

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

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

**[2024] NZEmpC 85
EMPC 164 /2024**

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

BETWEEN PACIFIC INSULATION LIMITED
Applicant

AND RODERIGO JOSE LAGERA
First Respondent

AND RJ & AL CONTRACTING LIMITED
(formerly PACIFIC INSULATION (NORTH
ISLAND) LIMITED)
Second Respondent

Hearing: On the papers

Appearances: J Laphorne and S Caradus, counsel for applicant

Judgment: 21 May 2024

**REASONS JUDGMENT OF JUDGE J C HOLDEN
(Application for freezing and ancillary orders)**

[1] By judgment dated 17 May 2024, I granted Pacific Insulation Ltd’s without notice application for freezing and ancillary orders against Roderigo Lagera (also known as “Eric Lagera”) and RJ &AL Contracting Ltd.¹ This judgment provides the reasons for the application being granted.

¹ *Pacific Insulation Ltd v Lagera* [2024] NZEmpC 82.

The applicant is filing proceedings

[2] Pacific Insulation intends to file proceedings in the Employment Relations Authority against the respondents.

[3] Because the Court has not yet heard from the respondents, the untested evidence has been summarised but with enough detail so that the basis for the orders can be understood. Pacific Insulation's affidavit evidence was provided by Thomas Woollen, who is one of its two directors.

[4] Mr Lagera was employed by Pacific Insulation until 7 May 2024. Pacific Insulation says that Mr Lagera had control of the day-to-day operations of its business in New Zealand.

[5] Pacific Insulation says that after Mr Lagera indicated to it that he was intending to leave his employment, he advised Pacific Insulation's operations manager that he had started his own company and that he intended to acquire business currently with Pacific Insulation for the purposes of that company.

[6] Pacific Insulation says that, as a result of this conversation it undertook an investigation during which it discovered that:

- (a) Mr Lagera had incorporated a company on 30 January 2024, which then was called Pacific Insulation (North Island) Ltd;
- (b) Mr Lagera and his wife are directors and shareholders of the new company, which has now changed its name to RJ & AL Contracting Ltd and is the second respondent;²
- (c) Mr Lagera had taken steps to divert business from Pacific Insulation to RJ & AJ Contracting, although the investigation is ongoing, Pacific Insulation says it has identified approximately \$1,500,000 worth of

² Mrs Lagera also was, but is no longer, an employee of Pacific Insulation Ltd.

Pacific Insulation projects that have been diverted to RJ & AJ Contracting; and

- (d) Mr Lagera had taken steps to lock Pacific Insulation personnel out of its systems, including taking its website offline and locking them out of its email platform.

[7] Mr Lagera was advanced a loan from Pacific Insulation of \$251,500. Pacific Insulation also says that Mr and Mrs Lagera obtained a number of unauthorised payments for their own benefit from Pacific Insulation.

[8] Both Mr and Mrs Lagera were dismissed from Pacific Insulation, primarily because they had incorporated the competing company.

[9] Pacific Insulation understands that Mr and Mrs Lagera intended to leave New Zealand on 18 May 2024. He has previously expressed an intention to retire overseas. Pacific Insulation also understands that Mr and Mrs Lagera have accepted a conditional offer on a property they own.

[10] In its proceedings before the Authority, Pacific Insulation intends to seek:

- (a) damages for the breaches of Mr Lagera's employment agreement in a sum to be quantified but likely to be calculated based on the amount of purchase orders directed away from Pacific Insulation less any amounts that are reissued in Pacific Insulation's name;
- (b) an account of the profits from Mr Lagera and RJ & AJ Contracting arising from Mr Lagera's breach of his fiduciary duty to Pacific Insulation; and
- (c) reimbursement of costs and filing fees.

[11] This application for freezing and ancillary orders is supported by a memorandum from counsel, as well as the affidavit from Mr Woollen and an undertaking as to damages. In addition, draft proposed orders were filed.

[12] Counsel for Pacific Insulation has certified that:

- (a) the grounds on which the application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure 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.

The Employment Court may make freezing orders

[13] Under s 190(3) of the Employment Relations Act 2000, the Employment Court has the same powers as the High Court to make freezing orders and applies pt 32 of the High Court Rules 2016 with appropriate modifications.

[14] Freezing orders are provided for under r 32.2 of the High Court Rules 2016; r 32.3 provides for ancillary orders. Rule 32.5 provides that the Court may make a freezing order or an ancillary order against a prospective judgment debtor if the Court is satisfied that there is a danger that a judgment will be wholly or partly unsatisfied because the assets of that debtor, or of another person, might be either: removed from New Zealand; or disposed of, dealt with, or diminished in value.³

[15] To obtain such orders, Pacific Insulation must satisfy four essential requirements:⁴

- (a) It has a good arguable case.
- (b) The respondents have assets within the jurisdiction.
- (c) There is a real risk that the property will be moved out of the jurisdiction or dissipated.

³ High Court Rules 2016, r 32.5(4).

⁴ See *Labour Inspector v Taste of Egypt Ltd* [2016] NZEmpC 31, [2016] ERNZ 309 at [13]–[23]; citing *Mareva Compania Naviera SA v International Bulk Carriers SA* [1980] 1 All ER 213 (EWCA).

- d) The balance of convenience and interests of justice require the order to be granted.

[16] The orders sought by Pacific Insulation comprised:

- (a) An order pursuant to s 190(3) of the Act and r 32.2 of the High Court Rules freezing the assets of the respondents specified in the draft order filed with Pacific Insulation's application.
- (b) An order dispensing with service of the application on any person.
- (c) Ancillary orders requiring the respondents to provide a schedule particularising their assets and to discover the relevant physical and electronic documents in their possession within five working days of the date of service of the orders of the Court.

Pacific Insulation meets the requirements

[17] The alleged admissions of Mr Lagera, and the steps the respondents have allegedly taken to divert business from Pacific Insulation, demonstrate a good arguable case.

[18] The respondents have assets within New Zealand, including real estate and bank accounts.

[19] Mr Lagera's recent actions involving Pacific Insulation, the acceptance of an offer on his property and his expressed intention to go overseas, together are indicative of a real risk that the respondents may seek to further dissipate assets in their ownership or move them out of New Zealand.⁵

[20] As for the balance of convenience and interests of justice, Pacific Insulation notes that any potential hardship that the respondents may experience as a result of the orders being made is mitigated by r 32.6(3) of the High Court Rules, which provides

⁵ See *Bank of New Zealand v Hawkins* (1998) 1 PRNZ 451 (HC) at 454; as cited in *Labour Inspector v Taste of Egypt Ltd*, above n 4, at [16].

that the freezing order must not prohibit the respondents from dealing with the assets covered by the order for the purposes of paying ordinary living expenses; legal expenses related to the freezing order; or disposing of assets or making payments in the ordinary course of business, including business expenses incurred in good faith.

[21] The ancillary orders sought would enable the parties to refine the terms of the freezing order (to cover a more limited range of assets), or to make arrangements for the payment of security into Court or to a trust account that would obviate the need for ongoing freezing orders.

[22] Pacific Insulation has identified possible defences. It points to an argument over the amount of any lost profile, and to an indication from Mr Lagera that he intends to repay Pacific Insulation the loaned money.

[23] Pacific Insulation notes that the orders sought also affect Mrs Lagera. She remains able to access funds for her living expenses, however. Further, although she is not presently a defendant, she is a director of RJ & AJ Contracting and Pacific Insulation submits it would likely have a direct claim against her as a former employee or a claim for a constructive interest over any funds she holds that her husband unlawfully obtained from Pacific Insulation.

[24] An undertaking as to damages has been filed, as required by r 32.2(5). I am satisfied that the evidence demonstrates Pacific Insulation's financial ability to meet any likely order for damages.

Orders appropriate

[25] As noted in my earlier judgment, I was satisfied that, in all the circumstances, it was appropriate for Pacific Insulation to file an urgent, without notice application. As can be seen, urgency applied to the need to restrict the respondents' actions at this stage; it was necessary and just to order that the application be heard as soon as practicable. Having to proceed on notice would have caused the applicant undue delay and prejudice. In all the circumstances of this case, that would have been contrary to

the interests of justice. Accordingly, the matter proceeded without notice and was accorded urgency.⁶

[26] I was satisfied that the substance of the orders sought in the draft submitted with the application were appropriate. The proposed freezing and ancillary orders were made substantively as sought, to be reviewed by the Court at 9.30 am on 30 May 2024. The respondents or their representatives will be entitled to be heard by the Court on that date. By then, the respondents will have been required by the order to serve Pacific Insulation with a schedule fully particularising their financial position and identifying all of their assets and their value.

[27] I also now direct:

- (a) Pacific Insulation is to forthwith file its statement of problem in the Employment Relations Authority and serve it on the respondents (if it has not already done so).
- (b) A copy of this judgment is to be served on the respondents as soon as possible.
- (c) As Mr Lagera may have left the country, service on him may be to his last known personal email address(es). Copies of all documents filed also should be copied to any known legal representatives acting for the respondents. This judgment also may be provided to any real estate agents acting on the sale of any property owned by the respondents.
- (b) The Court is to be notified as soon as service is carried out. An affidavit of service also must be filed.
- (c) This judgment is not to be published until further order of the Court.

⁶ Employment Relations Act 2000, sch 3 cl 21; and High Court Rules 2016, rr 7.23 and 32.2(1).

[28] Costs are reserved.

J C Holden
Judge

Judgment signed at 4.30 pm on 21 May 2024