

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 141  
ARC 96/11**

IN THE MATTER OF an application for special leave to  
remove proceedings

BETWEEN TRANSPACIFIC INDUSTRIES  
GROUP (NZ) LIMITED  
Plaintiff

AND KAINE HARRIS  
First Defendant

AND SMART ENVIRONMENTAL  
LIMITED  
Second Defendant

**ARC 37/12**

AND IN THE MATTER OF proceedings removed from the  
Employment Relations Authority

BETWEEN TRANSPACIFIC INDUSTRIES  
GROUP (NZ) LIMITED  
Plaintiff

AND STEPHEN GREEN  
First Defendant

AND SMART ENVIRONMENTAL  
LIMITED  
Second Defendant

Hearing: 20 August 2012 (by telephone conference call)  
(Heard at Auckland)

Appearances: Stephen Langton and Nick Edlin, counsel for plaintiff  
Richard Harrison, counsel for Kaine Harris and Smart Environmental  
Limited  
Stephen Green in person

Judgment: 20 August 2012

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1] The issue for decision today is whether the defendants and, in the case of Mr Harris and Smart Environmental Limited, their counsel, should be permitted to see or otherwise know of the contents of exhibits attached to the affidavit of the plaintiff's Dean Matthew Brown sworn on 15 August 2012.

[2] On 12 and 13 September 2012, a full Court is to determine the validity in law of a covenant contained in the employment agreements of Messrs Harris and Green (and of numerous other employees of Transpacific Industries Group (NZ) Limited), purporting to prohibit them as former employees from working for Transpacific's competitors in business for specified periods after the end of their employment.

[3] Transpacific does not wish Messrs Harris and Green, and Smart Environmental Limited (which is a competitor and for which Messrs Harris and Green work or worked), from seeing what it says is confidential information in some 214 pages of exhibits to Mr Brown's affidavit or, more correctly, to make use of such information other than for the purposes of the litigation.

[4] Two of those exhibits are not now in issue. These are copies of Messrs Green's and Harris's employment agreements at pp 35-56 and pp 59-79 respectively of the bundle of exhibits. There can be no confidential information in these documents which should not be revealed to any of the defendants.

[5] Transpacific's principal concern is with the position of its competitor, Smart Environmental Limited, for whom Mr Harris now works. The plaintiff's claim against that company is for a penalty for being a party to the breach or alleged breaches by Messrs Harris and Green of their employment agreements. Those are not issues before the full Court on 12 and 13 September 2012: if necessary, those and other non-preliminary issues will be heard and determined at a later time. The question of the disclosure of confidential documents arises at this stage only in relation to the preliminary question for determination by the full Court, the validity of cl 7.1 of the employment agreements.

[6] I note Mr Langton's advice today that the plaintiff's case for consideration by the full Court should also include possible modification of cl 7.1 under the Illegal Contracts Act 1970 if the Court determines that it is illegal in its current form. Mr Harrison, for Mr Harris and Smart Environmental Limited, wishes to reserve his position on this matter although I note the plaintiff's intended evidence covers such relevant questions.

[7] Without opposition, but to enable Mr Green to consider his position, I make the following interim orders which will be reviewed by the Court at a further telephone directions conference on 4 September 2012 at 10.15 am.

[8] The documents in respect of which confidentiality is claimed by the plaintiff are those exhibits annexed to Mr Brown's affidavit, but do not include the documents between pp 35-56 and pp 59-79 of the bundle, being copies of the employment agreements of Messrs Green and Harris respectively. The documents so defined will be referred to as "the confidential documents" in the following orders.

1. The confidential documents will be served on the defendants' solicitors, HarristonStone, and may be disclosed only to the following:
  - a. the defendants' solicitors and counsel;
  - b. Kaine Harris and Stephen Green; and
  - c. any expert witness instructed by the defendants' solicitors or counsel.
2. Disclosure of the confidential documents to the above-named will be on the following conditions:
  - a. that they will not at any time, directly or indirectly, discuss or disclose the confidential documents, or any knowledge or information which they may acquire as a result of inspecting the confidential documents, with or to Smart Environmental

Limited or any other individual or entity who is not authorised under the terms of this order to inspect them;

- b. that they will not use the confidential documents, or any knowledge or information which they may acquire as a result of inspecting the confidential documents for any purpose other than in connection with these proceedings, being proceedings numbers ARC 96/11 and ARC 37/12 at the Employment Court in Auckland; and
- c. that Kaine Harris and Stephen Green may only inspect the confidential documents at the offices of HarrisonStone with either Gretchen Stone or Richard Harrison in attendance and will not remove them, copy them or any part of them, or take any notes of their contents.

[9] I confirm that the sole witness intended to be called by the defendants Kaine Harris and Smart Environment Limited, Grahame Christian whose company the second defendant is, will not qualify as an expert witness pursuant to the relevant High Court Rules which are adopted for the purpose of this case. So disclosure under 1.c above will not extend to Mr Christian.

[10] Although not part of the orders made at this point, the Court will be cognisant of reproducing or describing in detail the nature or contents of the confidential documents. Likewise, the Court will be aware that during the hearing on 12 and 13 September 2012, there may be a need to maintain the confidentiality of the confidential documents and to prevent their disclosure to any party who is not authorised to inspect them.

[11] As already noted, there will be a further telephone directions conference at 10.15 am on 4 September 2012 to reconsider the foregoing orders, plus to make any further orders or directions as may be appropriate in respect of the forthcoming hearing.

[12] Costs are reserved.

GL Colgan  
Chief Judge

Judgment signed at 3.30 pm on Monday 20 August 2012