IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 405/10
5287671
5287710

	BETWEEN	KERI MARGARET CSORE Applicant in 5287671
		RENEE LISA PANTON Applicant in 5287710
	AND	MJRC THERAPIES LIMITED formerly ESSENTIALLY SKIN LIMITED Respondent
Member of Authority:	Dzintra King	
Representatives:	Karen Tipa, Advocate for Applicant Michaella Messenger, Advocate for Respondent	
Hearing:	6 July 2010	
Determination:	7 September 2010	

DETERMINATION OF THE AUTHORITY

---

[1] The applicants, Ms Renee Panton and Ms Keri Csore, say they have been unjustifiably dismissed by the respondent, MJRC Therapies Limited.

[2] Ms Csore was employed by Essentially Skin Limited, the predecessor of MJRC Therapies Limited, in late 2008; and Ms Paton from 30 September 2008.

[3] On 23 September 2009 Ms Michaella Messenger, the director of the respondent, sold the business.

[4] On 23 September Ms Csore and Ms Panton were told there would be interviews with the new employer on 24 and 25 September.

[5] On the evening of 25 September Ms Csore and Ms Panton was told by the new owner, Essentially Skin Therapy Limited, that they had been unsuccessful in gaining employment. However, other staff of the respondent were employed and new staff were employed.

[6] Ms Panton was offered work at the Dargaville branch of her employer but this was on a casual basis and there was no offer to recompense her for the extra travel. Ms Panton said she understood why the offer was of casual employment only – the company was in financial difficulties. The Dargaville branch subsequently closed.

[7] The applicants do not dispute the validity of the commercial rationale for the sale of the business. Their issue is with the manner in which the redundancies were carried out.

[8] They seek payment of one month in lieu of notice and interest and $2,000 each in compensation.

[9] Ms Messenger said the she had done the best she could in the circumstances and was as supportive as she could be. The applicants were allowed to attend interviews for the new company in work time. Neither references nor certificates of service were provided at the time of termination.

[10] Ms Messenger said the business had never been on the open market but some people were aware that it was up for sale. The sale was originally due to go unconditional on 18 September 2009 but that did not eventuate. The original Sale and Purchase Agreement had contained a confidentiality clause. On 23 September a further Sale and Purchase Agreement was made without confidentiality provisions. This agreement became unconditional at 4.30pm that day.

[11] A meeting was the held at the business premises. It was attended by employees of the Whangarei branch, shareholders, the director and the new owner, who was at that stage a casual employee of the respondent.

[12] Ms Messenger said staff were told the business had been sold and the takeover date would be the following Monday. That being the case, they could not fulfil their notice requirements other than to the takeover date. The intention was to pay for the week worked plus holiday pay due

Decision

[13] Section 4 Employment Relations Act 2000 requires the parties to an employment relationship to deal with each other in good faith. It requires the parties to be responsive and communicative; and requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of one or more of his or her employees to provide to the employees affected access to information that is relevant to the continuation of the employees' employment; and an opportunity to comment on the information to their employer before the decision is made.

[14] Subsections (1B) and (1C) provide that an employer does not have to provide access to this information if there is "good reason" to maintain its confidentiality. Section 4(1C) gives a non-exhaustive list of what will constitute a good reason. In *Harris v Charter Trucks Ltd*, CC16/07, 11 September 2007, Couch J held that an employer's genuine, but subjective, belief that information was confidential did not meet the test under subsections (1B) and (1C).

[15] In the instant case, I cannot see that the employer's position would have been prejudiced by a disclosure of an imminent sale. Furthermore, there was no confidentiality provision in the later agreement.

[16] The employer owed a duty to the employees to advise them it was considering selling the business.

[17] The employer failed to advise and consult staff regarding the potential sale of the business and the potential disestablishment of their positions. The dismissals were unjustified on that basis.

[18] The applicants have sought $2,000 each pursuant to s 123 (1) (c) (i). They are each to be paid $2,000 by the respondent as compensation.

[19] They have sought payment of a month's notice in lieu. There is no notice period provided for in the agreement. Two weeks would have been a reasonable notice period.

[20] Both applicants have been made some payment. The parties should endeavour to calculate the payments that are still owed to the applicants. If they are unable to do, leave is reserved to return to the Authority on this issue.

Costs

[21] If the parties are unable to resolve the issue of costs the applicants should file a memorandum within 28 days of the date of this determination. The respondent is to file a memorandum in reply within 14days of receipt of the applicants' memorandum.

Dzintra King
Member of the Employment Relations Authority