

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 27
ARC 27/09
ARC 43/07**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for verification order

BETWEEN OLDSCO PTI LIMITED
 Plaintiff

AND PHILIP ERIC HOUSTON
 Defendant

Hearing: On the papers

Judgment: 25 March 2010

INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] On 23 December 2009, the plaintiff applied under regulation 46 of the Employment Court Regulations 2000 for a verification order. This required the defendant to make a sworn or affirmed statement as to whether certain documents or classes of documents are or have been in his possession, custody or control and if they are no longer in his possession, custody or control when the documents were parted with and what has become of them.

[2] The application was supported by two affidavits.

[3] It also sought an order enlarging the five day period referred to in reg 46(1) for applying to the Court for a verification order after a party is dissatisfied with the current disclosure of documents.

[4] The defendant has taken no steps to oppose the plaintiff's application. The plaintiff has therefore requested that the Court determine the application on the

papers filed in accordance with reg 47 which gives the Court, if satisfied of the probable existence of the documents, the power to make a verification order.

[5] The defendant has responded by letter observing that the time in which the plaintiff had for making the application had expired but that, despite this, the defendant was confident that all relevant information was made available for inspection in August 2009 and he is willing to verify this.

[6] On the material filed in the Court I am satisfied, in terms of reg 47, of the probable existence at some point in time of the documents listed in the application. I therefore make the following order:

The defendant is to disclose in a sworn or affirmed statement whether any document or any class of document specified or described in the plaintiff's application dated 23 December 2009, that has not been disclosed in response to that application:

- a) is in the possession, custody or control of the defendant; and
- b) if not, whether any such document or class of documents was ever in the possession, custody, or control of the defendant; and
- c) if so, when it was parted with and what became of it.

[7] The defendant must swear or affirm a verifying statement and file and serve that statement by **4pm on Friday 16 April 2010**.

[8] Costs are reserved.

B S Travis
Judge

Interlocutory Judgment signed at 4.45pm on 25 March 2010