

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

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

**[2025] NZEmpC 82
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 THOM DAO
First Respondent

AND VIET HUNG NGUYEN
Second Respondent

AND DUONG ALEX NGUYEN
Third Respondent

Hearing: 16 and 17 April 2025 (by telephone)

Appearances: M Denyer, counsel for applicant
Kenneth Sun and L Yang, counsel for respondents

Judgment: 17 April 2025

**JUDGMENT (NO 2) OF JUDGE KATHRYN BECK
(Application to vary or discharge orders)**

Introduction

[1] This judgment resolves an opposed application to vary a freezing order.

[2] By minute dated 4 April 2025, I issued a freezing order and ancillary orders on a without notice basis, with reasons to follow.

[3] On 9 April 2025, I issued a judgment setting out those reasons.¹ The background to the situation is set out at [4]–[13] of that judgment. Accordingly, I do not repeat it here.

[4] On 15 April 2025, the respondents filed a memorandum seeking to vary the orders by:

- (a) releasing the bank accounts of various businesses so that they can continue the ordinary course of their business;
- (b) releasing the H&K family trust bank account to enable the trust to pay its day-to-day expenses;
- (c) authorising payment of \$15,000 from the respondents' bank account to a new and separate (unfrozen) bank account to cover one month of living costs; and
- (d) authorising payment of \$50,000 to Capstone Law's trust account on retainer for anticipated estimated legal costs.

[5] At a directions conference held on 15 April 2025, the parties were directed to confer about the possibility of the freezing and ancillary orders being varied by consent. That was not possible, and on 16 April 2025, the respondents sought that their application be dealt with urgently.

[6] A telephone hearing was held on 17 April 2025 during which the issues were discussed. Some level of agreement was able to be reached in relation to the release of funds for the purposes of living and legal expenses, and the release of some business bank accounts from the freezing orders.

¹ *A Labour Inspector of the Ministry of Business, Innovation and Employment* [2025] NZEmpC 73.

[7] The purpose of freezing orders is to prevent the dissipation or diminution of assets. It is not to operate as a penalty in relation to as yet unproven claims. Nor should they unreasonably impinge on the rights of third parties.

[8] As is normally the case, orders were made allowing the release of funds to meet day-to-day living and business expenses, as well as legal expenses. However, there are logistical difficulties, particularly leading into a holiday weekend with the banking system's ability to make such payments in a timely way. This is of particular concern given that the respondents need to pay wages from many of the business accounts.

[9] The respondents say the variations sought are in response to those logistical difficulties.

[10] The Labour Inspector said that had she been provided with an appropriate level of detail as to the basis for proposed payments, along with details of the balances in the respective accounts, then she may have been able to take steps to action them. She said no such information had been provided or request made. Further, she said that the respondents had not yet provided information in relation to their assets and liabilities, and that it was not possible or appropriate to consent to variations as sought by them in relation to the business bank accounts in the absence of that full picture.

[11] During the course of the hearing Mr Sun, counsel for the respondents, was able to provide information in relation to their financial position based on the draft statements of financial position available to him.² This was helpful to provide assurance to the Labour Inspector that even with the release of some funds and business bank accounts, there were sufficient assets available to meet any judgment in the event of her being successful in her claims.

[12] Mr Sun submitted that the equity in three properties owned by the first and second respondents, through their family trust, amounted to more than enough security for any claims made against them in relation to both arrears and penalties.³ Mr Denyer

² The draft financial statements have been provided to the Court on the basis that sworn versions will be filed as soon as practicable.

³ Approximately \$205,000 is sought by way of arrears and approximately \$200,000 is sought from each respondent in penalties.

appropriately accepted that the penalties sought were a maximum figure but submitted that any security should still be in the region of \$500,000 to \$600,000.

[13] I deal with each of the variations sought in turn.

Business bank accounts

[14] Duong Nguyen provided an affidavit to the Court setting out the impact of the freezing orders to date.

[15] He advised that the current orders have resulted in the bank accounts of the following companies being frozen:

- (a) B & R Food Supply Ltd;
- (b) B & R Franchise Ltd;
- (c) Deluxenail05 Ltd;
- (d) HS69 Investment Ltd;
- (e) TH89 Ltd;
- (f) BL69 Ltd;
- (g) Vietflames Ltd;
- (h) DL89 Ltd;
- (i) PH89 Ltd;
- (j) Robert89 Ltd; and
- (k) HK89 Ltd.

[16] These companies have a mix of shareholding which, for the most part, includes some or all of the respondents as well as third parties. However, the shareholders of BL69 and DL89 are third parties and do not include the respondents.

[17] The Labour Inspector acknowledges that the order currently applies to companies that are not parties to these proceedings, and therefore to directors or shareholders of those companies who are not parties to these proceedings.

[18] Whatever the actions of the parties to date, there is a real issue in relation to ensuring that the businesses are able to meet their ongoing obligations – in particular, to pay wages to employees.⁴ Accordingly, a solution is necessary.

[19] Subject to the statements of assets and liabilities which were to be filed today being consistent with the provisional information provided through counsel, it was agreed that the freezing orders could be lifted in relation to the bank accounts of 10 of the companies set out in [15] above, being those in (a)–(j) and as detailed in the respondents' memorandum dated 16 April 2025.

[20] Such bank accounts will be released subject to the following conditions:

- (a) in relation to BL69 Ltd and DL89 Ltd,⁵ the respondents must provide full copies of bank statements in relation to each bank account to the Labour Inspector on a weekly basis so that any activities within the accounts are fully transparent;
- (b) leave is reserved to both parties to apply for any necessary directions on short notice; and
- (c) the freezing orders will continue to apply to all other assets of the businesses.

⁴ The Court was provided with a schedule of wage payments due for two of the businesses affected.

⁵ These are the companies which now operate the businesses sold by the respondents in circumstances which the Labour Inspector asserts are of concern.

Family trust bank account

[21] Mortgage repayments can be facilitated without removing this account from the freezing order. There is sufficient time to undertake any process required by the bank to ensure that obligations are met.

[22] The application to vary the order in relation to the H&K Trust is declined.

Living costs and legal expenses

[23] It was agreed that a separate bank account should be set up in the name of the three respondents for the purposes of receiving and paying ordinary living and business expenses. The respondents are required to provide undertakings that the unfrozen account will only be used for the purposes of receiving and paying living and business expenses and will not be used to redirect funds from frozen accounts. Those undertakings have since been filed in the Court.

[24] As such undertakings were filed, it was agreed that the amount of \$15,000 could be released from bank account number 03-XXXX-XXXXXXXX-026 in the name of Hung Viet Nguyen to be paid into the new bank account for the benefit of all three respondents.

[25] It was also agreed that the sum of \$50,000 could be released from the same bank account and paid directly into the trust account of Capstone Law to operate as a retainer on account for future legal expenses. Such funds are not to be used for any other purposes.

General

[26] All other aspects of the freezing orders already made will continue.

[27] As already ordered in my first judgment, such orders will lapse at 4 pm on Tuesday, 29 April 2025 unless extended by order of the Court.

[28] A review hearing will take place at 10 am on Monday, 28 April 2025.

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

[30] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 7.30 pm on 17 April 2025