

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 214
EMPC 401/2023**

IN THE MATTER OF an application for without notice freezing
and ancillary orders

BETWEEN SERVICE FOODS LIMITED
Applicant

AND GONGQIAN LIU
Respondent

Hearing: 28 November 2023
(via telephone)

Appearances: S Langston and T Sung, counsel for applicant
E Anderson, counsel for respondent

Judgment: 29 November 2023

**JUDGMENT (NO 3) OF JUDGE M S KING
(Further application to amend and extend orders)**

Introduction

[1] On 6 November 2023 a judgment was issued by the Court making freezing and ancillary orders under s 190(3) of the Employment Relations Act 2000 and pt 32 of the High Court Rules 2016 in respect of a bank account and other assets held by the respondent, Mr Liu.¹ The orders prevent Mr Liu from disposing or otherwise dissipating that property pending the determination of the applicant's, Service Foods Limited's, substantive claims being pursued in the Employment Relations Authority (the Authority).²

¹ *Service Foods Ltd v Liu* [2023] NZEmpC 190.

² Employment Relations Authority, file number 3262099.

[2] The Court ordered that the matter be brought back before the Court on 28 November 2023 to review the orders made. The orders were extended by agreement until 5 pm on 29 November 2023.³

[3] Shortly before the review hearing commenced, Mr Liu filed an application for interim non-publication orders and an application for variation of the freezing orders.

Application for interim non-publication orders

[4] Counsel for Mr Liu, Ms Anderson, advised the Court that Mr Liu was seeking interim non-publication orders for a short period, being approximately two weeks, to allow Mr Liu to work through the information provided in the supporting affidavits filed by Service Foods Ltd, to enable him to fairly determine whether any further non-publication orders would be sought. Ms Anderson confirmed that there had been no applications or orders for non-publication made in the related High Court or the Employment Relations Authority proceedings.

[5] Due to the late filing of the application, counsel for the Service Foods Ltd, Ms Langston, had been unable to obtain instructions on the application prior to her attending the review hearing. She indicated that it had concerns over the potential impact that any non-publication orders may have on its ability to refer to the Employment Court proceedings in the concurrent High Court proceedings. This Court has not been provided with information about the status of the High Court proceedings. It understands that they pertain to Mr Liu's wife and other companies who are alleged to have been involved in the conduct that gave rise to the freezing orders being made against Mr Liu in the Employment Court.

Application for variation of freezing orders

[6] Ms Anderson advised that the application for variation of freezing orders was primarily made for two purposes. Firstly, to narrow the scope of the freezing orders so as to allow Mr Liu to pay the legal expenses related to the substantive matter in the Authority. Secondly, Mr Liu seeks a variation of [4(c)] of the sealed freezing orders which he says is a "catch all" provision which encompasses assets of value unknown

³ *Service Foods Ltd v Liu (No 2)* [2023] NZEmpC 213.

to Service Foods Ltd at the time the order was made (inclusive of bank accounts). Mr Liu wishes the provision to be removed and replaced with a requirement that there be a comprehensive list of assets to which the freezing order is to attach. Mr Liu is seeking that his application for variation of freezing orders be heard urgently within the week. Ms Anderson says that the urgency is due to Mr Liu starting new employment next week. If the variation was granted it would allow him to create a new bank account, which he would use to receive his wages and pay his ordinary living expenses, and which would fall outside the scope of the freezing orders.

[7] Ms Langston did not have instructions on the application for variation of the freezing orders. She sought for the order to be extended while Mr Liu's applications were timetabled and dealt with by the Court.

[8] There was consensus between counsel that if the Court was able to deal with Mr Liu's applications on an urgent basis, the freezing orders could be extended by consent.

Directions/orders

[9] I direct that the freezing order will be extended by consent until **5 pm on Tuesday 5 December 2023**.

[10] In respect of the applications filed, I direct:

- (a) Any notice of opposition to the application for interim non-publication orders, and/or the application for variation of freezing orders, are to be filed and served by the applicant by **4 pm on Thursday 30 November 2023**.
- (b) There will be a hearing in the Auckland Court via VMR at **2.15 pm on Monday 4 December 2023**, to consider the applications for non-publication and variation. Counsel are to provide written submissions at the hearing.

[11] This judgment and the earlier judgments of 6 and 17 November 2023 are not to be published other than to the parties, their representatives and to authorised persons, and the Court file may not be inspected by a non-party without leave of the

Court until after the hearing has taken place on Monday 4 December 2023 and a judgment on the application for interim non-publication orders has been issued.

[12] In addition to considering the applications for non-publication and variation at the hearing, I wish to hear from counsel as to:

- (a) the status and timing of the proceedings in the High Court and Authority;
and
- (b) whether a direction to mediation should be made.

M S King
Judge

Judgment signed at 11.30 am on 29 November 2023