

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKAURAU**

**[2022] NZEmpC 219  
EMPC 368/2022**

IN THE MATTER OF      an application to vary search orders

BETWEEN                HYNDS PIPE SYSTEMS LIMITED  
                                 Applicant

AND                        JUNMING (JASON) CHENG  
                                 First Respondent

AND                        ZEB LIMITED (T/A SPANIT)  
                                 Second Respondent

Hearing:                1 December 2022  
                                 (Heard at Christchurch via Audio Visual Link)

Appearances:        J Rooney and M S Austin, counsel for applicant  
                                 G Pollak, counsel for first respondent  
                                 No appearance for second respondent  
                                 P Swarbrick, independent solicitor

Judgment:             1 December 2022

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**ORAL JUDGMENT OF JUDGE K G SMITH**

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[1] This morning I heard from Ms Swarbrick, the independent solicitor who carried out the search permitted by the order made on 9 November 2022. She reported that the search was conducted on 17 November 2022.

[2] Ms Swarbrick reported that the first respondent, Junming Cheng, cooperated fully in the search. Clones of certain devices were made during the search and other devices were seized to be cloned later. Documents were also uplifted. Those items cloned and/or removed are listed in schedules A and B to Ms Swarbrick's report.

[3] I also heard this morning from Mr Rooney and counsel for Mr Cheng, Mr Pollak. I record that Mr Rooney confirmed the statement of problem between the applicant and first respondent has been lodged in the Employment Relations Authority.

[4] It is also appropriate for me to record Mr Pollak's comments to the Court this morning. His instructions were to raise concerns over the necessity for the order and how it was executed. He advised me, nevertheless, that Mr Cheng will cooperate with the next steps to be taken. Mr Pollak also informed me that Mr Cheng intends to vigorously defend the claims made against him in the Authority.

[5] At my request, counsel took the opportunity to discuss the further orders that might be made in this proceeding.<sup>1</sup> Essentially, the applicant seeks orders to allow the information yielded by the search to be interrogated and for decisions to be made about whether that information may or may not have some bearing on the Authority's investigation.

[6] The following orders are a product of agreement between Mr Rooney and Mr Pollak. I order by consent that the search orders are continued subject to the following conditions:

- (a) The yield of the search undertaken is to be fully processed by the independent computer expert, Mr Campbell McKenzie (or any person employed by Incident Response Solutions Ltd listed in schedule B to the search order).
- (b) Counsel are to agree on key word search terms to be applied to processing the data referred to in [6](a).
- (c) Key word searches are to be run and a manual review of documents is to be conducted (the manual review being in relation to those documents which are not text searchable).

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<sup>1</sup> Relying on High Court Rules 2016, r 33.8(2).

- (d) Mr McKenzie is to categorise the documents identified through the key word search and manual document search into the following lists:
  - (i) Those likely to contain specified information, as defined by the terms in the search order.
  - (ii) Those unlikely to contain specified information, as defined by the terms of the search order.
  - (iii) Those documents which Mr McKenzie is uncertain fall within the category of specified information, as defined by the terms of the search order.
  - (iv) Privileged information.
- (e) Counsel are to review the lists of documents referred to in categories [6](d)(i), [6](d)(ii) and [6](d)(iii) above to try to reach agreement as to which of them contain specified information.
- (f) The documents within categories [6](d)(ii) and [6](d)(iv) (that is those unlikely to contain specified information or privileged information) will be returned to Mr Cheng or destroyed but, in any event, the applicant will not keep any copies of those documents.
- (g) The parties will make reasonable endeavours to agree on the categorisation of documents as identified by the order at [6](e) above and what comes within the scope of specified information by 10 February 2023.
- (h) The devices and documents obtained through the search are to remain under the control of Ms Swarbrick as independent solicitor and/or Mr McKenzie until further order of the Court.
- (i) I reserve leave to any party to apply on 24 hours' notice for further directions in the event that there are any difficulties in identifying

matters such as key word search terms or complying with any of the orders that have been made.

[7] The Registrar is to arrange a telephone directions conference with counsel on the first available date after 10 February 2023 the purpose of which will be to consider whether any further orders are required.

[8] Costs are reserved.

K G Smith  
Judge

Judgment delivered orally at 11.12 am on 1 December 2022