

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2020] NZERA 291
3108332

BETWEEN IGNITE SERVICES LIMITED
Applicant

AND ADAM TORRENS TAYLOR
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Susannah Maxfield, counsel for the Applicant
Madeleine Lister, counsel for the Respondent

Date of Determination: 29 July 2020

CONSENT DETERMINATION OF THE AUTHORITY

[1] The parties have reached agreement as to liability in this proceeding and have asked the Authority to issue a consent determination recording the terms of settlement as follows:

- a. The applicant, Ignite Services Limited (“**Ignite**”), is part of a group of companies which operate under the “Ignite” brand. Ignite, as a group, is a major architecture and master planning practice in New Zealand.

- b. The respondent, Adam Torrens Taylor (“**Mr Taylor**”), is a Registered Architect (NZ). Mr Taylor was employed by Ignite between 17 January 2013 and 17 July 2020, and his most recent job title was “Director” (but he was not a company director). Mr Taylor was a senior employee, leading Ignite’s Special Projects sector.

- c. Ignite employed Mr Taylor pursuant to an individual employment agreement, the material terms of which included:

Individual Employment Agreement

[...]

5. DUTIES AND RESPONSIBILITIES

[...]

- 5.2 The Employer expects that the Employee will devote their time and attention to the faithful and diligent performance of their duties. The Employee will be required, to the utmost of their ability, to promote the interests of the Employer. It is a condition of the Employee's employment that the Employee undertakes at all times to act in the best interests of the Employer.

[...]

25. POOR PERFORMANCE / MISCONDUCT / SERIOUS MISCONDUCT

[...]

- 25.3 For the avoidance of doubt, serious misconduct is behaviour during work time or outside work that fundamentally compromises the Employer's trust and confidence in the Employee, and includes, but is not limited to:

[...]

- dishonesty of any kind;

[...]

- breaches of obligations of trust, fidelity and confidentiality;

[...]

- actions that damage or have the potential to damage the Employer's reputation;

[...]

- other breaches of obligations under this Agreement and/or the Employer's rules, policies and procedures, as referred to therein, or conduct, that damages or undermines the Employer's ability to retain the necessary trust and confidence in the Employee.

[...]

32. INTELLECTUAL PROPERTY

- 32.1 Any trademark, goodwill, patent, design or copyright work, procedure, process, formula, method of production, invention or other discovery created by the Employee during their employment

relating to the business of the Employer or capable of being used or adapted for use by the Employer, must immediately be disclosed to the Employer and is the absolute property of the Employer (“**Intellectual Property**”).

[...]

33. **CONFLICT OF INTEREST AND SECONDARY EMPLOYMENT**

33.1 The Employee must declare any interest in any business of any kind in which the Employee may potentially be in conflict or in competition with the business of the Employer in which the Employee is engaged. Further, the Employee must not, whilst employed by the Employer, invest personal monies, obtain an interest in or establish any other business that may be deemed to be in competition with the Employer, without the Employer’s prior written permission.

33.2 The Employee agrees that, whilst employed by the Employer, they will not, without prior written approval of the Employer, be employed, engaged, concerned or interested (whether directly or indirectly) in any way whatsoever in any other business whose activity competes with the Employer in any way whatsoever.

[...]

d. The terms of the employment agreement also include the implied duties of fidelity and to act in good faith, which duties include:

- i. To act in Ignite’s best interests;
- ii. Not to damage Ignite’s business;
- iii. To report to Ignite any information, fact or circumstance material to Ignite’s business; and
- iv. Not to divert Ignite’s business opportunities to himself.

(together, the “**Employment Duties**”).

e. In 2019, Ignite Architecture Limited was engaged by Riverside Golf Club to design its new clubhouse at its Lochiel Course, which is located at 72 Lochiel Road, Tamahere, and progress that design through to practical completion. Mr Taylor was the project director.

f. Around April 2020, after Ignite’s concept design had been approved by Riverside Golf Club and had been costed by a third party, Mr Taylor led Ignite

to believe that Riverside Golf Club decided to put the project on hold. This was misleading.

- g. In reality, Riverside Golf Club approached Mr Taylor and they agreed that he would continue to undertake the Riverside Golf Club Project personally, and not on behalf of Ignite. Mr Taylor established and operated a business on his own account to do so.
- h. Mr Taylor took active steps to keep this agreement and his work a secret from Ignite, including using his personal email address to send alternative concept designs to Riverside Golf Club, and deleting information from his work computer which related to the work he was doing for Riverside Golf Club on his own account.
- i. Mr Taylor carried out the work he was doing for Riverside Golf Club on his own account during work hours, and using Ignite's computer systems, programmes, confidential information and intellectual property.
- j. Mr Taylor also appeared to assert Intellectual Property rights over the work he did for Riverside Golf Club on his own account.
- k. Ignite issued these proceedings against Mr Taylor on 11 June 2020. The Authority issued urgent directions and orders on 12 June 2020 in respect of the employment relationship problem and the manner in which it would be investigated, including an order that Mr Taylor:

“... must not, (nor instruct anyone else to) destroy, conceal or make unavailable any relevant evidence or take any actions that could result in the destruction or concealment of relevant evidence including not closing relevant email accounts, destroying computers, devices or wiping their contents.”

- l. On 15 June 2020, Mr Taylor provided the Authority and Ignite with a number of undertakings in respect of the matters raised by Ignite and before the Authority.
- m. Ignite applied for a summons, which was granted by the Authority on 15 June 2020 in the form of orders, requiring Mr Taylor to attend the Authority on 18 June 2020, and to bring with him and produce relevant devices and documents for examination by an independent IT expert.
- n. After being served with the proceedings on 12 June 2020, and again on 13 June, 15 June and 17 June 2020, Mr Taylor deleted 18.1 GB of data from his personal OneDrive, which data included documents directly related to these proceedings.
- o. The Authority determines (and Mr Taylor admits and consents), that Mr Taylor breached the duties and obligations he owed to Ignite in the following respects:
 - i. In breach of clause 5.2 of his employment agreement, and his duty of fidelity, Mr Taylor failed disclose to Ignite that the Riverside Golf Club wanted a more cost effective concept design for the Riverside Golf Club Project;
 - ii. In breach of clause 5.2 of his employment agreement, and his duty of fidelity and good faith, Mr Taylor misled Ignite to believe the Riverside Golf Club Project had been put on hold by Riverside Golf Club;
 - iii. In breach of clause 33.1 of his employment agreement, and his duty of fidelity, Mr Taylor failed to declare his personal interest in the Riverside Golf Club Project, and in which he was in conflict with Ignite's business (the personal interest being that he had agreed with Riverside Golf Club to continue the project personally, on his own account);
 - iv. In breach of clause 33.2 of his employment agreement, and his duty of fidelity, Mr Taylor established and operated a business on his own

account, to undertake the Riverside Golf Club Project himself, whilst employed by Ignite;

- v. In breach of clause 5.2 of his employment agreement, and his duty of fidelity, Mr Taylor failed to devote his time and attention to the faithful and diligent performance of his duties, instead undertaking the Riverside Golf Club Project on his own account during work hours;
 - vi. In breach of clause 32 of his employment agreement, and his duty of fidelity, Mr Taylor failed to disclose to Ignite the Intellectual Property created by him in respect of his work on the Riverside Golf Club Project on his own account; and
 - vii. In breach of clause 5.2 of his employment agreement, and his duty of fidelity, Mr Taylor expected to be remunerated by Riverside Golf Club in respect of his work on the Riverside Golf Club Project on his own account, and caused Ignite to suffer losses as a result of his breaches.
- p. Liability having been established by this Consent Determination, the matter is adjourned to ascertain whether the parties can reach an agreement in relation to remedies and costs.

Anna Fitzgibbon
Member of the Employment Relations Authority