

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 71
5456422

BETWEEN	MITRE 10 (NEW ZEALAND) LIMITED Applicant
AND	PETER OTTLEY First Respondent
AND	CARTER HOLT HARVEY LIMITED Second Respondent

Member of Authority: Christine Hickey

Representatives: Richard Upton, Counsel for Applicant
Andrew Shaw, Counsel for First Respondent
Daniel Erikson, Counsel for Second Respondent

Determination: 5 May 2014

CONSENT DETERMINATION OF THE AUTHORITY

[1] The parties have reached agreement as to how the injunction claims of the employment relationship problem are to be resolved. The parties have asked the Authority to record their settlement as a consent determination.

[2] The parties have agreed to a record of settlement, a copy of which is held on the Authority file. By consent, the terms set out in the record of settlement are also the orders of the Authority in this matter. Accordingly, the Terms of Settlement annexed to this determination contains the orders of the Authority.

[3] The parties have agreed that the following clauses ([4] to [11] inclusive) can form a part of the Authority's consent order that is not subject to the order for non-publication.

[4] The Applicant alleges the First Respondent has breached various contractual obligations including the duty of fidelity and a purported non-solicitation agreement. The applicant further alleges the Second Respondent has incited, instigated, aided or abetted those breaches in terms of s.134(2) Employment Relations Act 2000.

[5] The Applicant has filed proceedings against the Respondents, seeking interim and permanent injunctions, penalties, special damages and costs.

[6] The Applicant's application for injunctions has been granted urgency.

[7] The First and Second Respondents deny all of the allegations made against them. They say there has been no breach of the duty of fidelity, the purported non-solicitation agreement is not enforceable and, even if enforceable, has not been breached. The Second Respondent further says that even if there has been any breach of a contractual obligation (which it denies) it has not incited, instigated, aided or abetted any breach.

[8] Notwithstanding their denials of all of the allegations made against them, the First and Second Respondents have provided various undertakings that remove the need for the injunction application being determined. The Applicant has therefore withdrawn its application for injunctions only, specifically paragraphs 1.1, 1.2, 3.13 and 3.14 of its Statement of Problem.

[9] The First and Second Respondents have provided the undertakings referred to in this consent determination and the Applicant has accepted them without admission of any liability. The parties have also entered into the settlement without prejudice to all of their rights in respect of the substantive proceedings, which remain on foot. The issue of costs arising from this application for injunctive relief is also reserved pending the disposition of the substantive proceedings.

[10] The parties agree that the Authority should promptly convene a conference call to schedule the substantive matters and arrangements will be made for this to occur.

[11] All other details of the settlement are prohibited from publication pursuant to Schedule 2, paragraph 10(2) of the Employment Relations Act 2000.

[12] This determination is enforceable under s. 137(1)(b) of the Employment Relations Act 2000.

Christine Hickey
Member of the Employment Relations Authority