

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

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

**[2025] NZEmpC 62
EMPC 51/2025**

IN THE MATTER OF an application for a freezing order and
 ancillary orders

AND IN THE MATTER OF an application for non-publication orders

BETWEEN TRADEZONE INDUSTRIAL GROUP LTD
 Applicant

AND MICHAEL STANTON
 Respondent

Hearing: On the papers

Appearances: S Langton and B Colgan, counsel for applicant
 M Stanton, respondent in person

Judgment: 1 April 2025

**JUDGMENT (NO 4) OF JUDGE M S KING
(Application for non-publication orders)**

[1] Michael Stanton seeks non-publication orders over his name and any identifying details. TradeZone Industrial Group Ltd (TradeZone) opposes the orders sought.

[2] In 2022 Mr Stanton commenced employment with TradeZone as its general manager, resigning from his employment in late 2024. Shortly after Mr Stanton had finished employment, TradeZone found irregularities involving supplier invoices. Following an investigation into the irregularities, TradeZone alleged that between August 2023 and December 2024 Mr Stanton had fraudulently manipulated and fabricated supplier invoices for his own benefit to the value of \$62,021.25.

[3] On 7 February 2025 TradeZone was granted an ex parte freezing order and ancillary orders.¹ The freezing order was to the value of \$72,000 and applied to specific assets. The ancillary orders required him to provide TradeZone with details of his financial position.² An interim non-publication order was made to give Mr Stanton an opportunity to address the allegations and decide whether to apply for a non-publication order to preserve his identity.³

[4] The sum of \$72,000 arose from TradeZone claiming approximately \$62,000 in substantive damages relating to the fraud and \$10,000 in special damages. The special damages claim arose from legal costs prior to proceedings being filed, computer forensic costs and executive time required for TradeZone to bring its claim.

[5] After being served with the proceedings Mr Stanton confessed to the allegations against him. He repaid the \$62,021.25 to TradeZone and partially complied with the ancillary orders. He also turned himself in to the Police.

[6] On 21 February 2025 the orders were extended by agreement of the parties until 27 February 2025, following which they were discharged.⁴ When discharging the orders, it was acknowledged that Mr Stanton had admitted his conduct, repaid TradeZone its substantive claim in full and handed himself in to the Police.⁵

[7] Mr Stanton applied for non-publication orders on the grounds that publication would adversely affect his privacy, his rehabilitation and reintegration into society, and his family, who he says will suffer undue hardship and emotional distress due to his offending. He relies on his taking accountability for his conduct, his proactive steps to rectify his mistakes and his commitment to make amends moving forward. In the circumstances he submits that there is a lack of public interest in this matter.

[8] TradeZone opposes the application for non-publication orders on the grounds that there is no evidence of specific adverse consequences that would justify a

¹ *TradeZone Industrial Group Ltd v Stanton* [2025] NZEmpC 15.

² At [52].

³ At [59].

⁴ *TradeZone Industrial Group Ltd v Stanton (No 2)* [2025] NZEmpC 27; and *TradeZone Industrial Group Ltd v Stanton (No 3)* [2025] NZEmpC 30.

⁵ *TradeZone Industrial Group Ltd v Stanton (No 3)*, above n 4, at [12].

departure from the principle of open justice. To the extent Mr Stanton has an interest in non-publication, it is submitted that his interests are outweighed by the interests of TradeZone and of third parties such as TradeZone's members' interest in open justice. Further, TradeZone submits it would be futile, and contrary to the Court's exercise of its equity and good conscience, for the Court to grant non-publication orders where there is a criminal proceeding on foot which will involve a public hearing.

[9] TradeZone submits that a criminal conviction is separate to the proceedings before the Employment Court. Any criminal conviction will be the result of Mr Stanton's own actions in committing fraud in the first place and then his self-reporting to the Police of his fraudulent conduct.

[10] TradeZone has provided evidence in support of its opposition to non-publication orders. It deposes that it is a management cooperative and nationwide distribution network made up of locally owned and operated stores throughout New Zealand. It has 28 shareholders (members), with each member owning one store or more. It has provided evidence of how it and its members' interests will be affected if a non-publication order is made. It says the interim non-publication order has already affected its ability to report to its members and provide assurances that it has taken steps to protect their interests.

[11] On 26 February 2025 the Court made orders by way of minute allowing TradeZone to disclose these proceedings to its members, and the orders confirm that TradeZone and its members may participate in any Police investigation. Despite these orders TradeZone maintains it has a legitimate interest in full publication. It says that its members have a strong sense of open justice. It is concerned that it cannot control its members and ensure they comply with the Court's orders. It has also raised concerns that if non-publication orders were made in this proceeding but not the criminal proceedings, this could confuse its members.

Approach to non-publication

[12] A full Court has recently considered the correct approach to non-publication in the Authority and the Employment Court in *MW v Spiga Ltd*.⁶ The majority held that open justice is of fundamental importance and may only be departed from to the extent necessary to serve the ends of justice.⁷ Ordinarily, the Court will only order non-publication where there is reason to believe that specific adverse consequences could reasonably be expected to occur that justify a departure from open justice.⁸ Two steps were outlined to assist in that analysis.

[13] The first step is an assessment of whether there is reason to believe that specific adverse consequences could reasonably be expected to occur. The necessary evaluation will focus on such evidence as has been submitted and/or is available. Inferences may be required by the Authority or the Court, but these must be reasonable inferences that may be taken from the evidence, based on the specific circumstances of the case, when considered in context.⁹

[14] The second step is a weighing exercise in which the Court must consider whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case.¹⁰ In conducting that weighing exercise, a number of factors may be relevant, including:¹¹

- (a) the circumstances of the case;
- (b) the interests of the person or entity applying for a non-publication order;
- (c) the interests of the other party or parties to the litigation;
- (d) the interests of any third party;

⁶ *MW v Spiga Ltd* [2024] NZEmpC 147, [2024] ERNZ 678.

⁷ At [87], relying on *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2]–[3] and [13].

⁸ *MW v Spiga Ltd*, above n 6, at [87]–[89].

⁹ At [88].

¹⁰ At [89].

¹¹ At [94].

- (e) the public interest, including the rights of media;
- (f) any further issues of equity and good conscience; and
- (g) tikanga and its principles, values, or concepts.

Analysis

[15] Having heard from the parties, and having considered the material before the Court, I am not satisfied that it is appropriate to order non-publication.

Specific adverse consequences

[16] In terms of the first step of *Spiga*, the Court must consider if there are any specific adverse consequences that could reasonably be expected to occur if Mr Stanton's name and identifying details were published.

[17] Mr Stanton has deposed that he has serious concerns that his family may suffer emotional distress if he is named in the proceedings. However, no evidence has been provided by his family to particularise the adverse consequences on them if non-publication was granted. There is no evidence before the Court that the emotional distress to Mr Stanton and his family would amount to anything more than embarrassment from being publicly associated with legal proceedings.

[18] Mr Stanton asserts in his evidence that publication will prevent him from seeking new employment. He has been unemployed since his employment with TradeZone ended. He has been applying for work and completing job applications which ask whether he has been convicted and consents to pre-employment screening. I accept that Mr Stanton may have difficulty in finding new employment, but his difficulty on that front will be caused by his fraudulent activity, and a non-publication order will not protect him from being required to answer truthfully any questions about whether he has any criminal convictions when filing job applications.

[19] I do not doubt that Mr Stanton genuinely holds the above concerns over the consequences of publication. However, these concerns and the evidence provided do

not necessarily satisfy me that specific adverse consequence will occur if the Court did not order continued non-publication.

The weighing exercise

[20] While I am not satisfied that specific adverse consequences have been made out on the evidence before me, I have nevertheless undertaken the second step of *Spiga*, which requires a weighing exercise that considers whether the adverse consequences identified justify a departure from the principle of open justice.

[21] The circumstances of the case weighed against the making of a non-publication order. At the relevant time, Mr Stanton held a senior position of trust within TradeZone, and his conduct was deliberate, serious, and sustained. He only admitted fault when he was caught. The principle of open justice is fundamental; transparency of court proceedings maintains public confidence in the administration of justice. Information about proceedings related to fraud and theft by an employee should be in the public domain. In these circumstances there is a public interest in justice being seen to be done.

[22] The interests of Mr Stanton and his family do not outweigh the interests of TradeZone, its members and open justice. Mr Stanton's concerns over embarrassment or emotional distress are not sufficient in and of themselves to justify non-publication.¹² TradeZone and its members, who are the victims of Mr Stanton's conduct, have a genuine interest in being able to communicate openly about these proceedings without risking breach of any non-publication order. Further, third parties, including Mr Stanton's future employers, also have a genuine interest in these proceedings being reported openly.

[23] Finally, the principles of equity and good conscience clearly go against the making of non-publication orders, particularly given the nature of Mr Stanton's conduct and the interests of third parties.

¹² *Erceg v Erceg*, above n 7, at [13].

[24] Therefore, I consider that the consequences identified by Mr Stanton do not justify a departure from the principle of open justice.

Conclusion

[25] The application for non-publication orders is declined.

[26] The interim non-publication order I granted over Mr Stanton's name and identifying details in my judgment of 7 February 2025, continues in force for a further period of 28 days from the date of this judgment or until further order of the Court, following which the interim order will lapse and there will be no restriction on publication.

[27] Costs are reserved. If the parties are unable to agree, they may file memoranda in regard to the costs arising from the non-publication application and the costs arising from the freezing order and application to vary the freezing order.

M S King
Judge

Judgment signed at 4.20 pm on 1 April 2025