

*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

**INVESTIGATION MEETING** 14 January 2005

**DATE OF DETERMINATION** 18 January 2006

**DETERMINATION OF THE AUTHORITY**

**The original claim**

[1] In June 2003, the applicant, Turkish House Ltd, t/a Techloom Carpet and Rug Creations (Techloom), asked the Authority to issue injunctions against the first respondent, Mr Goris, restraining him from continuing his employment with the second respondent, the Interior Design Company Ltd (IDC). Techloom also sought to enforce a restraint of trade clause against Mr Goris and to recover damages of \$100,000. However in July 2003 Techloom, through its representative, advised the Authority that the matter had been settled.

**The current claim**

[2] In March 2004 the Authority received a new statement of matter from Techloom. This new statement sought compliance orders:

1. Against Mr Goris requiring that he refrain from disclosing confidential information relating to Turkish House's business and from contravening the *settlement deed*.
2. Against IDC restraining them from contravening *the deed*; and
3. Against Ms Stewart-Eder (the owner of IDC) restraining her from either directly or indirectly interfering with the *settlement deed*.

Techloom also sought to recover losses sustained as a result of alleged breaches of the deed estimated at \$150,000.

[3] The deed which Techloom sought to enforce is dated 1 July 2003. The Parties are listed as Techloom, Mr Goris and the IDC, and states:

### ***Background***

- 1. (Mr) Goris was employed by Techloom until on or about October 2002, pursuant to an Employment Agreement executed on 18 January 2002 (the employment agreement)*
- 2. The employment agreement contained certain clauses relating to confidentiality and restraint of trade which continued to apply following termination of Mr Goris' employment with Techloom.*
- 3. Mr Goris terminated his employment with Techloom on or about October 2002 and commenced employment with IDC. A part of IDC's business relates to the design and manufacture of custom rugs and carpets. Techloom has claimed that this part of IDC's business is similar to or competitive with Techloom's business.*
- 4. As a consequence of the above Techloom issued proceedings in the Employment Relations Authority against Goris for breach of the employment agreement, in particular the terms relating to confidentiality and restraint of trade.*

### ***Terms of settlement***

- 1. In consideration of Techloom withdrawing the proceedings and seeking no order as to costs, and not commencing proceedings against IDC in relation to its activities up to the date of this deed, IDC and Goris undertake, subject to clause 2 below, to immediately cease and refrain from any activity from now until 1 in July 2008 in relation to the business of design, import and manufacture of custom-made rugs and carpets ("the activity") and including promoting the activity as part of IDC's business.*
- 2. ...*
- 3. the parties acknowledge that by IDC and Goris withdrawing from the activity, that IDC is entitled to source, give design instructions (but not undertake the function of design), purchase acquire, and/or obtain designs for customer rugs and carpets from (and limited to) any other entity based in New Zealand which provides such service, including Techloom.*
- 4. It is acknowledged that this deed binds the parties, their employees, share holders, directors, managers, agents, servants or any other associated person or entity. This clause remains in effect during the currency of this deed.*
- 5. This deed is full and final settlement of all issues between the parties and shall remain strictly confidential between the parties.*
- 6. The parties acknowledge that they have at all times each had a proper opportunity to seek independent legal advice.*

The Deed is signed by Turkish House Ltd (i.e. Techloom), by Mr Goris and by the Interior Design Company. (Although not clear I understand the signature on the deed for IDC to be that of Ms Stewart-Eder)

## Background:

[4] From February/March 2001 until late October 2002 Mr Goris was employed by Techloom. In the latter stages of this employment Mr Goris was involved in the design of Custom made rugs and carpets. This included visiting clients, arranging sales, meeting with architects and interior designers etc. In October 2002 Mr Goris commenced employment with IDC and in June 2003 Techloom lodged its original application with the Authority, seeking to restrain Mr Goris from breaching the terms of a restraint of trade clause. As set out above, this application was withdrawn following agreement between the parties and the signing of a *settlement deed* (see paragraph 3 above).

[5] In September 2003 the Director of the Techloom, Mr Ali Nejat Kavvas, employed the services of a private investigator Mr Rodney Moratti. Mr Moratti invited Ms Stewart-Eder (from IDC) to *conduct a full survey and make suggestions for interior design* for his private residence. Ms Stewart-Eder carried out the survey and provided a written report to Mr Moratti. This report suggested a large rug in the family area and included a sketch of the proposed rug. At about this time Ms Stewart-Eder left to live in Australia and Mr Moratti continued his discussions with Mr Goris as an employee of IDC. Mr Goris subsequently produced a more detailed illustration of the proposed rug and some discussion took place regarding who could manufacture the finished article. Mr Moratti did not proceed with the purchase.

## Techloom's claims

[6] Techloom says that the actions of Ms Stewart-Eder and Mr Goris directly contravene their undertaking, in the settlement Deed, to *refrain from any activity ... in relation to the business of design, import and manufacture of custom-made rugs and carpets ("the activity") and including promoting the activity as part of IDC's business*. Mr Nevvias believes that has alleged to breach is not the only breach and says, in an affidavit in support of his application:

*Although losses have not to date been accurately quantified, it is apparent through sales data that there is a continuing downturn in this part of (Techloom's) business, which the applicant believes has primarily been caused by the respondents continued activities in this area. The applicant is therefore also seeking damages for the losses it has suffered as a result of the respondents' breaches. To date it estimates those losses at \$150,000 although actual losses will be quantified before hearing.*

Mr Swan, for Techloom, has proposed that the Authority:

- Find that the respondents have breached the settlement deed;
- Require IDC to produce all relevant business records in order to establish the extent of the losses caused by this and any other breaches
- Issue the appropriate orders and awards.

## The Responses

### Mr Goris (first respondent)

[7] Mr Goris says that he has not made contact with or attempted to do any business with clients of the applicant whether in regard to rug design, import, and manufacture or any other business. He says that no confidential information has been used and he has fully fulfilled his obligations in terms of the settlement deed. He argues (through IDC and Ms Stewart Eder) that the "design" he

produced for Mr Moratti was merely an illustration, produced using generic graphic design software. Mr Goris says that absolutely no business has been lost by Techloom through his (or the other respondent's) actions.

[8] Mr Goris says that he is no longer employed by IDC (he was made redundant in February 2004) and is now employed by a bathroom products retailer. He says he owns nothing of value, his income is "meagre" and any pursuit of damages against him by Techloom is "financially fruitless".

### **IDC and Ms Stewart-Eder (second and third respondents)**

[9] IDC argued, in the first instance, that the Employment Relations Authority had no jurisdiction to hear the dispute between Techloom and the second and third respondents and/or that the settlement deed was unenforceable. In a determination dated 26 January 2005 (AA 21/05) I found that the Authority did have jurisdiction to investigate this dispute and that the question of enforceability of the deed would form part of my substantive investigation. In the light of the findings set out below it is not necessary for me to determine the question of enforceability.

[10] IDC's substantive argument is that neither IDC, nor Ms Stewart-Eder, nor Mr Goris as an employee of IDC, have breached the settlement deed. Mr Strathdee, for IDC, points out that in the settlement deed, IDC agreed to refrain from any activity in relation to *the business of design, import and manufacture of custom made rugs and carpets* but makes it clear that IDC is entitled to *source, give design instructions (but not undertake the function of design), purchase etc.* he argues that neither IDC nor Ms Stewart Eder have undertaken any of the *functions of design* since the settlement deed was entered into. The respondents, Mr Strathdee says, in response to request from Mr Moratti, simply gave *design instruction* as they were entitled to do in terms of the deed.

### **The "expert evidence"**

[11] Techloom's principal argument is that the respondents, in their dealings with Mr Moratti, have breached the settlement deed. Mr Swan argues that this single alleged breach, if proven, provides the basis for further investigation i.e. the production by IDC of all relevant accounting and business records, to establish whether further breaches occurred and if so, the extent of financial damage to Techloom. In support of their claim, Techloom have provided me with a sworn statement from Ms Kathryn Wells. Ms Wells holds a diploma in textile design and a Masters degree in Fine Arts (design). Ms Wells, in her affidavit says:

*In my professional opinion the documents ... clearly constitute a developed rug design and are more than sufficient to enable a manufacturer to produce a rug.*

[12] However, IDC have provided me with a statement from The Managing Director of Korda Brothers Pty Ltd, Mr Eric Korda. Korda Brothers is, according to Mr Korda's statement, *the leading custom rug supplier in Australia*, and holds the exclusive supply agency for supply and representation of Tai Ping Carpets Ltd *an internationally acclaimed custom rug and carpet manufacturer*, for Australia and New Zealand. Mr Korda says, in his statement:

*In our professional opinion the sketch referred to in Mr Moratti's affidavit ... is inconclusive as to rug design. In order to complete a design we would need the following (information) to be developed via further dialogue with you.*

And:

*We note that Ms Wells' comments in her affidavit that the notations on the sketch are "instructions are typical of a rug design layout prepared by a designer for their client". We agree with this comment; the sketch and basic parameters shown in exhibit "B" to Moratti's affidavits are in our professional opinion standard instructions that we would receive from an interior designer to get the ball rolling on a rug design. Our role as a rug designer and supplier is to supplement the original sketches with our expertise and technical knowledge of the options available to ensure that requirements are precisely defined and the variability of outcomes is eliminated.*

*We cannot however, agree with Ms Wells' professional opinion that the sketch and notations 'clearly constitute a developed a rug design and are more than sufficient to enable a manufacturer to produce a rug'. In our professional experience, as stated above, the sketch provided is quite insufficient and is not a basis upon which we as a leading rug designer and supplier would be prepared to quote, sample or supply a rug.*

## **Discussion and determination**

[13] It would, of course, be open to me to seek a third opinion on this matter. However I am doubtful whether such an opinion would resolve this point i.e. whether there was a breach of the settlement deed. This matter does not turn on whether the diagrams produced by IDC/Mr Goris were of sufficient detail for a manufacturer to manufacture a rug. Rather the question is whether the work carried out by IDC and Mr Goris for Mr Moratti breached the settlement deed. It seems to me that there is unlikely to be a consensus of "expert opinion" as to what constitutes *the giving of design instructions* (permitted by the settlement deed) and what constitutes *the function of design* (not permitted by the settlement deed). In any event I have formed the very clear opinion that such additional evidence is not necessary. Even if Mr Goris and/or IDC could be said to have breached the deed of settlement in their dealings with Mr Moratti, (and I am not convinced that they did) such breach did not cause any financial damage to Techloom. Mr Moratti did not purchase a rug from anyone. Techloom have produced no evidence that either Mr Goris or IDC carried out any commercial activities in breach of the deed. While I accept Mr Kavvas' evidence that Techloom's business has declined, he has produced no supporting evidence to link this decline to the activities of any of the respondents. Mr Goris has not been employed in this line of business since February 2004, and is therefore extremely unlikely to have breached the deed since then. Ms Stewart-Eder has been residing in Australia since late 2003 and IDC is no longer trading in New Zealand.

[14] Under all the circumstances, continuing to investigate Techloom's unsubstantiated claims, and to require further evidence from any of the respondents, would be to subject them to unnecessary expense. On the evidence available to me there appears to be little chance of proving, to any reasonable standard, that any breaches of the deed have occurred. Even if such evidence was available it would be equally as difficult to establish that such breaches resulted in financial loss to the applicant. Lastly, while not a consideration that the Authority should give undue weight, if such losses could be established it is unlikely that these would be of such a magnitude as to justify the legal and other expense expended by the various parties.

[15] Techloom's application for compliance orders and damages against the various respondents is declined.

## **Costs**

[16] Costs are reserved and the parties are urged to attempt settle this issue between themselves in the first instance.

James Wilson  
Member of Employment Relations Authority