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Mason Engineers (NZ) Limited v Hodgson [2011] NZEmpC 105 (12 August 2011)

Last Updated: 29 August 2011

IN THE EMPLOYMENT COURT AUCKLAND

[\[2011\] NZEmpC 105](#)

ARC 50/11

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

BETWEEN MASON ENGINEERS (NZ) LIMITED Plaintiff

AND KAREN MARGARET HODGSON Defendant

Hearing: 12 August 2011 (Heard at Auckland)

Counsel: Anthony Russell and Clare Mansell, counsel for plaintiff

Judgment: 12 August 2011

ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] Today marks the expiry of the first extension to the freezing order in this proceeding made originally on 8 July 2011.^[1] Although the defendant has not taken any steps to defend the substantive proceeding, as she was entitled to do, the plaintiff's claim cannot be finalised at this point. In these circumstances, the plaintiff seeks a further extension of the freezing order. There is a potential development only made known recently to the plaintiff and thereby to the Court which may affect how the claim progresses.

[2] It seems the defendant is currently receiving psychiatric care or treatment in a South Auckland community based facility. It is possible that this is in the nature of respite care and it is possible also that she is there temporarily as a voluntary patient.

Nonetheless, I think the Court should proceed cautiously if there is any suggestion of

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a defendant's competence in law to defend significant proceedings as these are. The following directions will take account of that contingency.

(a) The plaintiff will file an amended statement of claim by 26 August

2011 which will quantify its losses as it must if it is to seek judgment.

(b) I require a without notice application for directions as to service to accompany the amended statement of claim when it is filed. If the plaintiff considers it appropriate, that may include affidavit evidence but it must, in any event, include a memorandum from counsel addressing the defendant's current legal status (as referred to earlier) and what directions should be given for service of the amended statement of claim on the defendant. That without notice application will be able to be dealt with by a Judge in Chambers and orders made accordingly.

(c) The defendant will then have the period of 30 days to file and serve a statement of defence to that amended statement of claim if she wishes to do so. If the amended statement of claim is filed on 26 August

2011, then the time for filing and serving a statement of defence to it will expire on or about 26 September 2011.

[3] The plaintiff seeks a continuation of the freezing orders previously made in terms of a draft order filed and in the circumstances I am prepared to grant that. The freezing order will be renewed in terms of that draft order to continue until 12 noon on Thursday 20 October 2011.

[4] As in the case of today's hearing, the matter will be called in court at 10 am on 20 October 2011, by which time the amended proceedings should have been served and the time for filing and serving statements of defence expired. The plaintiff's indication is that it will seek judgment by way of formal proof of its claim, certainly if Ms Hodgson does not take any steps to defend the proceeding.

[5] In those circumstances I will allow evidence proving the claim and the plaintiff's losses to be provided by affidavit and if the defendant takes no steps, a date for formal proof will be able to be set on 20 October 2011.

[6] The one remaining factor is how the defendant is to be advised of the outcome of today's hearing. Given the paucity of information about her present circumstances, which is understandable, I think the best course is for a copy of this judgment and the sealed freezing order to be served on the defendant at her current address which is known to the plaintiff, and for a copy of the judgment to also be served on the defendant's father whose identity and whereabouts are also known to the plaintiff.

[7] I reserve leave for either party to apply on reasonable notice for any further orders or directions before the next hearing on 20 October 2011.

[8] I again reserve costs on the applications made today.

GL Colgan

Chief Judge

Judgment delivered orally at 10.28 am on Friday 12 August 2011

[\[1\]](#) [\[2011\] NZEmpC 82.](#)

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