

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

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

**[2023] NZEmpC 119
EMPC 240/2023**

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

BETWEEN MNO
Applicant

AND PQR
Respondent

Hearing: 7 August 2023 (by telephone)

Appearances: L Bercovitch, counsel for applicant
Respondent in person

Judgment: 7 August 2023

JUDGMENT (NO 2) OF JUDGE KATHRYN BECK

[1] On 19 July 2023, a judgment was issued by this Court making freezing and ancillary orders under s 190(3) of the Employment Relations Act 2000 and pt 32 of the High Court Rules 2016 in respect of a bank account and any other assets held by the respondent, to prevent them from disposing or otherwise dissipating that property pending the determination of the applicant’s substantive claims.¹

[2] The Court ordered that the matter be brought back before the Court on 7 August 2023. The purpose of this hearing is to review the orders made.

[3] The applicant seeks an extension of the freezing orders for a further period of time. The applicant also seeks further orders directing any bank that holds an account

¹ *MNO v PQR* [2023] NZEmpC 109.

subject to the freezing orders to disclose the existence of that account, and account records.

Events since orders made

[4] Since the orders were issued on 19 July 2023, the respondent has been served and a statement of problem was filed in the Employment Relations Authority in the same terms as was provided to this Court in draft. A statement in reply is due on 10 August 2023.

[5] The freezing orders required the respondent to file and serve an affidavit setting out the nature, value and extent of her assets. The respondent has provided that affidavit to the Court, although the applicant was not formally served until 2 August 2023. The applicant is currently in the process of reviewing that document, including for completeness.

[6] In accordance with the freezing orders, counsel for the applicant had served a copy of the freezing orders on Westpac and a number of other banks. With the exception of Bank of New Zealand (BNZ), the other banks have confirmed that they do not hold bank accounts in the name of the respondent. However, BNZ has declined to confirm whether or not it holds an account that is subject to the freezing orders without an order from the Court to do so.

Extension of orders sought

[7] The applicant seeks that the freezing orders remain in place while it reviews the information and takes substantive steps in the claim in the Authority.

[8] The applicant says the basis on which the Court imposed the freezing orders remains. It says the factors justifying the freezing orders are reinforced by the respondent's disclosed account records, which confirm that funds were in fact paid into her personal accounts.

[9] The applicant also seeks an ancillary order directing any bank to disclose the existence of any bank account subject to the freeze, and account records from when the respondent commenced her employment with the applicant, being 2 May 2022.

[10] Counsel for the applicant submits that such an order is necessary to enable proper administration of the freezing orders, and for the applicant to understand whether certain banks should continue to be served with further orders in this proceeding.

[11] Prior to the hearing this morning, the respondent had not applied for any orders in respect of the freeze, or responded to it in substance. The respondent attended the telephone hearing this morning in person. They seek that the freezing orders be lifted on the ground that they have been unable to access any funds (even to meet ordinary living expenses), that they have complied with the ancillary orders, and that there is nothing further. I took it that they were saying there is therefore no risk of dissipation.

[12] The current orders include that the respondent is not prohibited from dealing with the assets covered by the order for the purposes of paying ordinary living expenses. Accordingly, they should not be having the difficulties they say they are currently experiencing. The applicant is directed to work with the respondent and Westpac to ensure that the terms of the order are met; in particular, that the respondent is able to deal with the funds in the accounts for paying ordinary living expenses or legal expenses relating to the freezing order.²

[13] I agree that the basis on which this Court imposed the freezing orders remains for the further limited period of time sought. The situation with any further accounts needs to be established, as does the completeness of the affidavit filed to date. The filing of a statement in reply in the Authority will enable, at least in part, the respondent's reply to the allegations to be provided to the applicant. The further time will also enable the respondent to obtain legal advice in relation to the orders themselves.

² The respondent advises that they are currently arranging legal advice.

[14] Accordingly, I am satisfied that the current freezing order should continue. Ancillary orders, in relation to the direction that any bank that holds any account subject to the freezing orders discloses the existence of that account and account records from 2 May 2022 to present, and a modification as to the timing of the matter being brought back before the Court, should also be made.

[15] The orders are to have effect until 5 pm on 14 August 2023 unless, prior to that time, they are continued or renewed. The case will be called again in Court at 10.30 am on 14 August 2023. The purpose of the hearing will be to review the orders. The hearing will be by telephone. Any party may apply in the meantime to vary or discharge the terms of the orders on two working days' notice.

[16] A copy of the amended orders is to be served on the respondent as soon as possible.

[17] The interim non-publication orders continue.

[18] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 2.45 pm on 7 August 2023