

- (b) any information (whether written or oral) that, for the purposes of the adjudication, is disclosed in the course of the adjudication.
- (2) The adjudicator and any party to a dispute must not disclose to another person any of the information to which this section applies except—
 - (a) with the consent of the relevant party; or
 - (b) to the extent that the information is already in the public domain; or
 - (c) to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator's determination; or
 - (d) in statistical or summary form arranged in a manner that prevents any information disclosed from being identified by any person as relating to any particular person; or
 - (e) if the information is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify any particular person.

[3] In *Concrete Structures (NZ) Ltd v Inframax Construction Ltd*, High Court Hamilton, CIV-2010-419-909, 9 November 2010, the defendant sought to place before the Court a copy of an adjudicator's determination relating to the validity of a payment schedule. The plaintiff argued that the determination was inadmissible because of the confidentiality provisions under section 68. Lang J's discussion of this issue was obiter (as he decided to determine the application afresh) but he was of the view that the words "any document created for the purposes of an adjudication" in section 68(1)(a) are sufficiently wide to include the determination itself. The Court held that the confidentiality provisions in section 68 do not absolutely prohibit any party from placing an adjudicator's determination before the Court (paragraph [25]).

Discussion

[4] Counsel for the defendant states that paragraphs 24-27 of the statement of claim dated 10 February 2012 make direct reference to the two determinations including their outcome, and that paragraphs 31 and 32 of the statement of claim contain statements made/information disclosed in relation to the first determination. Counsel for the defendant further states that the briefs of evidence of Anthony


Edmond Stehlin and Anthony Moss dated 22 December 2011 contain information disclosed in the course of the adjudication. Counsel for the defendant argues that none of the exceptions listed in s 68(2) applies to the present case, and so there is an absolute prohibition imposed by the section on disclosure to any other person of the information in question.

[5] However, I note that section 68(2) provides that “any party to a dispute must not disclose to *another person* [my italics] any of the information to which this section applies”. The information provided by the plaintiff in the statement of claim and briefs of evidence, and which is now challenged, is being disclosed to the District Court. Section 68(2) does not prohibit disclosure to this Court, and refers only to “another person”. The (Construction Contracts) Act does not define person. I therefore turn to the Interpretation Act 1999, section 29, which provides that “person” “includes a corporation sole, a body corporate, and an unincorporated body”. This definition contains no mention of a Court.

[6] I note also that the High Court of New Zealand has held that the word “person” does not include a “Court” (see *Walker v Walker* [2012] NZHC 543, paragraph [36]). I have had regard to the argument of the defendant that this decision was decided in the context of a different statutory regime. However, in the absence of clear wording including the District Court within the ambit of section 68(2), I find that the prohibition argued for by the defendant does not apply.

Order

[7] I dismiss the application brought by the defendant. I invite counsel to submit memoranda as to costs within 10 working days of receipt of this order.


Judge P R Spiller
District Court Judge