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Harlow v Western Property Management Limited [2016] NZEmpC 62 (26 May 2016)

Last Updated: 1 July 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 62](#)

EMPC 121/2016

IN THE MATTER OF an application for freezing and ancillary orders under the Employment Relations Act 2000

BETWEEN DEBRA HARLOW Applicant

AND WESTERN PROPERTY MANAGEMENT LIMITED First Respondent

AND TONY TEAGUE Second Respondent

AND WEST MANAGEMENT LIMITED Third Respondent

Hearing: 25 May 2016
(Heard at Auckland)

Appearances: J Turner, counsel for applicant
No appearance for first respondent
G Pollak, counsel for second and third respondent

Judgment: 26 May 2016

ORAL JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] On 20 May 2016, the applicant in these proceedings, Debra Harlow, applied for freezing and ancillary orders in terms of a draft of orders submitted to the Court. The application needed to be dealt with as a matter of urgency and orders in a written memorandum were made with the indication that the reasons for making the orders would be given the following week. On 23 May 2016 in an interlocutory judgment I

dealt with matters surrounding the application and also gave the reasons for the

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making of the order by granting of the application of Ms Harlow against all three respondents, Western Property Management Ltd, Tony Teague and West Management Limited.¹

[2] I also indicated that the orders would continue in force until 4pm on 17 June

2016, which was 20 working days from the date of the original granting of the orders, or such earlier orders of the Court or later orders

if the orders in turn needed to be extended beyond the 20 working days. In addition I reserved leave for the parties to apply for an earlier hearing to modify or set aside the orders if they could not wait until today's date (2.15pm on 25 May 2016) which was the date I set to hear this matter and in particular to hear from counsel. I accept that unbeknown to Ms Harlow and her counsel, Western Property Management Ltd had already been put into liquidation prior to the making of the freezing orders. As a result of that the liquidators have communicated with the Court by way of a lengthy memorandum and accompanying documents and have also corresponded with the Registrar. They asked prior to today's hearing whether they needed to appear, and in view of what I anticipated might happen today, I excused them from appearance. The point they make is that Ms Harlow either required the permission of the liquidators to pursue the freezing order proceedings or alternatively had to apply to the High Court for permission if the liquidators were not prepared to agree to the matter proceeding.

[3] The liquidators are concerned also at the freezing orders because, they say, that is affecting their ability to pursue the winding up of Western Property Management Ltd. I am not altogether sympathetic with that because when it all boils down, the creditors of this company are Ms Harlow who has some portion of her claim as a prior claim, the Inland Revenue Department, and a company which is also owned by Mr Teague (the second respondent) called TAZ Ltd, the assets of which Western Property Management Ltd purchased. The liquidators have indicated in one document provided by them that they intend to seriously investigate TAZ Ltd's claim to a secured interest in Western Property Management Ltd.

[4] The purpose of today's hearing was to simply review the matter, but in the meantime Mr Teague and West Management Ltd (the second and third respondents

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in the proceedings) and parties subject to the freezing order, have applied to the Court to have the freezing order set aside. There is an affidavit in support of that application from Mr Teague which was sworn today, 25 May 2016.

[5] Prior to proceeding with the hearing today, I also received in addition from Mr Turner, counsel for Ms Harlow, his submissions in support of the freezing orders and ancillary orders continuing, and also a supplementary affidavit from Ms Harlow which now annexes further documents relating to the bank accounts which are the subject of the freezing order.

[6] Mr Turner has submitted that even though Western Property Management Ltd is in liquidation and was in liquidation prior to the freezing orders being made, the freezing orders should remain in force to enable Ms Harlow to either now persuade the liquidators to pursue the claims in view of the further information available, or alternatively to seek the leave of the High Court to continue with the proceedings. In addition the order should remain to enable her legal counsel, Mr Turner, to attend to some proposed amendments to the pleadings in the statement of claim which is filed in this Court and upon which the interlocutory order granting the freezing orders was made.

[7] I am bound to say that the documents to which I have been referred today, and indeed the contents of them showing transactions taking place; money coming into the accounts and going out; cause me concern.

[8] I am sympathetic to the position of Mr Pollak, who is appearing for Mr Teague and West Management Ltd today at short notice, who, as he has frankly stated, has not really had time to fully consider all of the issues which may be material to refer to the Court in consideration of the application to set the freezing orders aside.

[9] Alongside all of this there are currently proceedings before the Employment Relations Authority (the Authority). I am informed that Ms Harlow is seeking compliance orders with the earlier determination of the Authority under which consent orders were made and which form the basis of her claim arising out of an

employment relationship problem. Earlier there had been a determination, which unfortunately was not disclosed to me, in which the Authority clearly held that Ms Harlow was an employee of Western Property Management Ltd and not Mr Teague personally. The matter was then referred to mediation and a settlement was reached. I am informed that the matter, rather than being endorsed by a mediator, came back to the Authority and that resulted in the consent determination being made, to which I refer in my earlier judgment in this matter. I am further informed that Mr Teague indicated after the making of those orders that he fully expected to be able to pay Ms Harlow the money that was owing under that determination. Certainly there is no basis for him to challenge the determination; it containing consent orders.

[10] To proceed further with the proceedings now pending in the Authority, Ms Harlow, in view of the liquidation of Western Property Management Ltd, will either need to get the liquidator's consent to taking those proceedings further or alternatively apply to the High Court to get permission to continue them.

[11] I just want to mention that while I have expressed some views at the hearing today as to the weakness of the claims in the statement of claim presently filed in the Court against the second and third respondents, I nevertheless had the power, as I indicated in my earlier judgment, to make freezing orders against third parties who are not parties to the proceedings themselves. This is a power, by analogy, derived from r 32.4 of the High Court Rules. These Rules apply with necessary modifications to the making of freezing orders and search orders by this Court.

[12] Having considered all of the matters that have been presented today, I am not prepared to set aside the freezing order. I can see that difficulties arise from the fact that Western Property Management Ltd went into liquidation prior to the making of the orders. I accept that the liquidators are concerned at that fact but there is still work to be done on behalf of Ms Harlow, and as I say, I am concerned about the matters that have been placed before me today which are contained in the further bank documents that have been annexed to Ms Harlow's supplementary affidavit. Those are matters which, in my view, need to be further discussed with the

liquidators and indeed, it is my view that further information needs to be obtained

from the bank in view of the fact that there is some uncertainty surrounding the identity of the account holder in respect of one of the accounts.

[13] There has been an application by Ms Harlow today, in view of the liquidation and the fact that the liquidators had already frozen one of the accounts which was the subject of the order, to make amendments to the freezing order. There has also been an application by her seeking leave to extend the freezing order to TAZ Ltd which seems to be the major creditor of Western Property Management Ltd. I am not prepared to make an extension of the existing freezing order to include TAZ Ltd now that I am fully aware that Western Property Management Ltd is in liquidation. I could not make such an order in the face of that knowledge, but in any event it does not seem to be of any great moment because the liquidators have indicated that they intend to fully investigate the position of that creditor. I am not sure whether the creditor has a debenture over Western Property Management Ltd or how its debt is secured, but certainly the liquidators intend to investigate it and that seems to me to give sufficient protection at this stage to Ms Harlow in respect of TAZ Ltd.

[14] Having considered the matter fully, I am not prepared to set aside the freezing order. What I will do is amend it. And I will just mention the amendments to be made to the freezing and ancillary orders which are already in the Court and once these amendments are made, Mr Turner can then submit an amended order for sealing.

- In clause 5.2 of the order the bank account number 12-3039-0381369-

00 is to be deleted.

- In clause 5.5 the word “defendant” is to be amended to read the word

“respondents”.

- In clause 9.1(b) the bank account number 12-3039-0381369-00 and

the word “and” are to be deleted.

- In clause 9.2 the word “liquidators” is to be replaced by the word

“applicant” and in the parenthesis following that word the word

“their” is to be replaced with the word “her” so that the words in the parenthesis read “(or her solicitor)”.

[15] Those amendments can be made and the order will still continue in force until

4pm on 17 June 2016. However, in view of the fact that the liquidators are now going to be approached, or there may be an application to the High Court and there may be an amendment to the pleadings in this Court, I direct that this matter is to be recalled at 9.30am on Friday 3 June 2016 so that a full review can take place then. In addition to that, leave is reserved to either party to apply to modify or set aside the orders in case there is a dramatic change in circumstances or further information comes to hand that the respondents in particular may wish to place before the Court. The Court will put aside time on an urgent basis to hear any such application.

[16] The liquidators have raised the issue of costs in this matter but at this stage I

do not intend to deal with any costs issue and costs are reserved.

M E Perkins

Judge

Oral judgment delivered at 3.46 pm on 25 May 2016