



non-publication orders. These orders were to be reviewed at a hearing on 21 February 2025 and were to expire on 24 February, unless further orders were made by the Court.

[2] On 21 February 2025 I extended the freezing and interim non-publication orders by agreement of the parties.<sup>2</sup> The orders were due to expire at 9.30 am on Thursday 27 February 2025, unless further orders were made by the Court.

[3] The applicant seeks for the freezing order to be extended whereas the respondent seeks for the orders to be lifted. At the hearing on 26 February 2025, I indicated that I would not extend the freezing order. This judgment provides the reasoning for that decision.

[4] The freezing order made by the Court on 7 February 2025 covered assets of the respondent up to a value of \$72,000. That sum arose from two claims which the applicant indicated that it intended to pursue against the respondent:

- (a) A claim for about \$62,000 in substantive damages. This claim arises from allegations that the respondent obtained that amount of money from the applicant through manipulation and fabrication of invoices.
- (b) A claim for \$10,000 in special damages. This claim arises from the legal costs prior to filing proceedings, computer forensic costs and executive time required for the applicant to be able to bring its claim in this Court.

[5] In response to being served with the freezing order, the respondent realised most of his KiwiSaver account and paid the applicant \$62,000 to cover the substantive damages the applicant had claimed. The special damages claimed by the applicant remains unpaid.

[6] Upon receipt of the above funds, the applicant filed an application to vary the freezing order. It seeks for the quantum of the freezing order to be amended from \$72,000 down to \$18,555. The applicant also sought for the order to be extended until this amount was paid by the respondent or for a further three months. The proposed

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<sup>2</sup> *TradeZone Industrial Group Ltd v Stanton* [2025] NZEmpC 27.

amount to be covered by the freezing order took into account that the respondent has paid the defendant its substantive claim; however, the applicant sought to increase the special damages it was seeking from the respondent to \$18,555. The claimed special damages relate to legal fees, computer forensic costs and executive time.

[7] Prior to the hearing on 26 February 2025, the applicant had partially complied with the ancillary orders. He had disclosed his KiwiSaver account balance (less the deductions made from that account to pay the applicant the special damages). He had also disclosed the balances for three bank accounts, which have a value of just over \$9,000. However, the respondent has failed to disclose the details of two credit card facilities. He has also not provided the applicant with bank statements dating back 24 months from 7 February 2025 for all bank accounts, as required by the ancillary orders. For the sake of completeness, I note that during the hearing on 26 February 2025, the respondent advised that that one credit card facility was closed and the other had a negative balance.<sup>3</sup>

[8] After hearing from the parties, I am satisfied that there is a good arguable case for the special damages claim brought by the applicant, namely that the claims that the applicant intends to bring in the Employment Relations Authority are capable of tenable argument and are supported by sufficient evidence.

[9] However, from the information provided to the Court, I am not satisfied that the respondent has sufficient assets within the jurisdiction to satisfy the applicant's claims for special damages. As traversed above, the respondent has already accessed his KiwiSaver fund to repay the applicant's claim for substantive damages in full; however, that was of his own volition, and the respondent is not able to claim against the remaining sum. Even if the applicant was successful and bankrupted the respondent, his KiwiSaver account would be ring-fenced from any actions of the official assignee.<sup>4</sup>

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<sup>3</sup> Although not strictly legal evidence, the respondent's statements may be considered by the Court, see s 189(2) of the Employment Relations Act 2000.

<sup>4</sup> *Trustees Executors Ltd v Official Assignee* [2015] NZCA 118, [2015] 3 NZLR 224; see also *Commissioner of Police v Harrison* [2021] NZCA 540, [2022] 2 NZLR 339.

[10] The respondent has limited other assets. As noted above, his bank balances are low. He is also unemployed at present. The respondent's wife is the only income earner in his family, with her income being relatively modest and effectively covering not much more than the household rent. This income is paid into the joint account, which is affected by the freezing and ancillary orders made by the Court. The respondent has not brought a claim against the respondent's wife, and the Court acknowledges that the freezing order adversely affects her. In these circumstances once the respondent has met his living expenses, there is little left to freeze, which also indicates that there is in fact little that can be dissipated.

[11] For completeness, although the respondent has not fully complied with the ancillary orders, I note that he is not legally represented and appears to have made efforts to comply with those orders. Therefore, on the balance of probabilities, I do not consider it likely that he has further undisclosed assets of any meaningful value. That indicates to me that the ancillary orders are no longer necessary.

[12] I also consider the risk of dissipation of the respondent's assets to be low. The respondent has admitted his conduct, has realised assets to pay the applicant the substantive claim in full and has handed himself into the Police. The respondent should be given credit for this. Mr Langton submitted that the respondent has dissipated assets with some of the recent payments made out of his accounts; however, paying down validly owed debts does not constitute dissipation of assets.<sup>5</sup> Further, the respondent is self-represented in an effort not to incur legal fees, which he was entitled to incur under the terms of the freezing order. This suggests that he is not seeking to dissipate his assets.

[13] Considering the balance of convenience, I consider that the respondent has realised what assets he has available to pay the applicant its substantive claim in full and that he has very little left. The fact that the only issue outstanding for the purposes of the freezing order relates to costs or special damages arising from the applicant's

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<sup>5</sup> *Twentieth Century Fox Film Corp v Dotcom* [2016] NZHC 1948; and *Whare Manaaki Inc t/a Porirua Women's Refuge v Anderson* [2024] NZEmpC 209 at [17].

claims indicates to me that the freezing order has served its purpose. A freezing order is a draconian measure and should not be in place longer than is reasonably necessary.<sup>6</sup>

[14] Therefore, I find that the freezing order and ancillary orders have served their purpose and are not extended.

[15] The parties may serve this judgment on the relevant banks and KiwiSaver provider as necessary.

[16] Costs are reserved. If they are unable to be agreed, the applicant may file a memorandum within 14 days of the date of this judgment, with the respondent having 14 days within which to respond. The applicant will then have a further 7 days to reply.

[17] The interim-non-publication orders made in the judgment of 7 February 2025, and extended in the judgment of 21 February 2025, continue until further order of the Court.

M S King  
Judge

Judgment signed at 11.30 am on 27 February 2025

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<sup>6</sup> See High Court Rules 2016, r 32.8(2).