

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 100
EMPC 156/2015**

IN THE MATTER OF an application for a search order

BETWEEN IAG NEW ZEALAND LIMITED
 Applicant

AND MICHELLE ANN BOULGER
 Respondent

Hearing: 26 June 2015
 (Heard at Auckland)

Appearances: K Dunn, counsel for the applicant
 B Edwards and C Hallowes, counsel for the respondent

Judgment: 29 June 2015

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The Court granted an application for search orders on 10 June 2015. Those orders were executed on 11 June 2015. Hardcopy documents and electronic devices were removed from the respondent's residence on that date. The Court granted consequential orders on 15 June 2015. PricewaterhouseCoopers (PwC) is in the process of analysing the material on those copies in accordance with the consequential orders. This process is taking longer than expected. The difficulty that has arisen, and which the applicant is not unsympathetic to, is that some of the electronic devices which are currently held by PwC are required by the respondent's husband for business purposes.

[2] Further orders were sought regarding the removal of the applicant's confidential information from the electronic devices and the return of the electronic devices to the respondent. I heard from counsel on 26 June 2015 in respect of these matters. The essential sticking point related to the costs associated with removing

any of the applicant's confidential information from the electronic devices prior to their return.

[3] Mr Edwards, counsel for the respondent, submitted that such costs could ultimately sound in a claim for special damages and that it was appropriate that the applicant bear the costs in the interim, having sought the original orders. While Miss Dunn accepted that the applicant could seek to recover by way of special damages, the applicant is concerned that the respondent may not be in a position to satisfy any award made against her in due course. There was no information before the Court that would suggest that this concern was well founded.

[4] In all of the circumstances I considered it in the broader interests of justice that IAG meet the costs associated with removing any of its confidential information from the electronic devices. If appropriate it may seek to recover those costs against the respondent in its proceedings. Counsel were invited to confer about the form of the orders to be made by the Court, and subsequently filed a joint memorandum together with draft orders. The following orders are accordingly made:

- a. PwC is directed to retain one of the two clone copies of the electronic devices removed from the respondent's residence on 11 June 2015 ("Electronic Devices"). This clone copy is to be preserved by PwC and not disclosed to any other person or party until further orders are given by the Court. The second clone copy of the Electronic Devices may be dealt with in accordance with the orders made by this Court on 15 June 2015.
- b. The applicant and respondent will agree which files on the Electronic Devices contain the respondent's personal information. This should occur by the respondent indicating (for the applicant's confirmation) those files it considers contain the respondent's personal information. The respondent will attend PwC's offices on the afternoon of 26 June 2015 for this purpose.

- c. Once this is agreed, PwC will copy the respondent's personal information to a portable hard drive for the respondent to uplift. Then, all information/data/files on the Electronic Devices will be deleted by PwC.
- d. Once all information/data/files on the Electronic Devices have been deleted, the Electronic Devices are to be immediately returned to the respondent.

[5] The orders made by the Court on 15 June 2015 are varied accordingly.

[6] Leave is reserved for either party to apply for further directions or orders.

[7] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 12.50 am on 29 June 2015