

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

**DETERMINATION NUMBER: WA 37/07
FILE NUMBER: 5080750**

BETWEEN **Credit Consultants Debt Services Limited**
 Applicant

AND **David Wilson and EC Credit Control Limited**
 Respondents

Member of Authority: P R Stapp

Representatives: Katie Elkin for Applicant
 Gary Tayler for Respondents

Telephone conference: 8 March 2007

Determination: 9 March 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application for urgency on an employment relationship problem filed in the Authority on 7 March 2007. Also there is an application filed on 7 March 2007 to remove the employment relationship problem to the Employment Court on the grounds that an important question of law is likely to arise in the matter other than incidentally. The employment relationship problem involves the jurisdiction in regard to interim injunctive relief for a restraint of trade provision. Also there would appear be an overlap of jurisdiction involving the Court and the Authority. The application has been made under s 178 of the Employment Relations Act.

[2] The Respondents have no objection and have indicated willingness to attempt to reach agreement and explore undertakings with the Applicant to resolve the matter with any final agreement being dealt with by the Court.

Issues

[3] Whether there are grounds to remove proceedings filed in the Authority to the Employment Court under s 178 of the Act.

Facts

[4] There is an employment relationship problem that has been filed on the enforcement of a restraint of trade clause, including confidentiality and non-solicitation clauses in an employment agreement in which injunctive relief is being sought. Also the application has been made for penalties including that a third party has allegedly aided and abetted in a breach.

Determination

[5] I am satisfied this is a matter for urgency because of the allegations being made, the time period involved and the relationship between the parties based on the claims. In addition the very nature of the relief being sought supports the urgency of the matter.

[6] I am satisfied that an important question of law is likely to arise in the matter other than incidentally in regard to injunctive relief and the Authority's jurisdiction on restraint of trade provisions and compliance. Also at the very least the jurisdiction for any injunctive relief rests in the Employment Court (applying *Axiom Rolle PRP Valuations Services Ltd v Kapadia* 4 August 2006 Colgan C J, Travis and Shaw JJ AC 43/06). The cause of action to resolve the matter lies at the heart of this matter. If the matter had been filed in the Court then any contemporaneous application filed in respect of a claim for breach and compliance and penalties in the Authority would involve overlapping proceedings in the Court and the Authority in the same matter. Therefore it is entirely appropriate for the matter to be removed to the Court for the applicant to take advantage of the full range of remedies legally available to it.

Orders

[7] It is my decision that the application be removed to the Employment Court under s 178 (2) (a) and (d) of the Act. I order the entire proceedings be removed to the Employment Court.

Costs

[8] I have reserved costs.

P R Stapp
Member of the Authority