

**ORDERS PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE PARTIES AND OF THE EVIDENCE FILED IN THESE PROCEEDINGS UNTIL FURTHER ORDER OF THE COURT – SEE [7] and [9]-[11]**

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

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

**[2025] NZEmpC 105  
EMPC 222/2025**

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

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

AND IN THE MATTER OF an application to effect service overseas

BETWEEN AZK LIMITED  
Applicant

AND JKL  
Respondent

Hearing: 23 May 2025 (by telephone)

Appearances: W Fotherby and K Dunn, counsel for applicant  
No appearance for the respondent

Judgment: 27 May 2025

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**JUDGMENT OF JUDGE J C HOLDEN  
(Application for freezing and ancillary orders; Application for interim non-publication orders; Application to effect service overseas)**

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[1] The applicant has applied without notice for freezing and ancillary orders against the respondent.

[2] Draft proposed orders have been filed, together with an undertaking as to damages confirming that the applicant undertakes to comply with any order for the payment of damages sustained by the respondent as a result of the freezing order.

[3] Based on the material before me, I am satisfied that it is appropriate to deal with the application on a without notice basis. The (untested) affidavit evidence supports the existence of a real risk that proceeding on notice would cause unnecessary delay and/or lead to the dissipation of assets.

### **Interim non-publication orders made**

[4] The applicant seeks an interim non-publication order over the names and any other details that would tend to identify the parties. Given the business operated by the applicant, the details would need to extend to the nature and/or location of its business.

[5] The applicant says that non-publication at this stage is appropriate for a number of reasons:

- (a) There is an ongoing police investigation that widespread publication of these matters may interfere with.
- (b) The applicant is alleging dishonest and fraudulent conduct against the respondent on a without notice basis. It acknowledges that those allegations may cause reputational damage to the respondent and that if there is publication before they have the opportunity to make such an application, the horse may have bolted on preserving their identity.
- (c) In respect of its own identity, it says it plans to take further steps to preserve its position in respect of other parties implicated in the alleged fraud. The investigations into the full extent of the fraud are also ongoing, and those investigations might identify other participants in the conspiracy. Publication of court judgments and associated media coverage may alert those third parties and other yet unidentified parties to the investigation.

[6] I agree that it is appropriate for an interim order to be made.

[7] There is, accordingly, an interim order prohibiting publication of the names and identifying details of the parties.

[8] The applicant also applies for an order prohibiting publication of the evidence in these proceedings. That too is appropriate given the ongoing investigations by the police and by the applicant.

[9] Therefore, there also is an interim order prohibiting publication of the evidence in these proceedings, except to the extent it is included in this judgment.

[10] These orders do not extend to preventing the applicant from identifying itself and the respondent to those entities and individuals named in the freezing and ancillary orders, so that the freezing and ancillary orders can be effected.

[11] These orders remain in force pending further order of the Court. They will be revisited when the application is heard on notice.

### **The Employment Court may make freezing orders**

[12] The Employment Court may make freezing and ancillary orders, and has the same powers in that regard as the High Court, as provided in the High Court Rules 2016.<sup>1</sup>

[13] In order for the Court to make freezing and ancillary orders, the applicant must satisfy four essential requirements:<sup>2</sup>

- (a) that it has a good arguable case;
- (b) that the respondent has assets within the jurisdiction;

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<sup>1</sup> High Court Rules 2016, rr 32.2 and 32.3; Employment Relations Act 2000, s 190(3).

<sup>2</sup> *A Labour Inspector v Taste of Egypt Ltd* [2016] NZEmpC 31, [2016] ERNZ 309 at [13]–[23], citing *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213 (EWCA); *Borsboom (Labour Inspector) v Preet PVT Ltd* [2016] NZEmpC 168 at [25]; and *A Labour Inspector of Ministry of Business Innovation and Employment v Jeet Holdings Ltd* [2019] NZEmpC 188 at [5].

- (c) that there is a real risk that assets will be dissipated or will be moved out of the jurisdiction; and
- (d) that the balance of convenience and the interests of justice require the grant of interim relief.

[14] There must be a proceeding within the jurisdiction of the Court or the Authority to which the application for freezing orders relates. If substantive proceedings to which the order can relate have not been able to be issued because of urgency, generally such proceedings will be required to be filed as soon as possible after the order is made.<sup>3</sup>

[15] The freezing order jurisdiction is flexible.<sup>4</sup> Nevertheless, a freezing order is draconian in the sense that it is an intrusion on the ability of the party whose assets have been frozen to freely deal with their property.<sup>5</sup> The Court must be wholly satisfied that the requirements at law have been carefully complied with.

### **The applicant says the evidence supports orders**

[16] Counsel for the applicant has set out the grounds upon which the application relies. The evidence filed by the applicant is very detailed. I am, however, conscious of the issues that have justified the non-publication orders, including that the respondent has not had the opportunity to respond to the allegations made against them. I note too that the respondent will be served with all the papers filed, so they will be fully apprised of the allegations and the basis for them. For those reasons, this judgment refers to the evidence only to the extent necessary for the purposes of the judgment.

[17] The respondent is a former employee of the applicant. Earlier this year, the applicant noted discrepancies in invoices the respondent had supplied for customer

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<sup>3</sup> “Employment Court of New Zealand Practice Directions” (1 September 2024) <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 8.

<sup>4</sup> *Shaw v Narain* [1992] 2 NZLR 544 (CA) at 548; and *Official Assignee v Scott* [2012] NZHC 2579 at [23].

<sup>5</sup> *Saomai v Prestige Demolition Services Ltd* [2016] NZEmpC 18 at [33]; and *Kang v Saena Co Ltd* [2022] NZEmpC 36 at [48].

reimbursements. The applicant commissioned an independent investigation into these and related invoices.

[18] On 30 January 2025, as part of its investigation, the applicant and its investigator met with the respondent, at which time the respondent signed a memorandum of understanding that allowed for a forensic copy to be taken of their phone, with an agreed process on how the applicant's information would be identified and distinguished from the respondent's personal information. The respondent was suspended from their employment with the applicant on that date.

[19] The respondent instructed counsel, who raised personal grievances for unjustifiable disadvantage, including alleging that the respondent had been pressured into signing the memorandum of understanding without legal advice.

[20] Further correspondence occurred between counsel throughout February and counsel for the respondent raised a number of procedural concerns in respect of the investigation.

[21] On 26 February 2025, the respondent resigned with immediate effect and declined to participate any further in the investigation. Shortly after this time they left the country and are now in China.

[22] The applicant says that the same day the respondent left the country, the police executed search warrants against their home and the homes of two other employees of the applicant.

[23] While the applicant's investigation is still ongoing, the investigators have now established that a number of invoices appear to have been falsified and suggest that the respondent has been involved in misappropriating funds for the direct benefit of customers of the applicant. The applicant says it can be inferred that the respondent also received benefits from such conduct.

[24] The value of the alleged fraud is very significant.

### **A draft statement of problem has been provided**

[25] The applicant has provided a draft statement of problem that it intends to file with the Employment Relations Authority. That draft statement of problem seeks:

- (a) a declaration that the respondent has breached their obligation of fidelity, as implied into their employment agreement;
- (b) general damages of at least \$262,000 to be further particularised in evidence following disclosure, to compensate the applicant for its losses as a result of the respondent's breaches of their employment agreement;
- (c) special damages to be further particularised in evidence following disclosure for the investigation costs and the loss of executive time and business interruption experienced by the applicant in investigating the respondent's conduct. The current estimate of all these costs is approximately \$1 million;
- (d) interest on the damages in (b) and (c) in accordance with the Money Claims Act 2016 and;
- (e) a penalty of \$10,000 for each of the respondent's breaches of the employment agreement, pursuant to s 134(1) of the Employment Relations Act 2000, with such breaches payable to the applicant pursuant to s 136 of the Employment Relations Act.

### **There is a good arguable case**

[26] As noted, matters are still under investigation. Nevertheless, on the material before me, I am satisfied that the applicant has a good arguable case that the respondent has acted in breach of the express and implied terms of their employment agreement, and has benefitted from doing so.

### **Possible defences have been identified**

[27] Properly, the applicant has identified possible defences that it considered may be available to the respondent. These include jurisdictional issues, and issues regarding the procedure followed by the applicant in its investigation. The applicant also identifies the possible defence that the respondent may allege that the applicant somehow authorised their behaviour and/or that the conduct was for the greater good of the applicant.

[28] None of the identified defences appear particularly strong at this stage.

### **There are assets within the jurisdiction**

[29] The requirement that there be assets within the jurisdiction is satisfied. The assets the applicant seeks to be frozen include property in New Zealand and New Zealand bank accounts and term deposits held in the respondent's name.

### **There is evidence of a risk of dissipation**

[30] As noted, the respondent has left New Zealand. Prior to them leaving, the evidence was that they sought advice from another former employee of the applicant as to how to remove assets from New Zealand.

[31] Further, there is evidence of fraud and other dishonest activity from which a prudent, sensible commercial person could properly infer a danger of default.<sup>6</sup>

[32] Based on the evidence before the Court, I am satisfied there is a real risk that if the orders sought are not made, the assets will be dissipated.

### **Balance of convenience and overall interests of justice support the orders being made**

[33] The investigation so far indicates that there may have been significant fraud. In addition, there is an ongoing police investigation which may take some time.

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<sup>6</sup> *Wellington Tenth Trust v Skiffington* [2017] NZHC 1646, (2017) 24 PRNZ 244 at [48].

[34] Freezing orders will allow a more wide-reaching investigation into the fraud by the applicant in order to determine the true extent of the fraud for the purpose of quantifying its claim and preserving its position pending determination of its substantive claim.

[35] The proposed order would freeze significant assets. The applicant proposes, however, that any hardship on the respondent's part can be ameliorated by a provision for ordinary living expenses, legal expenses, and ordinary business expenses to be able to be accessed by them. The draft ancillary orders include an order that the respondent identifies an account for the purposes of meeting those expenses.

[36] As noted, an undertaking as to damages has been provided which also protects the respondent.

[37] Standing back, I am satisfied that the balance of convenience and overall interests of justice support the making of the freezing and ancillary orders sought.

### **The applicant seeks to have the orders apply to assets of the respondent in Australia**

[38] The applicant seeks to have the proposed freezing order apply to any Australian bank accounts and term deposits held in the respondent's name at a named bank, as well as to assets in New Zealand.

[39] It is clear that such an order may be made against a party in New Zealand in respect of overseas assets.<sup>7</sup> If, however, there are sufficient assets within the jurisdiction to protect an applicant for a freezing order, that will be an excellent reason for confining the order to such assets.<sup>8</sup>

[40] While the New Zealand authorities have dealt with respondents who are in New Zealand, in the United Kingdom and in Australia orders have been made in respect of foreign assets of respondents who were out-of-jurisdiction.<sup>9</sup>

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<sup>7</sup> *Fitzherbert v Faisandier* (1995) 8 PRNZ 592, citing *Zietlow v Simon* (1991) 4 PRNZ 373.

<sup>8</sup> *Derby & Co Ltd v Weldon (Nos 3 & 4)* [1990] 1 Ch 65 (CA).

<sup>9</sup> *Derby & Co Ltd v Weldon*, above n 10; and *National Australia Bank Ltd v Dessau* [1988] VR 521.

[41] In the present case, the breach of contract claims come within the jurisdiction of the Court. The amounts at stake appear to be substantial, such that the applicant may not be sufficiently protected with a freezing order that covers only the New Zealand assets. There is no reason to believe that the risk of dissipation is any less in respect of the Australian assets. The applicant is able to serve the Australian bank and to require compliance by it of the proposed freezing orders. In those circumstances, I consider a freezing order can extend to the identified assets in Australia.

### **Service requires leave**

[42] The fact that the respondent is now overseas creates difficulty in effecting the immediate service of any orders granted. The leave of the Court is required in order to effect service on an overseas party. An application for leave must be made in accordance with regs 31A to 31C of the Employment Court Regulations 2000.<sup>10</sup>

[43] The evidence satisfies the relevant factors for the purposes of reg 31A(5) of the Employment Court Regulations.

[44] The need to serve the order through diplomatic channels may, however, cause there to be a delay between the making of the orders and service.<sup>11</sup> That goes to the interests of justice but does not tip the balance in favour of the respondent.

[45] The applicant proposes that, if the orders are granted, counsel will provide them to the respondent's last known address in New Zealand, their New Zealand lawyers, and to the respondent's email address.

[46] The arrangements proposed by the applicant are appropriate. Leave is granted to effect service on the respondent overseas. It remains open to the respondent, however, to accept service via the alternative means of provision of the orders identified by the applicant.

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<sup>10</sup> Employment Relations Act, sch 3 cl 5A.

<sup>11</sup> For service in China, see *Huang v Huang* [2021] NZHC 2902 at [54], [56] and [69].

### **In addition to the freezing order, ancillary orders are sought**

[47] Ancillary orders are sought requiring the respondent to provide the applicant with an affidavit particularising the following information:

- (a) details of all bank accounts in the name of the respondent (including joint accounts), both in New Zealand and overseas;
- (b) details of all shareholding and investments held in the name of the respondent, both in New Zealand and overseas;
- (c) details of any other property interests held by the respondent, including shared interests;
- (d) details of any trusts of which the respondent is a trustee and/or a beneficiary;
- (e) details of any bank accounts to which the respondent contributes, or has access or control of; and
- (f) details of any tangible assets owned by the respondent (other than real property) with a market value of over NZ\$10,000.

[48] I accept that the ancillary orders sought are appropriate in the interests of justice and will ensure that there is a full picture before the Court (and the parties) when the application is heard on notice.

### **Freezing and ancillary orders made**

[49] Freezing and ancillary orders are to be issued by the registrar, on condition that a statement of problem is to be filed promptly in the Employment Relations Authority.

[50] The orders are to be made in the form submitted after the telephone hearing on 23 May 2025.

[51] As the orders will be made without notice, they have limited effect so that they expire at 4pm on 11 July 2025. At 10 am on 10 July 2025 the matter will be called in the Employment Court at Auckland (via AVL) for review. The Court will consider whether to continue or renew the orders. The respondent or their representative will be entitled to be heard by the Court on that date. Either party may apply in the meantime to vary or discharge the terms of the order on two business days' notice.

[52] I also direct that:

- (a) A copy of the freezing and ancillary orders, this judgment, hearing notice, and all supporting documents filed by the applicant are to be served on the respondent as soon as possible.
- (b) In addition, copies of those documents are to be provided to the respondent's last-known address in New Zealand, the respondent's last known email address, and to the respondent's New Zealand solicitors forthwith. The New Zealand solicitors should use their best endeavours to bring the proceedings to the attention of the respondent.
- (c) The Court is to be notified as soon as the documents have been provided to their addresses identified in [52](b), and again once they have been served on the respondent.
- (d) This judgment is to be published no less than 24 hours after service has been effected on the respondent.

[53] Costs are reserved.

J C Holden  
Judge

Judgment signed at 2.30 pm on 27 May 2025