

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2020-004-009514  
[2023] NZDC 14487**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**WHAKAARI MANAGEMENT LIMITED  
ANDREW BUTTLE  
JAMES BUTTLE  
PETER BUTTLE  
I D TOURS NEW ZEALAND LIMITED  
TAURANGA TOURISM SERVICES LIMITED**  
Defendants

Hearing: 11 July 2023

Appearances: K McDonald KC, M Hodge, S Symon, D Dow, S Forrest and L Dalton for the Prosecutor  
J Cairney and P Brash for Whakaari Management Ltd, Andrew Buttle, James Buttle and Peter Buttle  
D Neutze, P Couldwell and P Hawkins for I D Tours New Zealand Limited  
P David KC and S Wroe for Tauranga Tourism Services Limited

Judgment: 17 July 2023

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**TRIAL RULING 1 OF JUDGE E M THOMAS  
[Non-disclosure of confidential information]**

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**The application by Whakaari Management Ltd, Andrew Buttle, James Buttle and Peter Buttle for non-disclosure of confidential information is refused.**

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## **REASONS**

### **Introduction**

[1] WorkSafe alleges that WML and each of the Buttles (the applicants) failed to take certain steps. Potentially material to that inquiry would be whether they had the means to take those steps. WorkSafe alleges they did. Its case is that by 2019 the applicants were making a profit of approximately \$1,000,000 a year by granting commercial access to Whakaari.

[2] The applicants have always known this was part of WorkSafe's case. It is referred to in the summary of facts dated 8 December 2020.

[3] With the trial about to begin, the applicants expressed concern that WorkSafe may refer to this profit in its opening address. WorkSafe confirmed its intention to open on that basis and the reason for it. I allowed the parties to consider the matter overnight in case they could reach any agreement, through concessions or otherwise, on how that information should be revealed.

### **Section 210 Health and Safety at Work Act 2015**

[4] The applicants also initially suggested that WorkSafe's use of this information offended against s 210(2). However, they could not challenge that WorkSafe's reason for using the information engages s 210(2)(c)(i).

### **This application**

[5] Overnight discussion did not result in any resolution. The applicants therefore sought an order under s 69(2)(a) of the Evidence Act 2006. WorkSafe opposed the application. As the start of the trial was imminent, I heard argument immediately. I did not consider, given that the start date of the trial had been set for some time, that it was appropriate to delay the argument. Following argument, I was satisfied that I could make an immediate decision, reserving my reasons. I dismissed the application.

[6] I now give my reasons.

**Is it confidential information?**

[7] Yes.

[8] The applicants did not tender evidence in support of the application. I assume for present purposes that WML is a private company. This information would not appear to be publicly available. WML and the Buttles would have a reasonable expectation of confidentiality.

**What is the public interest in disclosure?**

[9] This prosecution arises out of the eruption that caused great harm to individuals from New Zealand and overseas, including loss of life. Affected parties spread wider, including families, communities, first responders, and all who provided difficult treatment and recovery. The case potentially has implications for those involved in adventure tourism and its governance. The event itself was one of both of national and international significance. The public interest, both nationally and internationally, in fully establishing and understanding any health and safety failures is high.

**Is that public interest outweighed by any public interest in preventing harm to the applicants through disclosure of the information?**

[10] No.

[11] The applicants wish that financial information relating to their business remains confidential. The information is both personally and commercially sensitive. However, those are private interests. A private interest will not be relevant unless it embodies a wider public interest.<sup>1</sup>

[12] There is a wider public interest in ensuring commercially sensitive information, and the private income information of individuals, is protected. This is

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<sup>1</sup> See Adams on Criminal Law EA 69.04

the public interest that I must weigh up against the public interest in disclosure. However, the impact upon that wider public interest is minimal given:

- (a) The intended disclosure is very narrow in scope, and
- (b) The reason for disclosure is fact-specific, and unlikely to have any material impact upon the wider public interest in confidentiality.

[13] The applicants intend to challenge the admissibility of the interview provided during the investigation by WML. They argue that a confidentiality direction is necessary based on fair trial rights: to protect their position until that challenge is heard and ruled upon.

[14] There is a wider public interest in ensuring defendants can receive a fair trial. The applicants' position, however, is weakened by:

- (a) the challenge never having been advised despite a very lengthy period of active pre-trial case management,
- (b) the applicants suggesting that grounds to challenge and their strength may depend upon how evidence emerges, and
- (c) this is a judge-alone trial.

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Judge EM Thomas  
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe  
Date of authentication | Rā motuhēhēnga: 17/07/2023