

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.156/84

BETWEEN CBA FINANCE HOLDINGS LIMITED

Plaintiff

AND ALLAN ROBERT HAWKINS

First Defendant

AND KEVIN J. GILLESPIE

Second Defendant

AND EQUITICORP HOLDINGS LIMITED

Third Defendant

HEARING: 8th March, 1984

Counsel: Henry, Q.C. and B. P. Henry for Third Defendant
in support
Curry and Catran for Plaintiff to oppose

Judgment: 9 March, 1984

JUDGMENT OF SINCLAIR, J.

On the 29th February, 1984 by a chambers order I made an interim injunction concerning matters in dispute between the above parties. On the 6th March, 1984 the Third Defendant filed a motion for an order rescinding the interim injunction insofar as it affected the Third Defendant and at the same time a motion for abridgement of time was filed.

When the motion for abridgement came before the Court Mr Curry indicated that he intended to oppose the making of an order on that motion, but after some argument

I indicated that as an interim injunction had been made ex parte it seemed to me that any party affected by that injunction could apply at any time for a review of the order which had been made without having to give the usual three days' notice. I considered it would be quite unjust to make an order ex parte and then hold that the party affected had to give three days' notice to vary that which had been made in his absence, and that while I had not gone into the matter in depth, I was of the view that the Court could resort to Rule 594 to abridge the time, but in any event could resort to its inherent jurisdiction to ensure that no miscarriage of justice occurred.

However, after hearing argument on the substantive motion to rescind, Mr Curry recorded, very properly in my view, that he no longer wished to take objection to the motion for abridgement of time because there was very substantial agreement between the parties as to the legal position and what the Court should do in relation to the Third Defendant's motion. In fact it transpired that in the long run there was but very limited disagreement on one aspect of the matter.

I record that for the purposes of this particular exercise there was no appearance of either Mr Hawkins or Mr Gillespie and they took no part in the hearing.

In essence the Third Defendant sought to have certain matters referred to in the interim injunction clarified because it was of the view that the terms of the order were such that they could be interpreted as restraining some of the activities of the Third Defendant, which

activities it was lawfully entitled to engage in. In the main this centred round the Third Defendant's contention that any of the existing staff of the Plaintiff company who wished to terminate their contract of service could do so on giving reasonable notice and that by so doing they were not doing anything which was unlawful, but it was acknowledged that in giving such notice they could not, until the termination of their contracts of service, act in breach of any contractual obligation which they had to the Plaintiff. However, on the termination of their employment it was contended that they were lawfully entitled to accept other employment with Equiticorp or with any other employer.

The Plaintiff by its counsel accepted that situation as being correct and accepted that unless it could point to written terms of contract which would prevent an employee from terminating his employment except on the terms stated in that contract, then any employee was entitled to terminate his contract of service upon reasonable notice. It was further acknowledged that unless there was a written contract of employment between an employer and employee defining the respective rights of the parties, there was nothing in law to prevent one employer from approaching an employee of another employer with the intention of persuading that employee to terminate his or her contract of service with his then employer and enter the service of another one.

In view of the uniformity between the parties it was agreed that the interim injunction as against the Third Defendant should be amended or varied so as to

ensure that the above-mentioned principles were spelt out precisely.

The one area where there was some dispute was that the Third Defendant wished to retain the right to be able to publish or announce that certain of the Plaintiff's employees would be employed by, or otherwise advising or assisting, Equiticorp from such time as they were lawfully entitled so to do. In this area it was contended that whilst a person remained in the employ of the Plaintiff it would be wrong to allow the Third Defendant to announce that in due course that particular employee would enter the employment of Equiticorp as it would have an adverse effect upon the relationship which then existed between the Plaintiff and its employee. But that overlooks, as was pointed out by Mr Henry, the form of the pleading between the parties. The statement of claim shows quite clearly that the basis of the claim was the wrongful inducement by Equiticorp and the remaining Defendants to certain of the personnel employed by C.B.A. Finance to terminate their employment contracts without giving reasonable notice. The Plaintiff can only act within the confines of its claim and the matter above referred to, in my view, is outside those confines. In any event, unless there is a written contract with a provision to the contrary, I know of no other legal proposition which would prevent one firm announcing that a particular person is to join its service when that person's employment with his then existing employer terminates. It is something which happens frequently.

Accordingly there will be an order varying the interim injunction so far as it affects the Third Defendant. Paragraph (C) will now read as follows:

"C. RESTRAINING the third defendant its promoters, shareholders, servants or agents from:

- (i) directly or indirectly persuading, procuring or inducing any breach of, or interference with, the performance of any employment contract between the plaintiff and its employees;
- (ii) employing or otherwise receiving advice or service from the first or second defendant or any of the plaintiff's employees who have since 20 February 1984 tendered their resignation to the plaintiff until such time as their respective contracts of service with C.B.A. Finance Holdings Ltd have in fact terminated;
- (iii) issuing any press statement, public notice or other statement or document publicising its intention to make an offer to the public of shares in the capital of the third defendant, or issuing any prospectus or other like document which contains any indication that the first or second defendants or any of the plaintiff's employees who have since 20 February 1984 tendered their resignations to the plaintiff, being a person whose contract of service with the plaintiff has not terminated, are directly or indirectly employed by, acting for, or otherwise advising or assisting the third defendant, provided that this order shall not operate to restrain the third defendant, its promoters, shareholders, servants or agents from any such issue as aforesaid which contains an indication that the first or second defendants or any of the plaintiff's employees will be employed by acting for or otherwise advising or assisting the third defendant from such time as they may lawfully so do."

In the meantime the question of costs is reserved.

D. D. [Signature]

SOLICITORS:

Wilson, Henry, Martin & Co., Auckland for Third Defendant
Russell, McVeagh, McKenzie, Bartleet & Co., Auckland for Plaintiff