



# Employment Court of New Zealand

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## Potgieter v Bliss Beauty NZ Limited [2022] NZEmpC 203 (15 November 2022)

Last Updated: 22 November 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU

[\[2022\] NZEmpC 203](#)  
EMPC 397/2022

IN THE MATTER OF	an ex parte application for freezing and ancillary orders
BETWEEN	SONJA POTGIETER Applicant
AND	BLISS BEAUTY NZ LIMITED First Respondent
AND	RONALD AJIT NARAYAN Second Respondent
AND	VERONICA DEVI Third Respondent

Hearing: On the papers  
Judgment: 15 November 2022

### JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

**(Application for freezing and ancillary orders)**

[1] The applicant has applied without notice for a freezing order against their former employer (the first respondent) and ancillary orders against the second and third respondents. The second respondent is the company's sole director and owner. The third respondent is the second respondent's business partner.

[2] The application follows a determination of the Employment Relations Authority (dated 5 October 2022) finding that the applicant had been unjustifiably dismissed. The Authority made numerous orders against the first respondent, including that it pay the applicant the sum of \$23,500 in compensation under

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[s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#); \$4,940 by way of lost wages; interest on the lost wages; and a penalty of \$7,000 for breach of [s 65](#) of the Act, \$5,000 of which was to be paid to the applicant. It appears that none of these orders have been satisfied.

[3] The application now before the Court is supported by an affidavit by the applicant. Draft proposed orders have also been filed, together with an undertaking as to damages, an affidavit as to the applicant's financial ability to meet an order for damages pursuant to the undertaking, and a draft application for compliance orders in the Authority. Counsel for the applicant has certified that the grounds on which the application relies are made out and that all reasonable enquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

[4] I am satisfied that it is appropriate to proceed to deal with the application at this initial stage on an ex parte basis. There

is a real risk that proceeding on notice would cause unnecessary delay and/or lead to the dissipation of assets.

[5] The Employment Court may make freezing and ancillary orders, and has the same powers as the High Court as provided in the High Court Rules: [s 190\(3\)](#) of the [Employment Relations Act 2000](#).<sup>1</sup> An application must be advanced in the Employment Court because the Employment Relations Authority has no power to make such orders.<sup>2</sup>

[6] There are a number of hurdles that must be overcome by an applicant.

[7] First, there must be a proceeding within the jurisdiction of the Court or the Authority to which the application relates. A draft statement of problem seeking compliance orders from the Authority has been filed.<sup>3</sup>

1 [High Court Rules 2016](#), rr 32.2 and 32.3; [Employment Relations Act 2000](#), [s 190\(3\)](#).

2 [Employment Relations Act 2000](#), [s 160\(4\)](#).

3 Employment Court of New Zealand Practice Directions: "Search and Freezing Orders" at [4].

[8] Second, a written and signed undertaking as to damages must be filed with the application, and evidence provided (via affidavit/s) of the applicant's financial ability to meet an order for damages pursuant to the undertaking. These steps have been taken.

[9] Third, a draft order must be filed which refers to the undertaking as to damages. This too has been complied with by the applicant.

[10] Fourth, the applicant must show:

- (a) a good arguable case on a cause of action;
- (b) there are assets of the respondent to which the order can apply;
- (c) there is a real risk of dissipation.

[11] The need to protect the applicant from a barren determination must be balanced against any prejudice or hardship to the respondent and/or third parties. Consideration must be given to the overall interests of justice.

[12] Once made, a freezing order restrains a party from removing assets located in or outside New Zealand, or disposing, dealing with or diminishing the value of those assets.

[13] I am satisfied, on the basis of the evidence currently before the Court, that there is a good arguable case for compliance orders to be made against the first respondent in light of the non-payment of the awards made by the Authority. I am also satisfied that there are assets to which an order can attach to, including bank balances, fixtures and fittings. Having read the affidavit evidence before the Court I am also satisfied that there is a real risk that, if the orders sought are not made, the assets will be dissipated. The affidavit filed in support of the application refers to steps being taken by the second and third respondents to sell off furniture and equipment of the first respondent and that the business premises are now virtually bare, and with only one staff member remaining.

[14] The balance of convenience and overall interests of justice support the making of the orders. If the orders are not made the applicant will be face a significant risk that they will not be able to recover the money ordered in their favour on the unjustified dismissal claim.

[15] I am satisfied that the orders in the form submitted with the application should be made, on condition that the draft application for compliance orders be filed immediately in the Employment Relations Authority.

[16] The orders are to have effect until 5 pm on Friday 25 November 2022 unless, prior to that date, they are continued or renewed. Any party may apply in the meantime to vary or discharge the terms of the order on one business day's notice.

[17] A copy of the order, this judgment and all documents filed by the applicant are to be served on the respondents as soon as possible.

[18] The Court is to be notified as soon as the documents referred to in [16] have been served. An affidavit of service must also be filed.

[19] This judgment is to be published after that notification has been given.

[20] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 4.30 pm on 15 November 2022

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