

**NOTE: This determination
contains an order prohibiting
publication of certain
information at paragraph [19]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2022] NZERA 541

3132555

3133799

BETWEEN STONEWOOD GROUP
LIMITED
Applicant

AND VGP
Respondent

3167861

BETWEEN VGP
Applicant

AND STONEWOOD GROUP
LIMITED
Respondent

Member of Authority: Leon Robinson

Representatives: Greg Bennett, advocate for Stonewood Group
Limited
Danny Gelb, advocate for VGP

Submissions: 17 June 2022 from VGP
17 June 2022 from Stonewood Group Limited

Date: 21 October 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This determination deals with an application for interim non-publication order.

[2] The determination has been issued outside the timeframe set out at section 174C(3)(b) *Employment Relations Act 2000* (the Act), where the Chief of the Authority considers exceptional circumstances exist. As permitted under section 174E of the Act, not all the evidence or information received has been recorded. Rather, this determination makes findings of fact and law and sets out conclusions on the issues necessary to dispose of the Applicant's claims.

Background

[3] By application dated 17 June 2022, VGP (VGP) makes application for an interim non-publication order. His application is supported by an affidavit sworn on 15 June 2022. VGP intimates too that he intends seeking permanent orders.

[4] Also lodged in support of VGP's application are affidavits of Brent Gilchrist Stonewood's Chief Operating Officer between August 2018 and February 2020 and Jonathan Scott Prentice (Mr Prentice). Mr Prentice particularly gives evidence of a telephone call he received from Mr Gregory Bennett (Mr Bennett) in which Mr Prentice says Mr Bennett made statements he characterises as "threatening".

[5] VGP's affidavit of 15 June 2022 refers to litigation between these same parties in the Human Rights Review Tribunal (the Tribunal) in proceedings numbered HRRT 056/20.

[6] VGP made application to the Tribunal for an interim non-publication orders with a supporting affidavit sworn on 15 April 2021. The Tribunal granted interim orders on 31 August 2021. VGP swore a second affidavit on 4 March 2022.

[7] VGP asks the Authority to accept the evidence set out in his affidavits to the Tribunal when considering his application for interim non-publication order in the Authority.

[8] VGP's affidavit sworn 15 June 2022 refers to a story in the *National Business Review* dated 31 May 2022 about the Tribunal litigation between these

parties. He deposes that the directors of Stonewood Group Limited (Stonewood) Ka-ming Chow and Ka-yu Chow (apparently also known as Michael Chow and John Chow) by reason of their business activities, attract media attention and public interest and he further deposes that “it is almost certain there will be media coverage of the Employment Relations Authority proceedings”.

The grounds

[9] VGP’s affidavits to the Tribunal give evidence of an alleged smear campaign people associated with Stonewood have conducted against him and about the anxiety and depression he suffers as a result of those persons’ conduct.

[10] VGP also provides a medical certificate that he is suffering from acute anxiety and depression relating to his current employment issues. The medical certificate attests to prescribed antidepressants and sleeping medication together with counselling as treatments to help him manage “this extremely stressful situation”.

[11] VGP seeks a non-publication order to preserve his current position in the Authority’s investigation as it presently stands. He is currently not named publicly in connection with untested and arguably irrelevant allegations made by Stonewood against him in the various pleadings it has lodged in the multiple investigations currently before the Authority. VGP argues the interim non-publication orders are necessary to prevent further deterioration of his mental health and wellbeing and to protect his employment.

The opposition

[12] By Mr Bennett’s opposition dated 19 June 2022, Stonewood opposes non-publication. It refers to a 2014 compliance order against VGP in relation to confidentiality obligations and says that it is of significant importance that other companies or individuals know of VGP’s identity should there be similar instances of non-compliance by VGP. It is argued that in this regard, it is in the public interest that VGP’s identity not be prohibited from publication. That 2014 compliance order is not the subject of this present application, and the present application is to be determined independently on the grounds directly relevant and relating to the present application only.

[13] I discern no other matter of merit for consideration in the opposition.

The reasoning

[14] Non-publication orders are a departure from the fundamental principle of open justice. In considering whether to grant non-publication orders, the Authority must strike a balance between the principle of open justice and the interests of the party seeking non-publication orders, noting that the standard for departing from the principle of open justice is high.

[15] While the person applying for non-publication orders does not need to show exceptional circumstances, they must establish sound reasons for the presumption favouring publication to be displaced, showing that, if non-publication is not granted, there will be specific adverse consequences that are enough to justify an exception to the fundamental principle.

[16] I note too that where an application for non-publication is for an interim non-publication order, the principle of open justice has less weight than at a later stage in the proceedings. The institutions are cautious about permitting public opinion to be formed based on allegations rather than determinations of the institutions and courts.

[17] I am particularly mindful that it is an interim non-publication order that is now sought. I recognise that the principle of open justice has less weight at this current stage of the Authority's investigation. I accept that publication of the allegations and statements made in pleadings yet to be tested will likely cause VGP harm to his mental health and wellbeing and his employment. At this early stage of proceedings, it is important to protect VGP's position so that his situation does not deteriorate his claims before the Authority can be investigated and substantively determined.

[18] I am satisfied that if non-publication is not granted, there will be specific adverse consequences that are enough to justify an exception to the fundamental principle. Those consequences are the matters set out in VGP's affidavit. The threshold, such as it is at this juncture, I am satisfied has been met. I grant an interim non-publication order.

[19] Pursuant to clause 10 of Schedule 2 to the *Employment Relations Act 2000* I order that VGP's name and any details tending to identify him and the pleadings lodged in these investigations not be published. I further order that the Authority's files in these investigations may not be searched or accessed without leave of the Authority. VGP's name is represented by a randomly selected combination of letters "VGP" in substitution for his actual name and which bear no relation to his actual name.

Costs

[20] I encourage the parties to resolve the matter of costs between them. If they cannot agree and a determination is required, Mr Gelb is to lodge and serve a memorandum on costs within 14 days of the date of this determination. Mr Bennett is to lodge and serve any reply memorandum within 14 days of being served with Mr Gelb's memorandum. I will not consider any memorandum outside of this timeframe without prior leave.

Leon Robinson
Member of the Employment Relations Authority