



# Employment Court of New Zealand

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## M Limited (in liq) v J [2011] NZEmpC 176 (23 December 2011)

Last Updated: 12 May 2012

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2011\] NZEmpC 176](#)

ARC 99/11

IN THE MATTER OF proceedings for breach of employment agreement

AND IN THE MATTER OF a without notice application for freezing order

BETWEEN M LIMITED (IN LIQUIDATION)

Plaintiff

AND J Defendant

Hearing: 23 December 2011

(Heard at Auckland (in Chambers)) Appearances: James Turner, counsel for plaintiff Judgment: 23 December 2011

### ORAL INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE GL COLGAN

[1] This is the first hearing at which the defendant is entitled to appear, following the making of a freezing order affecting his bank account.

[2] There has been no appearance by or on behalf of the defendant at this morning's hearing. That is unsurprising because I am not satisfied that the proceedings, the sealed orders, and the judgment, have been served on the defendant as required by reg 28(2)(a) of the [Employment Court Regulations 2000](#). Although the plaintiff has attempted to send these to Mr J at various email addresses it has for him, there has been no response to these emails, but in any event service is

required to be personal unless an order for an alternative mode has been made. I

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have also had regard to a draft affidavit of service by a process server. This affidavit will be sworn and filed and speaks of the process server's attempts to effect personal service at Mr J's last known residential address, which tends to indicate that he is no longer residing there.

[3] A representative of the liquidators, Benjamin Francis, attempted to locate Mr J at Auckland International Airport last evening, anticipating that he might be a passenger on a Korean Airlines flight to Seoul departing at 9.30 pm, although Mr Francis had earlier ascertained that the air tickets purchased by Mr J from ABC Travel had been cancelled. Mr Francis was unable to locate Mr J at the Airport and now believes that he may still be in New Zealand and therefore able to be served personally, although it is possible also that Mr J has made other air travel arrangements which would be consistent with the evidence about his last known address.

[4] The other development in the case since the first freezing order was made

two days ago relates to Mr J's Westpac bank account. At 12.30 pm on 21

December 2011 the Bank was informed of the fact and effect of the Court's freezing order and this was served on the Bank approximately 45 minutes later. The plaintiff's information is that a cash withdrawal was made from Mr J's Westpac bank account on 21 December 2011 although the time and amount of this withdrawal have not been disclosed by the Bank which

regards this as its customer's confidential information that it cannot release without either Mr J's consent or a court order to this effect.

[5] Assuming that the Bank did not permit the withdrawal after it became aware of the prohibition on that by the order made, the plaintiff believes that the defendant may now have in his control, if not on his person, a substantial sum of money in respect of which it seeks an extension of the otherwise renewed freezing order and also ancillary orders to make effective the freezing order. This includes an order that the Registrar of this Court be appointed as receiver of the frozen monies if they are not in the Westpac bank account.

[6] The freezing order made two days ago expires at 12 noon today. The plaintiff seeks its renewal and, for the reasons set out in the first judgment for the making of the order,<sup>[1]</sup> I consider it is proper for it to be renewed. I am also satisfied that it is appropriate that the ancillary orders sought (also without notice to the defendant) be made in the circumstances now prevailing.

[7] Although Mr J will still be entitled to apply to set aside or modify the orders on reasonable notice to the plaintiff, the duration of the renewed and new ancillary orders must now be longer, taking into account the current legal vacation and the probability that the Court's orders of 21 December 2011 have come to Mr J's notice by email, even if they have not been served formally on him.

[8] Accordingly, the plaintiff is entitled to a further freezing order and to ancillary orders in the form which will be attached to this judgment, which orders will expire at 12 noon on Monday 23 January 2012. Those new orders, as well as the Court's original freezing order, and copies of both interlocutory judgments, will now need to be served personally on Mr J. The period until 23 January 2012 should allow the plaintiff an opportunity to begin to prosecute its proceedings which I accept have now been filed in the Employment Relations Authority or hopefully settle those proceedings in mediation with Mr J.

[9] For these purposes, the case will come back before the Court at 10 am on Monday 23 January 2012 for further consideration of the status of the freezing and ancillary orders unless the parties advise the Registrar in the meantime that no further orders are required.

[10] I again reserve costs in respect of today's appearance.

GL Colgan

Judge

Judgment delivered orally at 10.38 am on Friday 23 December 2011

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