

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

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

**[2025] NZEmpC 220  
EMPC 148/2025**

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

AND IN THE MATTER OF    an application to vary or discharge orders

BETWEEN                    A LABOUR INSPECTOR OF THE  
MINISTRY OF BUSINESS, INNOVATION  
AND EMPLOYMENT  
Applicant

AND                            THOMAS DAO  
First Respondent

AND                            VIET HUNG NGUYEN  
Second Respondent

AND                            DUONG ALEX NGUYEN  
Third Respondent

Hearing:                    9 October 2025  
(Heard at Auckland)

Appearances:            AJ Gordon, counsel for applicant  
L Yang, counsel for respondents  
D Vizor, counsel for ANZ Bank New Zealand Ltd

Judgment:                10 October 2025

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**JUDGMENT (NO 9) OF JUDGE KATHRYN BECK  
(Application to vary or discharge orders)**

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[1] This proceeding involves freezing and ancillary orders that were made on 4 April 2025, with reasons given on 9 April 2025.<sup>1</sup> The proceeding has come before the Court several times since then.

[2] A review hearing took place yesterday, 9 October 2025.

[3] The Labour Inspector seeks the continuation of the existing freezing and ancillary orders. She raises concerns about three matters:

- (a) the respondents' lack of compliance with the ancillary orders;
- (b) the respondents' request for the release of further funds for legal fees (\$40,000), which will further dissipate the assets; and
- (c) the bank statements do not show any income or shareholder drawings, appearing inconsistent with the respondents' earlier statements of financial position; additional accounts intended for receiving income (for example, rent, franchise fees) also show reduced deposits.

[4] The respondents state that they do not oppose the continuation of the freezing orders. They also consent to the making of ancillary orders, allowing the banks to provide bank statements for all frozen accounts directly to the Labour Inspector until the orders are discharged.

[5] In relation to the concerns raised about income, the respondent say that:

- (a) the April 2025 affidavits reflected historical 52-week income preceding that date;
- (b) their income is derived from businesses associated with the current proceedings;

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<sup>1</sup> *A Labour Inspector of the Ministry of Business Innovation and Employment v Dao* [2025] NZEmpC 73.

- (c) these proceedings have materially impacted business operations and profitability;
- (d) the continuing economic downturn has exacerbated business performance; and
- (e) available business funds are being retained for essential operational expenses, all of which are visible to the applicant through the account monitoring.

[6] In relation to the concerns raised about legal fees, the respondents seek the release of \$40,000 for ongoing legal expenses. This includes the preparation of the upcoming two-day judicial settlement conference and the filing of affidavits and other material. This request is made pursuant to r 32.6(3) of the High Court Rules 2016, which provides that freezing orders must not prevent respondents from dealing with assets for the purpose of paying legal fees.

[7] They submit that:

- (a) the complex nature of these proceedings requires continued and ongoing representation;
- (b) the denial of funds while maintaining the orders creates an inequitable impediment to justice;
- (c) where a significant number of the respondents' assets are currently frozen, the fundamental right to legal representation must prevail; and
- (d) in these circumstances, they are entitled to the release of funds as requested.

[8] I have sympathy for the Labour Inspector's concern in relation to the absence of income for the respondents and the apparent change in deposit patterns over the frozen accounts. However, the High Court Rules are clear that the freezing order must not prevent the respondents from dealing with the assets covered for the purpose of

paying legal fees.<sup>2</sup> The respondents are currently preparing affidavits to confirm their updated financial situation. Counsel for the respondents proposes that the Court wait until these are received before ordering the release of funds for legal expenses. This is a sensible proposal and is dealt with in the orders below.

[9] A further issue has also arisen in relation to a mortgage with ANZ Bank New Zealand Ltd (ANZ) which now has significant arrears due to the freezing orders preventing the regular mortgage payments being made.<sup>3</sup> Mr Vizer, senior counsel for ANZ, appeared at the hearing, seeking that the orders be amended to allow ANZ to apply funds from a frozen account to the ANZ mortgage arrears and that future mortgage payments be made from the account. The amendment was sought on the basis that the mortgage payments amounted to ordinary living expenses.<sup>4</sup>

[10] The Labour Inspector is understandably concerned that the release of funds for this purpose further reduces the frozen amounts. Ms Gordon, counsel for the Labour Inspector, reiterated the concern that living expenses should be able to be met from the account created for that purpose. She says further that the insufficient income and inability to meet expenses has not been sufficiently explained. The proposed affidavits from the respondents may shed some light on this situation.

[11] I agree that mortgage payments are ordinary living expenses. Further, they are necessary to maintain the assets that are currently frozen. I consider that it is appropriate to amend the orders as requested to allow the mortgage payments to be made, provided they do not put the account into overdraft.

[12] It is not appropriate that the orders continue indefinitely. Accordingly, a review hearing date is necessary.

[13] The parties are attending a judicial settlement conference on 26 and 27 November 2025 in relation to the substantive matter. The review should take place

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<sup>2</sup> High Court Rules, r 32.6(3).

<sup>3</sup> It was apparent that some mortgage payments had been made while the orders were in place but most were reversed.

<sup>4</sup> High Court Rules, r 32.6(3)(a).

after that conference. If any issues arise in the meantime, the parties can apply to have the matter brought back before the Court.

[14] The review hearing will be scheduled for 4 December 2025.

## **Outcome**

[15] The current freezing and ancillary orders will continue until 5 pm on Friday 5 December 2025 subject to the changes below.

[16] The following further ancillary order is made in addition to those that have already been made:

- (a) Commencing 10 October 2025, the banks covered by this freezing order are to provide the applicant with bank statements for all accounts covered by the orders.

[17] The respondents will no longer be required to provide the bank statements and the orders should be amended accordingly.

[18] ANZ is able to take mortgage payments, including arrears to date, directly from bank account number 06-XXXX-XXXXXXXX-00 provided it does not put the account into overdraft. It will provide a reconciliation of the amounts taken to the Labour Inspector and the respondents.

[19] Once the respondents' affidavits updating their financial position have been filed and served, if the applicant continues to oppose the release of funds for the purposes of legal fees:

- (a) it will file a memorandum in support of its opposition within two days of receipt of the affidavits;
- (b) the respondents will file any memorandum in response within two days of receipt of the applicant's memorandum;

(c) the Court will make a decision on the papers.

[20] A review hearing will be held, if necessary, at 9.30 am on Thursday 4 December 2025. The following timetable applies for that hearing:

- (a) The applicant is to file a memorandum and any other relevant documents by 4 pm on Friday 28 November 2025.
- (b) The respondents are to file a memorandum and any other relevant documents by 4 pm on Tuesday 2 December 2025.
- (c) If ANZ wishes to be heard, then it should file a memorandum and any other relevant documents by 4 pm on Tuesday 2 December 2025.

[21] This judgment and the orders which I now make are to be served immediately on the relevant banks.

[22] Costs are reserved.

Kathryn Beck  
Judge

Judgment signed at 4 pm on 10 October 2025