



Employment Court of New Zealand

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Auckland International Airport Limited v APC [2016] NZEmpC 12 (18 February 2016)

Last Updated: 1 March 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 12](#)

EMPC 39/2016

IN THE MATTER OF an application for a freezing order

BETWEEN AUCKLAND INTERNATIONAL
AIRPORT LIMITED
Applicant

AND APC
First respondent

AND ASB BANK LIMITED Second
Respondent

AND WESTPAC NEW ZEALAND LIMITED
Third Respondent

Hearing: 18 February 2016
(Heard at Auckland)

Appearances: K Dunn and S Fitzgerald, counsel for
applicant

Judgment: 18 February 2016

ORAL JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The first respondent has not appeared at this scheduled first call of the case following the making of freezing orders affecting her on 15 February 2016.

[2] The orders that follow on the applicant's request are to lie in court until the applicant proves service on the first respondent by affidavit later today.

[3] Subject to proof of service as just outlined, I am satisfied that the proceedings have been brought to the first respondent's attention, although there is nothing in the evidence, or that counsel are able to inform the Court, which might explain why the first respondent has not come to court today, either herself or represented.

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[4] There are a number of procedural and substantive changes which I am satisfied should be made in the interests of justice. The procedural changes include the following.

[5] Until now, there has been an order prohibiting publication of any information in relation to this file. The case has had some limited publicity over the last couple of days, including identifying the applicant and the very broad nature of the employment relationship

problem between the applicant and the first respondent. I am satisfied that the interests of justice are best served by allowing publication of the two judgments that the Court has issued so far,¹ and of this and subsequent judgments, on condition that the first respondent is not identified either by name or by the publication of any particulars that may lead to her identification. For these purposes, the first respondent will be identified by the three letters APC which bear no relation to her identity.

[6] The earlier judgments issued by the Court declined to reveal any particulars of the alleged fraud and I will continue to follow that practice in this and any subsequent judgments.

[7] The third order that I make on a procedural basis is to direct that the court file is not to be inspected by any person without the leave of a Judge after the parties have had an opportunity to be heard on any such application.

[8] The range of persons exempt from the publication prohibition orders made previously can now be extended to include the Serious Fraud Office, those orders having been amended earlier in the week to include the Police. That is because counsel advises me that the applicant's complaint to the Police may have been, or may be, referred to the Serious Fraud Office.

[9] The variations sought to the orders made previously by the Court will include the following. First, although the freezing orders have, until now, had a finite date, I

am satisfied that in all the particular circumstances of this case, the revised orders

1 *Auckland International Airport v APC* [2015] NZEmpC 8; *Auckland International Airport v APC*

[2015] NZEmpC 9.

that the Court will make may continue to apply until further order of the Court. That means that unless modified or set aside, the following orders will be of indefinite duration.

[10] The amount covered by the freezing orders is to be increased from the previous sum of approximately \$503,000 to \$1,840,000. There is respectable evidence that investigations have discovered that the amounts at issue are larger than first thought and probably exceed that figure of \$1.84m.

[11] Next, the applicant proposes, and I agree, that the first respondent's recourse to her bank accounts can be changed. She will be entitled to withdraw up to \$500 per week for ordinary and usual living expenses and if more is sought, the first respondent may obtain the agreement of the applicant's solicitors in writing to do so or, in default of that, she may apply to the Court.

[12] Separated from those fixed arrangements for ordinary and usual living expenses are any reasonable legal fees in relation to this proceeding which the first respondent may seek to incur. The arrangement for those will be that any legal adviser for the first respondent may approach the applicant's solicitors to seek a specific sum and to persuade them of the reasonableness of that. In default of any agreement, leave is reserved to apply to the Court to determine that question.

[13] Next, one of the bank accounts subject to the original orders, that with the last two numbers 14, is now expressly removed from their coverage. The applicant accepts that it is now the bank account solely of a relation and should not be affected by the orders.

[14] Next, the applicant seeks an order that the first respondent disclose information about her assets. That is, in appropriate cases, a lawful supplementary aspect of freezing orders and I consider in this case that the applicant's claims are warranted. Accordingly, the first respondent must disclose the full nature, extent and value of her assets, whether in New Zealand or elsewhere, and must identify with full particularity the nature of those assets, their whereabouts, whether they are held in her name or jointly with any other person or nominee or otherwise. In particular,

the first respondent will need to provide particulars of all bank or other money accounts in which she is or has been interested, whether those are current or closed in New Zealand or off-shore.

[15] In respect of closed accounts, those include only accounts which were operative after the commencement of the first respondent's employment with the applicant.

[16] The first respondent must disclose any term deposits which she has including amounts held on them and, in particular, the details of an account from which payments appear to have been made into the first respondent's Westpac bank account identified by the last two numbers 92, including the identity of the institution or institutions holding those term deposits or funds.

[17] Next, the first respondent must disclose all assets that she has to a value exceeding \$1,000 or, if part of a larger set of assets making up a total value exceeding \$1,000, together with details of their whereabouts; in particular, whether they are held in any storage facilities and, if so, the names and locations of those storage facilities.

[18] Finally in this regard, the first respondent is required to provide to the Court and to the applicant the names and contact details of any solicitors, accountants or other like agents or persons who may have some direct or indirect control of the administration of her affairs. Such disclosure is required to be made by affidavit sworn by the first respondent herself and which should be filed and served on the

14th day following service of the amended orders upon her.

[19] Finally, there is a direction that the second respondent, ASB Bank Limited, is to provide to the applicant's solicitors, within five working days, bank statements for bank account 12-3011-... (including all suffixes) for the period 1 January 2008 to 31

January 2013.

[20] In view of her absence from court or other participation in the proceeding, a copy of this judgment and the amended freezing orders, which the applicant may

now have sealed, are to be served on the first respondent personally and proof of service of that will be required by the Court in the continued absence of participation in the proceeding by the first respondent.

[21] Costs are reserved.

GL Colgan
Chief Judge

Judgment delivered orally at 10.43 am on Thursday 18 February 2016

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