 Turkish House lodged a new statement with the Authority. Turkish House said that, following the earlier application, the first respondent (Mr Goris), the second respondent (The Interior Design Company Ltd) and the third respondent (Ms Melanie Stewart-Eder) had signed a "Deed" in which they agreed to:

..... cease and refrain from any activity from now until 1 July 2008 in relation to the business of design, import and manufacture of custom made rugs and carpets.

This new application sought:

A compliance order pursuant to section 137 and 138 of the Employment Relations Act requiring the first respondent to refrain from:

*(a) disclosing confidential information relating to the applicant's business, to Interior Design and/or to any other of the applicant's clients, associates or any person or corporate body;
and*

(b) contravening the deed.

...an interim injunction...restraining the second respondent from contravening the deed and either directly or indirectly interfering with the first respondent's employment agreement;

...an injunction...restraining the second respondent from contravening the deed and either directly or indirectly interfering with the first respondent's employment agreement.

... an interim injunction...restraining the third respondent from either directly or indirectly interfering with the deed and/or the first respondent's employment agreement.

...an injunction...restraining the third respondent from either directly or indirectly interfering with the deed and/or the first respondent's employment agreement.

Damages in the sum of \$150,000.

Costs.

[3] The Interior Design Company and Ms Stewart-Eder, (the second and third respondents) have applied to be removed as respondents on the grounds that the Authority has no jurisdiction. The purpose of this Interim Determination is to address that issue.

Discussion

[4] Mr Strathdee, on behalf of the Interior Design Company and Ms Stewart-Eder, has argued that

- the Authority is not the correct jurisdiction for hearing any dispute between Turkish House and the second and third respondents, and
- the purported settlement Deed is unenforceable.

Mr Strathdee has mounted a lengthy argument regarding the enforceability of the settlement deed. In particular Mr Strathdee relies on sections of the Companies Act 1993. Mr Swan, for Turkish House, has, not surprisingly, submitted arguments to the contrary i.e. that the deed is enforceable. The question of enforceability of the Deed is, in fact, secondary to the question of the Authority's jurisdiction. If the Authority does have jurisdiction then it is for the Authority to determine the enforceability of the Deed. I intend, therefore, in this Determination, to address only the question of jurisdiction.

[5] The Employment Relations Act 2000 (ERA), at s161, outlines the jurisdiction of the Authority as including:

...exclusive jurisdiction to make determinations about employment relationship problems generally, including –

...

(r) any other action (being an action that is not directly within the jurisdiction of the Court) arising from or related to the employment relationship.....

And at s.5 defines an employment relationship problem as:

*Employment relationship problem includes a personal grievance, a dispute, **and any other problem relating to or arising out of an employment relationship** ... (emphasis added)*

[6] Mr Swan has, appropriately, drawn my attention to the Employment Court decision in *Waikato Rugby Union v. New Zealand Rugby Football Union* 10 December 2002, Shaw J., WC. 46-02. In that decision the Judge said:

In summary, it becomes clear that the jurisdiction of the Authority and the Court has been widened under the ERA. The legislation does not focus on who may bring an employment relationship problem to the Authority/Court but rather defines the jurisdiction according to the subject matter. The subject-matter focuses on employment relationship problems which are broadly defined. The implication of this is that it is possible for persons who are not direct parties to an employment agreement to file a statement of problem so long as the problems in it are related to or arise out of matters listed in s. 161 and are not otherwise excluded from jurisdiction by the ERA.

[7] The Deed signed by the parties, including the second and third respondents arose from an employment relationship problem between Turkish House and Mr Goris (the first respondent). The Deed purported to settle that dispute and was signed Ms Stewart-Eder as a representative of the Interior Design Company as Mr Goris's new employer. There is no doubt that this Deed (settlement) arose from an employment relationship and an employment relationship problem. The Interior Design Company chose to sign this Deed. Under these circumstances the Authority has, I find, *exclusive jurisdiction* to determine whether or not the Deed is enforceable and, if it is, whether the Interior Design Company/ Ms Stewart-Eder have breached the terms of that Deed and may be liable to pay any damages to Turkish House

[8] Whether or not Ms Stewart-Eder should continue to be cited as a respondent in this matter is a moot point. In the meantime it is my intention to continue my investigation of Turkish House's application. The investigation meeting will continue as scheduled on 8 March 2005. My expectation is that Ms Stewart-Eder as a representative of the Interior Design Company, will submit a statement of evidence prior to that date and will be available for questioning by the Authority, via telephone conference. The questions for further determination, to be addressed during my investigation are:

- (i) Did Mr Goris breach the restraint of trade terms of his employment agreement and/or the settlement Deed?
- (ii) If Mr Goris did breach the terms of his agreement and/or the Deed is he liable to the damages sought by Turkish House?
- (iii) Is the Deed enforceable against the Interior Design Company and/or Ms Stewart-Eder and, if so, should the Authority issue the injunctions/compliance orders sought by Turkish House?
- (iv) If Mr Goris did breach his agreement and/or the deed is the Interior Design Company liable to pay damages as sought?
- (v) If the Interior Design Company is liable to pay damages is Ms Stewart-Eder personally liable to meet some or all of any damages awarded?

Costs

[9] Costs are reserved pending the determination of the substantive issues in this matter.

James Wilson
Member of Employment Relations Authority