

Under the Employment Relations Act 2000

Between **Te Runanga o Ngati Whatua**

Applicant

And **Franc Brence**

Respondent

Order of the Court (Search Order)

Dated 21st April 2009

KENSINGTON SWAN

18 Viaduct Harbour Avenue Ph +64 9 375 1184
Private Bag 92101 Fax +64 9 379 0345
Auckland 1142 DX CP22001

Solicitor: Michael O'Brien
michael.obrien@kensingtonswan.com

Upon Reading the applicant's statement of claim, ex parte interlocutory application and memorandum of counsel and the affidavits of Michael Edward Spence, Allan Matthew Pivac, Bryan Gordon Wadsworth and Winston George West and the undertakings given by the applicant and Michael Edward Spence this Court orders and directs:

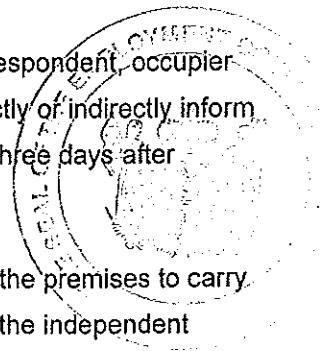
- 1 That the respondent whether by himself or by any person appearing to be in charge of the premises ('**occupier**') hereinafter specified must permit:
 - a a solicitor representing the applicant, Michael O'Brien ('**Mr O'Brien**'), who shall serve these Orders on the respondent or occupier
 - b an independent solicitor, Daisy Williams ('**independent solicitor**')
 - c a computer forensic analyst, Michael Spence of deCipher Limited, ('**Mr Spence**')

to enter forthwith the respondent's premises at **72 Nautilus Drive, Gulf Harbour, Whangaparaoa ('the premises')** and any other premises disclosed under paragraph 6 below being limited to owned or rented residences or any place where the respondent works and any vehicles under the respondent's control on or around the premises so they can search for, inspect, photograph or copy, and deliver in to safekeeping of the applicant's solicitors all the documents and articles which are listed in Schedule A to this order ('**listed items**') or which Mr O'Brien believes may be listed items.

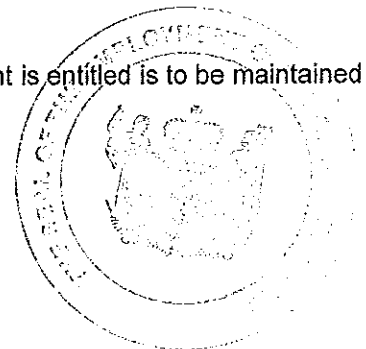
- 2 That the respondent or occupier must allow Mr Spence to make a Forensic Image (image) of any electronic documents as defined in Schedule A to this Order. Mr Spence may then search the information on the image(s) to find any of the listed items ('**relevant electronic information**'). Within four days of service of this Order Mr Spence will report to this Court on his search results. Mr Spence may only disclose relevant electronic information to the applicant's solicitors (who shall receive that information on a confidential to counsel only basis) and will not disclose any of the information on the image(s) to any third party, or the applicant without further leave of this Court.
- 3 That the respondent must allow these persons to remain on the premises until the search is complete, and to re-enter the premises on the same or following day in order to complete the search.
- 4 That no item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the

respondent and any other person served with the Order, and he or she has been given a reasonable opportunity to check the list.

- 5 That if the independent solicitor is satisfied that full compliance with paragraph 4 above is impracticable, she may permit the search to proceed and items to be removed without compliance with the impracticable requirements.
- 6 That the respondent or occupier must immediately hand over to the applicant's solicitor any of the listed items which are in their possession or under their control. The respondent or occupier must immediately inform the independent solicitor where all the listed items are located whether on the premises or otherwise.
- 7 That all reasonable steps shall be taken by the applicant's solicitor, the independent solicitor and Mr Spence to ensure that no damage is done to any electronic device.
- 8 That the respondent or occupier must:
 - a give the applicant's solicitors effective access to all electronic storage media, all necessary passwords and access codes; and
 - b open and unlock any doors, cupboards, drawers, safe, containers, cases, vehicles and the like within the premises or other premises covered by Order 1 above to allow the applicant's solicitors to search for listed items.
- 9 That the respondent or occupier must not destroy, tamper with, cancel or part with possession, power or control any of the listed items otherwise and in accordance with the terms of this Order.
- 10 That except for the purposes of obtaining legal advice, the respondent, occupier or their legal representative(s) or anyone else must not directly or indirectly inform anyone of these proceedings or contents of this Order until three days after service of this Order.
- 11 That before the respondent or occupier allows anybody into the premises to carry out this Order the respondent or occupier is entitled to have the independent solicitor explain to them what this Order means in everyday language.
- 12 That the respondent or occupier is entitled to refuse to permit entry before 7 am and after 7 pm or at all on Saturday and Sunday.



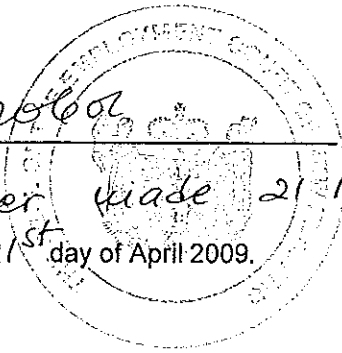
- 13 That within three working days of service of the Order the independent solicitor will make and provide to the applicant's solicitors and file with the Court written report on the carrying out of the Order the applicant's solicitors will immediately arrange for this report to be served on the respondent.
- 14 That the respondent does within forty-eight (48) hours of the service of these Orders upon him deliver or cause to be delivered to the custody of the applicant's solicitors all material (save insofar as not already taken into their custody) whose whereabouts it is required to disclose under Orders 1 and 6 above, and within a further period of twenty-four (24) hours he swears or affirms an affidavit stating or confirming that all the matters required to be delivered up and disclosed have been, and if not, their whereabouts or what has happened to the same and forthwith files with the Court and serves such affidavit upon the applicant's solicitors.
- 15 That the respondent or occupier do afford to the persons executing these orders all reasonable washing and toilet facilities available therein.
- 16 That the respondent (or anyone notified of these Orders) may apply to the Court at any time to vary or discharge this Order (or so much of them as affect that person) but anyone wishing to do so must first inform the applicant's solicitor.
- 17 On Monday 11 May 2009 at 10 am in this Court at Auckland, this Court will consider the report on the search from the independent solicitor, any other relevant reports and:
- a what is to happen to any goods removed from the premises or to any copies that have been made
 - b how the confidentiality to which the respondent is entitled is to be maintained
 - c any privilege claim
 - d any application by a party
 - e any issue raised by an independent solicitor.



18 The costs of this application be reserved.

M. M. 602

Registrar
Date order made 21 April 2009
Sealed this 21st day of April 2009.

The seal of the Employment Appeal Tribunal is circular, featuring a central crest with a crown on top. The words "EMPLOYMENT APPEAL TRIBUNAL" are inscribed around the perimeter of the seal.

Schedule A—Documents sought by the applicant

- 1 All material (in any form including written or electronic form) relevant or in any way related to:
 - a Te Runanga o Ngati Whatua
 - b Communications with District Health Boards or the Ministry of Health made after 16 July 2008
 - c The proceedings

NB: the term 'material' includes documents in whatever form, including without limitation:

- (a) printed documents
- (b) handwritten documents
- (c) electronic documents (including documents that may have been deleted or any fragment thereof) contained on any type of electronic storage media, including without limitation:
 - i computers
 - ii floppy discs
 - iii USB memory sticks and USB storage devices
 - iv DVD's and CD-Roms
 - v Mobile Phones and Personal Digital assistants (PDAs)
 - vi MP3 memory players (with data storage facilities)
 - vii Any other device capable of data storage.

In the Employment Court
Auckland Registry

ARC 20/09

Under the Employment Relations Act 2000

Between Te Runanga o Ngati Whatua

Applicant

And Franc Brence

Respondent

Notice to respondent

~~Before: The Honourable Judge~~ *MB*

Dated 21st April 2009

KENSINGTON SWAN

18 Viaduct Harbour Avenue Ph +64 9 375 1184
Private Bag 92101 Fax +64 9 379 0345
Auckland 1142 DX CP22001

Solicitor: Michael O'Brien
michael.obrien@kensingtonswan.com

To the Respondent, Franc Brence

- 1 This order notifies you that the court is satisfied—
 - (a) the applicant has a strong prima facie case on an accrued cause of action; and
 - (b) the potential or actual loss or damage to the applicant will be serious if this search order is not made; and
 - (c) there is sufficient evidence in relation to you that—
 - (i) you possess important evidentiary material; and
 - (ii) there is a real possibility that you might destroy that material, or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.
- 2 The applicant's undertaking as to damages is attached.
- 3 You are required to permit the persons named or described below to enter the premises described in paragraph 5 for the purpose of securing or preserving the evidentiary material listed or described in paragraph 6.

To the following persons:

- a A solicitor representing the applicant, Michael O'Brien, who shall serve these Orders on the respondent or occupier
 - b An independent solicitor, Daisy Williams ('**independent solicitor**')
 - c A computer forensic analyst, Michael Spence of decipher Limited, ('**Mr Spence**')
- 4 This order authorises you to search for, inspect, and remove the things listed or described in paragraph 6 and to take any further steps set out in paragraph 7.
 - 5 The specified premises are:
 - a 72 Nautilus Drive, Gulf Harbour, Whangaparaoa ('**the premises**').
 - b Any other premises owned or rented residences or your place of work and any vehicles under your control on or around the premises.

6 The things that may be searched for and inspected or removed are:

- a All material (in any form including written or electronic form) relevant or in any way related to:
 - i Te Runanga o Ngati Whatua
 - ii Communications with District Health Boards or the Ministry of Health made after 16 July 2008
 - iii The proceedings

NB: the term 'material' includes documents in whatever form, including without limitation:

- (a) printed documents
- (b) handwritten documents
- (c) electronic documents (including documents that may have been deleted or any fragment thereof) contained on any type of electronic storage media, including without limitation:
 - A Computers
 - B Floppy disks
 - C USB memory sticks and USB storage devices
 - D DVD's and CD-Roms
 - E Mobile Phones and Personal Digital assistants (PDAs)
 - F MP3 memory players (with data storage facilities)
 - G Any other device capable of data storage

7 The persons referred to in paragraph 3 may take the following further steps:

- a You must allow Mr Spence to make a Forensic Image (image) of any electronic documents as defined in Schedule A to this Order. Mr Spence may then search the information on the image(s) to find any of the listed items ('**relevant electronic information**'). Within four working days of service of this Order, Mr Spence will prepare a report to this Court on his search results. Mr Spence may only disclose relevant electronic information

to the applicant's solicitors (who shall receive that information on a confidential to counsel only basis) and will not disclose any of the information on the image(s) to any third party or the applicant without further leave of this Court.

- b You must allow these persons to remain on the premises until the search is complete, and to re-enter the premises on the same or following day in order to complete the search.
 - c No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to you, and you have been given a reasonable opportunity to check the list, unless the independent solicitor determines otherwise (see paragraph 9 below)
 - d The steps contained in clauses 8 to 16 of the Order of the Court (Search Order).
- 8 The following independent solicitor is appointed to supervise the carrying out of this order and to report to the court:
- Daisy Williams, Bankside Chambers, Level 22, 88 Shortland St, Auckland.
- 9 The independent solicitor is also authorised to do the following things:
- a If the independent solicitor is satisfied that full compliance with paragraph 7 (c) above is impracticable, she may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

To the Respondent and the persons listed in paragraph 3:

10 On Monday 11 May 2009 at 10am in the Employment Court at Auckland, the court will consider a report on the search from the independent solicitors. The applicant and the respondent and the independent solicitors are entitled to be heard on that date. The court will also consider the following:

- (a) what is to happen to any goods removed from the premises or to any copies that have been made:
- (b) how the confidentiality to which the respondent is entitled is to be maintained:
- (c) any privilege claim:
- (d) any application by a party:
- (e) any issue raised by an independent solicitor.

Date: 21st April 2009

Signature: *ll Probot*

(Registrar)

Sealed: 21st April 2009

