

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING  
PARTICULARS OF THE PARTIES AND A NON-PARTY**

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2025] NZEmpC 180  
EMPC 368/2025**

IN THE MATTER OF	a without notice application for freezing and ancillary orders
BETWEEN	AEL Applicant
AND	BAQ Respondent

Hearing: 15 August 2025  
(Heard at Wellington by telephone and by further documentation filed on 18 August 2025)

Appearances: J Laphorne, counsel for applicant

Judgment: 18 August 2025

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**JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS**

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**Introduction**

[1] The applicant has filed a without notice application for freezing and ancillary orders against the respondent, who is currently employed by the company. The orders extend to a non-party (the respondent's spouse) and a business.

[2] As the application has been made without notice, the respondent has not had the opportunity to address the allegations. Nor has a non-party whose rights and interests are implicated by the application.

## **Non-publication orders**

[3] I heard from counsel for the applicant at a telephone hearing. At that hearing I raised the issue of whether interim orders of non-publication should be made, recognising the damage that would likely be caused to the respondent (and non-party) if publication occurs. Counsel accepted that such orders were appropriate, and should extend to the applicant company on the basis that naming it would likely identify the respondent and their spouse.

[4] I accept that it is appropriate in the circumstances to make an interim order of non-publication. The allegations against the respondent are serious, untested and likely to be highly damaging; they have not had the opportunity to seek non-publication orders themselves, given the application arises in the context of without notice proceedings. The non-party is in the same position. I consider it appropriate to extend the order to the applicant, primarily on the basis that there is a risk that identifying the applicant company will lead to the identification of the respondent and their spouse.

[5] There will accordingly be an interim order over the identity of the respondent, including their name and any details that would tend to identify them, and over the evidence filed, except as referred to in this judgment. There will be a parallel order in respect of the name and identifying details of the applicant and the respondent's spouse (non-party). There is an associated order that the Court file not be inspected without the leave of a Judge.

[6] The orders of non-publication are interim and will need to be revisited in due course.

## **Freezing orders - framework for analysis**

[7] The Employment Court may make freezing and ancillary orders, and has the same powers as the High Court as provided in the High Court Rules.<sup>1</sup> An application

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<sup>1</sup> High Court Rules 2016, rr 32.2 and 32.3; and Employment Relations Act 2000, s 190(3).

must be advanced in the Employment Court because the Employment Relations Authority has no power to make such orders.<sup>2</sup>

[8] The power to make freezing orders, usually made on a without notice basis, engages two particular rights under the New Zealand Bill of Rights Act 1990 – the right to be secure against unreasonable search or seizure,<sup>3</sup> and the right to natural justice.<sup>4</sup> The Court must undertake a careful analysis of the (untested) evidence, which the rights-bearer has had no opportunity to refute or answer, and must consider whether compromising their rights is justified in the circumstances.

[9] In this case, where ancillary orders are also sought, requiring the disclosure of financial information through access to bank statements, important privacy rights are also implicated. Those rights too should not be disturbed without good cause, particularly given there are other mechanisms for seeking access to such documentation, such as through formal disclosure processes.

[10] A number of safeguards have been put in place in respect of the way in which applications of this sort are dealt with, and a number of hurdles that must be overcome by an applicant.

[11] First, there must be a proceeding within the jurisdiction of the Court or the Authority to which the application relates.

[12] Second, a written and signed undertaking as to damages must be filed with the application, and evidence provided (via affidavits) of the applicant's financial ability to meet an order for damages pursuant to the undertaking.

[13] Third, a draft order must be filed which refers to the undertaking as to damages.

[14] Fourth, the applicant must show:<sup>5</sup>

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<sup>2</sup> Employment Relations Act, s 160(4).

<sup>3</sup> New Zealand Bill of Rights Act 1990, s 21.

<sup>4</sup> Section 27.

<sup>5</sup> *A Labour Inspector v Taste of Egypt Ltd* [2016] NZEmpC 31, [2016] ERNZ 309 at [13]–[23], citing *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213 (EWCA).

- (a) a good arguable case on a cause of action;
- (b) there are assets of the respondent to which the order can apply;
- (c) there is a real risk of dissipation.

[15] On a without notice application an applicant is required to put before the Court any material that might weigh against the application, including in terms of evidence and submissions. They must identify any possible defences the respondent might have available.<sup>6</sup>

[16] Consideration must be given to the overall interests of justice.

[17] Once made, a freezing order restrains a party from removing assets located in or outside New Zealand, or disposing, dealing with or diminishing the value of those assets.

## **Analysis**

[18] The applicant has filed with the Court a draft statement of problem. The applicant is currently employed by the company and the causes of action against the respondent are squarely within the jurisdiction of the employment institutions.

[19] An undertaking has been filed in the appropriate form together with a supporting affidavit setting out the applicant's financial ability to meet an order for damages pursuant to the undertaking. A draft order has also been filed. The orders sought extend beyond the assets of the respondent, to the respondent's spouse and a business that is purportedly operated by the respondent's spouse as a sole trader (the business).

[20] The draft statement of problem seeks damages in respect of alleged breaches by the respondent of their employment agreement and penalties for breach of good faith.

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<sup>6</sup> High Court Rules, rr 7.23(2)(b) and 7.23(3); and see the discussion in *Green Way Ltd v Mutual Construction Ltd* [2021] NZHC 1704.

*Good arguable case?*

[21] It is alleged that the respondent breached their terms and conditions of employment, including express terms of their employment agreement related to conduct and conflicts of interest; the implied duty of fidelity and loyalty; and the statutory duty of good faith. The draft statement of problem pleads those alleged breaches as follows:

- (a) initiating a supplier application for their spouse, operating as a sole trader ([1.1.1]);
- (b) failing to declare that they had a conflict of interest in terms of the business ([1.1.2]);
- (c) over a period of more than three years, approving false invoices from the business for payment by the applicant (invoices by the business were for goods and services which were not delivered or undertaken) ([1.1.3]);
- (d) gaining an unlawful financial benefit by paying the false invoices into a bank account likely to be owned or controlled by the respondent ([1.1.4]);
- (e) misappropriating goods purchased by the applicant from other suppliers ([1.2.1]);
- (f) purchasing goods for personal use using the applicant's retail accounts without authorisation ([1.2.2]).

[22] The respondent has worked for the company for over 20 years. In early February 2022 it is said that the respondent completed a new supplier form, to register a new supplier for the company. The supplier was the business, and the respondent's spouse was recorded on the form as director of the business. The same name appeared on the respondent's employee file as the respondent's partner and emergency contact. The address for the business was recorded on the form as the same address as the respondent.

[23] There is no evidence before the Court that the respondent declared to the applicant that there was a conflict of interest in the business providing goods and services to the company.

[24] The documentation that is before the Court suggests that from 22 February 2022 and 25 June 2025, the business issued, and the company paid, a total of 98 invoices for a range of products and services. The total amount paid on the invoices was around \$737,055. Each of the invoices was signed off by the respondent.

[25] The company says that some of the unit prices were excessive and not within the bounds of what might be considered reasonable for the products and services identified, and the invoices lacked detail.

[26] It is further said that the standard process for submitting invoices were not followed. An investigation of CCTV footage suggests that some deliveries which had been invoiced for by the business, were in fact provided by other suppliers. A number of other concerns about the integrity of the charging by the business were also raised in the course of the investigation.

[27] On 30 June 2025, the company sent an email to the respondent querying an invoice. The respondent's answer was regarded as "suspicious" and the issue was escalated to the general manager who asked for further inquiries to be made. Those inquiries concluded that it was likely that the respondent used the business to issue various invoices for goods and services that were never supplied. That supposition appears to have been based on two things. First that it was the respondent who signed off on the new supplier account and second that the respondent approved all invoices from the businesses (some of which exceeded their delegated authority). At the hearing counsel also referred to a concern that the business was effectively being operated as a sham, and that there was no record of any of the invoices it generated being received by the company through the usual channels. The evidence referred to appeared to be limited to a discussion of the usual process for supplier invoices and an awareness that although some invoices had been submitted in that way there was an "awareness" that the respondent had "sometimes been sending invoices directly to a staff member in the accounts payable team".

[28] On 5 July 2025 the company cancelled all of the business's services.

[29] At the hearing counsel updated the Court on a further development that had occurred, namely a meeting conducted with the respondent who was said to have admitted wrongdoing. I granted leave for an affidavit to be filed in respect of what was said at the meeting (which was recorded) and what the alleged admissions related to. The affidavit has now been filed.

[30] I accept that, on the basis of the untested affidavit evidence currently before the Court, the company has a good arguable case that the respondent has breached their employment agreement and may be liable for damages in respect of those breaches if established.

[31] The company's application extends beyond the respondent, to the business and the spouse. Effectively the company asserts that the respondent deliberately set up a sham business arrangement that they, rather than their spouse, operated for the purposes of fraudulent charges for goods and services.

[32] The evidential hurdle for establishing that the company was a sham, controlled by the respondent, will be high. There is an identifiable argument, largely based on circumstantial threads being drawn together. I do not need to decide whether the circumstantial threads join sufficiently strongly together in respect of a sham because of the conclusion I have reached about the risk of dissipation, which I deal with below. Suffice to note at this point that the respondent appears not to have been represented at the meeting at which the admissions relied on were made, and the allegations relating to a sham do not appear to have been substantively addressed. I note too that the company may have other avenues in respect of the spouse's business.

#### *Assets within jurisdiction*

[33] The company applicant has identified assets of the respondent to which an order could apply.

*A real risk of dissipation?*

[34] The company's initial evidence pinpointed four indicators of risk that it said sufficed. First, the respondent had been on annual leave from work on 11 August 2025, and took sick leave the following days, on which, according to the company's IT records, the respondent accessed the company's virtual private network from Hamilton. Second, on 11 August the respondent's work vehicle GPS showed that the vehicle had been driven to the airport and back to what is understood to be the respondent's residential address. Third, the respondent had told unidentified colleagues (not a deponent) on an unidentified date that they had family members in Australia and would go and live there if their employment came to an end. Fourth, it was thought that the respondent was looking for alternative work.

[35] Counsel further submitted that the respondent's admissions strengthened the application because they reflected a propensity to engage in dishonest conduct, heightening the risk of dissipation. Those submissions were expanded on in a memorandum filed with the further affidavit.

[36] Counsel pointed to *FAJ v GEK*, where it was said that in cases where fraud or other dishonest conduct has been committed, the threshold for establishing a risk of dissipation should not be great.<sup>7</sup> *Ninemia Maritime Corp* was also relied on as authority for the proposition that previous conduct may demonstrate that a person's probity is not to be relied on.<sup>8</sup>

[37] One of the difficulties I perceived with the argument advanced on behalf of the respondent is that while it appears, based on the recorded admissions, that the respondent has engaged in some dishonest conduct relating to this matter, the extent of that conduct remains uncertain, reflecting (in large part) the way in which the meeting appears to have been conducted. And, as observed in *LAF v MEC*, fraudulent conduct may be relevant to the assessment, but is not the end point.<sup>9</sup>

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<sup>7</sup> *FAJ v GEK* [2025] NZEmpC 45 at [33].

<sup>8</sup> *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG* [1984] 1 All ER 398 (QB) at 406 and 407.

<sup>9</sup> *LAF v MEC* [2025] NZEmpC 23 at [20].

[38] It was also submitted that cases where the respondent has substantial physical assets should be differentiated from those without, because fluid assets are at a greater risk of immediate and more discrete dissipation.<sup>10</sup> On the evidence currently before the Court it appears that the respondent has few physical assets. It is true that cash assets cannot be monitored for dissipation in the same way that physical assets can, and I accept that can cause difficulties in establishing an evidential basis to support a claim of risk of dissipation. Nevertheless, and as the High Court stated in *Bank of New Zealand v Hawkins*:<sup>11</sup>

... a mere assertion of belief that the defendant will dissipate the assets is insufficient and that there must be solid grounds given justifying that belief ... it must be reserved for those cases where the plaintiff can demonstrate a real risk that the defendant will dissipate or dispose of his assets so as to render himself “judgment proof”.

[39] Judge Smith reiterated the point in *Kang v Saena Co Ltd*:<sup>12</sup>

... Mere suspicion is not enough. An assertion of a belief that a respondent will dissipate its assets unsupported by *solid grounds* justifying that belief is insufficient.

[40] The application was declined in *Kang*, with the Judge observing that the application for freezing and ancillary orders involved assumptions about risk without adequate support.

[41] Despite the lack of physical assets, the circumstances of this case can be contrasted to other cases where the Court has found a real risk of dissipation. In *MNO* the Court granted a freezing order where there appears to have been evidence before the Court that the respondent was planning to move to another jurisdiction.<sup>13</sup> I would not place the evidence in this case (a comment to an unidentified colleague, taking sick leave and a trip to Hamilton) into the same category.<sup>14</sup>

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<sup>10</sup> Relying on *A v B* [2021] NZEmpC 118 at [39]; and *BD v FG* [2022] NZEmpC 94 at [11] and [12].

<sup>11</sup> *Bank of New Zealand v Hawkins* (1989) 1 PRNZ 451 at 454.

<sup>12</sup> *Kang v Saena Co Ltd* [2022] NZEmpC 36 at [43] (emphasis added).

<sup>13</sup> *MNO v PQR* [2023] NZEmpC 109 at [26].

<sup>14</sup> See too *LAF v MEC*, above n 9, at [23], where it was pointed out that something more than a connection to another country is required to support a concern about flight risk or dissipation out of jurisdiction.

[42] It is also, in my view, relevant that the respondent has likely been aware of the applicant's concerns for some time. The applicant accepts this point, referring to events on 30 June 2025. That being so, it might reasonably be inferred that if there was going to be a dissipation it would have already occurred.

[43] Finally, I appreciate the company's concern that the respondent may not be in a position to fund any determination ultimately made against the respondent in the Authority. However, and as Judge Holden has observed:<sup>15</sup>

[17] Freezing orders are not designed as a tool to enable a claimant to secure a fund against future success. Nor are they intended to give the claimant an advantage or preference over other creditors of the respondent.

[44] The High Court has also previously made the point that the risk that there would be no fund to satisfy a judgment is a position that a number of plaintiffs potentially face, but it is not a basis for the grant of a freezing order.<sup>16</sup>

[45] And in *Washbourn v City Apartments Ltd*, the Court observed that, without proper evidence of propensity on the defendant's part to dissipate money or arrange her affairs so as to defeat any judgment, it would be wrong to grant an injunction to restrain persons from going about their ordinary affairs and business in an ordinary way.<sup>17</sup> Notably, that was despite an admission by the respondent about conduct relevant to the claim.<sup>18</sup> The observation is particularly apposite in this case and underscores the serious (draconian) impact of freezing orders on the rights of those impacted by them, which the Court is alive to when assessing whether such an order ought to be made.<sup>19</sup>

[46] I accept that there are factors that might otherwise weigh in favour of the application, but on balance I am not satisfied that the applicant has established that a freezing order is necessary in the particular circumstances and at this particular time, and nor am I satisfied (having regard to the balance of convenience or the overall

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<sup>15</sup> *Whare Manaaki Inc v Anderson* [2024] NZEmpC 209 (footnotes omitted).

<sup>16</sup> *Ilion Technology Corp v Johannink* HC Auckland CIV 2004-404-003358, 17 August 2004 at [39].

<sup>17</sup> *Washbourn v City Apartments Ltd* HC Wellington CP 46/00, 28 November 2001 at [40].

<sup>18</sup> At [9].

<sup>19</sup> *Anderson*, above n 15, at [16], citing *Saomai v Prestige Demolition Services Ltd* [2016] NZEmpC 18 at [33]; and *Kang v Saena Co Ltd*, above n 12, at [48].

interests of justice) that an order ought to be made in the applicant's favour. The applicant says that the Police will likely become involved, and that employment proceedings will be filed. Both provide avenues for access to documentation and records, including against non-parties. It is necessary to bear in mind the draconian nature of freezing orders, and ensure that they do not become a convenient avenue for short cutting other processes.

[47] The application was made without notice to the respondent. Counsel for the applicant is to provide this judgment to them immediately. Unless otherwise ordered by the Court, it may be published seven working days following today's date.

### **Conclusion**

[48] I do not consider it appropriate to make the orders sought and decline to do so.

[49] There is no order as to costs.

Christina Inglis  
Chief Judge

Judgment signed at 4.50 pm on 18 August 2025