

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2023] NZEmpC 121  
EMPC 430/2022**

IN THE MATTER OF a without notice application for a freezing  
order and ancillary orders

AND IN THE MATTER OF an application for non-publication orders

BETWEEN SAFARI CONSTRUCTION (2005)  
LIMITED  
First Applicant

AND SAFARI CONSTRUCTION (2015)  
LIMITED  
Second Applicant

AND SAFARI CONSTRUCTION LIMITED  
Third Applicant

AND SAFARI CONSTRUCTION 2019 LIMITED  
Fourth Applicant

AND SAFARI GROUP (NZ) LIMITED  
Fifth Applicant

AND MARTIN DUNNING  
First Respondent

AND MARVID LIMITED  
Second Respondent

Hearing: On the papers

Appearances: W Fotherby and M Kilkelly, counsel for applicants  
S McKenna, counsel for respondents

Judgment: 11 August 2023

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**JUDGMENT OF JUDGE J C HOLDEN  
(Application for non-publication orders)**

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[1] On 31 May 2023, a consent judgment was issued by this Court discharging freezing and ancillary orders and the interim non-publication orders in respect of the applicants.<sup>1</sup> The interim non-publication orders, as they related to the identity of the respondents, continued pending further order of the Court, with the parties advised to file a joint memorandum or separate memoranda addressing the Court on the reasons the non-publication orders ought to be made permanent.

[2] The applicants filed a memorandum advising that no joint position had been agreed and that it was unclear to them whether the respondents intended to actively pursue the making of permanent orders.

[3] They advised they were not in a position to advance any grounds for non-publication on the respondents' behalf and that they were content to abide the decision of the Court.

[4] Subsequently, a memorandum was filed on behalf of the first respondent and his wife, who with her husband, is a director of the second respondent. Mr and Mrs Dunning advised they did not wish to be heard in relation to the review of the non-publication orders. No submissions or evidence was provided in support of the interim orders continuing or becoming permanent.

[5] When the applicants applied for freezing and ancillary orders, they did so on an ex parte basis. At that stage, they applied for interim non-publication orders over the names of the parties and any details that would tend to identify them, and over the evidence filed. They did so noting that the respondents had not had the opportunity to try to preserve their identity in circumstances where the applicants were making serious allegations about the first respondent. The court acknowledged the points made and interim orders were made on the basis they would be revisited in due course, once the respondents had the opportunity to consider them.

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<sup>1</sup> *Safari Construction (2005) Ltd v NEN* [2023] NZEmpC 80.

## **No basis for non-publication orders to continue**

[6] The Court can make non-publication orders.<sup>2</sup> However, there must be sufficient, compelling reasons for it to do so as such orders displace the general, fundamental principle of open justice.<sup>3</sup> Here, no reasons have been advanced for the Court to continue the current non-publication orders in respect of the respondents, or to make them permanent.

[7] Accordingly, the orders made on 19 December 2022 are fully vacated.<sup>4</sup>

[8] As foreshadowed in the consent judgment, the file is now closed with no issue as to costs.

J C Holden  
Judge

Judgment issued at 10 am on 11 August 2023

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<sup>2</sup> Employment Relations Act 2000, sch 3 cl 12.

<sup>3</sup> *Erceg v Erceg [Publication restrictions]* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] and [13]; and *JGD v MBC Ltd* [2020] NZEmpC 193, [2020] ERNZ 447 at [5].

<sup>4</sup> *THL (2005) v NEN* [2022] NZEmpC 235 at [4].