

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

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

**[2023] NZEmpC 213
EMPC 401/2023**

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

BETWEEN SERVICE FOODS LIMITED
Applicant

AND GONGQIAN LIU
Respondent

Hearing: On the papers

Appearances: D Brabant and T Sung, counsel for applicant
T Braun and E Anderson, counsel for respondent

Judgment: 17 November 2023

**JUDGMENT (NO 2) OF JUDGE M S KING
(Application to amend and extend orders)**

[1] On 6 November 2023, a judgment was issued by this Court making without notice 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 the property of the respondent, Mr Liu, to prevent him from disposing or otherwise dissipating that property pending the determination of Service Foods Ltd’s substantive claims.¹

[2] The Court ordered that the matter be brought back before the Court on 20 November 2023. The purpose of this hearing is to review the orders made, which were due to expire on that date.

¹ *Service Foods Ltd v Liu* [2023] NZEmpC 190.

Events since the orders made

[3] Since the orders were issued on 6 November 2023, Mr Liu has been served and a statement of problem was filed in the Employment Relations Authority.

[4] A copy of the freezing orders was also served on the ANZ Bank. The ANZ Bank subsequently advised Service Foods Ltd that Mr Liu has attempted to open a new bank account with the ANZ Bank. Service Foods Ltd is concerned that Mr Liu's action could be construed as Mr Liu seeking to circumvent the freezing orders.

[5] Mr Liu, by memorandum of counsel dated 16 November 2023, advised that he had recently instructed counsel and was in the process of gathering the information necessary to comply with the ancillary orders requiring him to provide disclosure. Mr Liu advised that he would be applying for a variation of the order as soon as practicable.

[6] Service Foods Ltd, by memorandum of counsel dated 16 November 2023, requested the hearing scheduled for 20 November 2023 be vacated. It sought to amend the freezing and ancillary orders and to extend the orders to a date on or after 4 December 2023. The purpose of the extension was to ensure any application for variation brought by Mr Liu was timetabled for prompt disposition.

[7] By memorandum dated 17 November 2023, Mr Liu responded to Service Foods Ltd's memorandum. Mr Liu opposed any amendment to the current orders and sought that the order only be extended to 27 November 2023 to allow him time to take the above steps and for his application to be urgently heard.

[8] On 17 November 2023 Mr Liu filed an affidavit in compliance with the ancillary orders requiring him to provide disclosure.

No amendment of orders

[9] Service Foods Ltd has sought for the freezing orders to be amended to include a requirement that Mr Liu must seek approval from its solicitor before opening or

attempting to open a new bank account or credit facility with any financial institution, bank or lender.

[10] Mr Liu opposes the amendment to the order sought by Service Foods Ltd. He submits that his assets are frozen, so there is no meaningful way in which a new bank account would allow him to dissipate the frozen assets. It simply allows him to carry on his day-to-day living and pay expenses with amounts released from his frozen accounts and any future earnings that he may be able to make now that his employment with Service Foods Ltd has been terminated.

[11] Having considered the memorandum filed by both parties, I do not consider the amendment of the order is required. The current orders include at [4](c) an order which freezes any assets with a value over \$5,000 located in New Zealand, either real or personal (including bank accounts) in which Mr Liu has a beneficial and legal interest, power or disposition, whether solely or jointly with any other person/entity. Any new bank account with a value over \$5,000 created by Mr Liu would be subject to this order.

[12] Further the current orders already provide at [6] that Mr Liu is not prohibited from dealing with the assets covered by the order for the purposes of paying ordinary living expenses, paying legal expenses related to the freezing order, or disposition of assets, or making payments, in the ordinary course of his business, including business expenses incurred in good faith. Accordingly, the parties are directed to work together to ensure the terms of the orders are met including, specifically, that Mr Liu is able to deal with the funds in his bank accounts for paying ordinary living expenses, legal expenses relating to the freezing order and any payments in the ordinary course of his business (if any).

Extension of orders

[13] At this time, Mr Liu has not substantively responded to the 6 November 2023 freezing and ancillary orders. The grounds on which the Court imposed the freezing orders on 6 November 2023 remain.

[14] It is unnecessary to establish a particular timetable as proposed by Service Foods Ltd, as Mr Liu advises he will be able to file an application early next week. At that stage it would be appropriate for counsel to agree on a timetable to resolve the matter.

[15] The freezing and ancillary orders made by the Court on 6 November 2023 are continued so that they have effect until 5 pm on 29 November 2023 unless, prior to that time they are again continued or renewed. The hearing on 20 November 2023 will be vacated and the hearing will be called in Court at 9.30 am on 28 November 2023 (by telephone), being the earliest hearing time available for this matter to be scheduled that week.

[16] This judgment and the Court's earlier judgment of 6 November 2023² are not to be published other than to the parties, their representatives and to authorised persons, and the Court file may not be inspected by a non-party without leave of the Court until the review hearing has taken place on 28 November 2023. At this time, or earlier, Mr Liu will have an opportunity to address the allegations and decide whether to apply for a non-publication order to preserve his identity.

[17] Costs are reserved.

M S King
Judge

Judgment signed at 5 pm on 17 November 2023

² *Service Foods Ltd v Liu*, above n 1.