

[2] The freezing orders were made on 4 April 2025 and have been varied subsequently.

[3] The freezing orders currently cover trust property held by the trustees of the H&K Family Trust as well as various other property of the respondents.¹

[4] There is only one issue before the Court – which assets should continue to be subject to the freezing order?

[5] Mr Sun, counsel for the respondents, submits that the freezing orders should only apply to the property held by the trustees of the H&K Family Trust. He submits that there is sufficient equity in the trust property to cover the respondents' potential liability, and he emphasises that a freezing order must not freeze more assets than the amount claimed. In the alternative, he argues that if the orders do not apply to the trust properties, those properties and the trust bank account should be released from the current orders.

[6] Mr Denyer, counsel for the applicant, submits that the assets currently frozen should remain frozen. He submits that the property held by the trustees of the H&K Family Trust is properly held by the freezing order but that it may not be feasible to realise trust assets to satisfy any debt that arises in these proceedings. He argues that the level of security provided by any assets is relevant and that with the value of the respondents' interest in the trust property being unclear, it may prove to be illusory. On that basis he says the freezing orders should remain against all assets currently. He also notes that the second and third respondents have shares in various companies which they have claimed have significant value and that if necessary, freezing orders could be made over those shares.²

[7] Rule 32.6(2) of the High Court Rules 2016 states:

If the likely maximum amount of the applicant's claim is known, the value of the assets covered by the freezing order must not exceed that amount together with interest on that amount and costs.

¹ But see *A Labour Inspector of the Ministry of Business, Innovation and Employment v Dao* [2025] NZEmpC 82.

² Given the terms of the freezing orders made in April, I consider that the respondents' shares, including any rights associated with those shares, are frozen.

[8] In the present case, although the value of the assets held by the trustees of the H&K Family Trust is known, it is not clear what value can be placed on the beneficial interest held by each respondent in respect of those assets. This does not mean that such assets are not covered by the freezing orders as suggested by Mr Sun. They clearly are, and properly so, given the admitted interest held in them by the respondents. It is the value of that interest that is currently unquantified.

[9] I consider that the approach proposed by Mr Sun conflates the interests of the three respondents. The freezing orders in this case apply to each respondent individually rather than against them as a single entity. When freezing orders are made over assets in respect of which the respondents have a joint interest, the Court needs to assess under r 32.6(2) whether the interest of each respondent in those assets exceeds the amount claimed against that respondent. Where the value of an individual respondent's interest is unknown, the Court is not in a position to conclude that the amount frozen in respect of that respondent exceeds the amount claimed against them.

[10] Ultimately, although all of the property held by the trust is subject to the freezing orders, I consider that r 32.6(2) only applies to the value of the assets covered by the freezing order in which the respondents have a claim or expectancy.³ As the value of each respondent's beneficial claim or expectancy over the trust assets is not known, I consider that r 32.6(2) is not a bar to the freezing orders continuing as they are at the present time.

[11] That issue could be resolved by the respondents, or the trustees of the trust, providing an undertaking or bank security up to the amount of the claim. However, no such steps have been taken.

Bank accounts

Business accounts currently unfrozen

[12] There are a number of business accounts which are no longer frozen. The accounts were unfrozen to enable third party companies to pay employee wages, rent,

³ See r 32.5(5) of the High Court Rules 2016 by way of analogy.

loans, utilities and other business expenses. However, the balances of those accounts have been provided to the Labour Inspector.

[13] The Labour Inspector acknowledges that the Court has already considered an application to unfreeze these accounts and decided to do so. However, she reiterates her concern that as long as business accounts remain unfrozen, the respondents have the ability to receive and then dissipate funds via any such accounts.

[14] As already noted, the decision to unfreeze these accounts has been dealt with in a previous judgment.⁴ While it is open to the Court to look at refreezing those assets, the reasons for unfreezing them remain. In response to the Labour Inspector's concern around ongoing dissipation, the respondents have agreed to provide bank statements on a monthly basis for all business accounts to show that these accounts have been used solely for business expenses. I consider that to be acceptable and sufficient protection in the circumstances.

[15] In the event that the provision of those accounts gives rise to any concerns around dissipation, it is of course open to the Labour Inspector to make an appropriate application.

[16] Accordingly, the business accounts which currently are unfrozen remain so on condition that the respondents provide monthly bank statements to the Labour Inspector.

Bank account belonging to HK89 Investment Ltd

[17] The bank account for HK 89 Investment Ltd currently remains frozen. The respondents seek for it to be unfrozen.

[18] It is appropriate that it remains frozen. It is the account into which the fees are paid for the various nail franchises, including DL89 Ltd and BL69 Ltd which purchased the business of the companies that were the subject of the initial proceedings and which the Labour Inspector is concerned may be phoenix companies. The reason

⁴ *A Labour Inspector of the Ministry of Business, Innovation and Employment*, above n 1.

for unfreezing the other company bank accounts is set out in my previous judgment (primarily to enable the payment of wages).⁵ However, wages do not appear to be paid from this account. The respondents can liaise with the Labour Inspector and follow appropriate processes for the agreed release of funds if payments need to be made.

[19] To facilitate that process, the respondents should provide the Labour Inspector with bank statements for HK89 Investment Ltd on a monthly basis.

Personal bank accounts

[20] Mr Sun has stated that if the Court does not freeze the trust properties and the company bank accounts, then the respondents acknowledge that their personal bank accounts, real property and company shares can be frozen. I do not consider that retaining freezing orders over the trust assets is a bar to freezing orders remaining over the personal bank accounts and other assets.

[21] Previous orders have allowed the respondents to set up a new and unfrozen bank account for the purposes of day-to-day expenses.⁶ This has not occurred to date. The respondents say this is as a result of difficulties in opening a new bank account with Westpac Bank. As a result, the \$15,000 authorised to be released for living expenses have not yet been released. The respondents now seek the release of the \$15,000 together with a further amount of \$30,000 to cover living costs over the next three months. They have provided the basis for these amounts in their submissions.

[22] A joint bank account of the first and second respondents which is currently frozen has a balance of \$41,866.67. Instead of opening a new bank account, the respondents ask that the existing bank account be unfrozen and able to be used for ordinary living expenses.

[23] The difficulty with this proposal is that the bank account is currently the most significant quantifiable and viable asset held by the respondents.

⁵ At [18].

⁶ At [23].

[24] Rather than dissipate such asset, the previous arrangement that was approved should proceed with a separate and unfrozen bank account being set up. I note that the balance of the existing bank account has remained static.⁷ This is perhaps surprising given that all three respondents have salaries itemised in their statements of assets and liabilities. There is no record of them being paid into any existing bank accounts subsequent to the freezing orders being put in place. Any new account could receive the respondents' salaries and be used for day-to-day expenses, provided that the bank statements for such account are provided to the Labour Inspector on a monthly basis. This will enable the Labour Inspector to ensure that the account is not being used as a means to divert other funds or dissipate assets.

Bank accounts of the H&K Family Trust

[25] As with the trust properties, these bank accounts will remain frozen.

Outcome

[26] The current freezing and ancillary orders will continue until 4 pm on Thursday 10 July 2025.

- (a) The various company bank accounts currently unfrozen will remain unfrozen on condition that the respondents provide monthly bank statements to the Labour Inspector.
- (b) The bank account belonging to HK89 Investment Ltd will remain frozen and the respondents will provide monthly bank statements to the Labour Inspector.
- (c) The respondents' personal accounts will remain frozen with the exception of one new and separate bank account designated for living costs. As noted above, I would expect that any salary payments that have not been paid from the date of the freezing orders could be paid into these accounts to meet such costs.

⁷ With the exception of the allowed deduction of \$50,000 to the Capstone Law trust account for legal fees.

- (d) The respondents may require the release of further funds and/or payments to be made from currently frozen bank accounts. Accordingly, the Labour Inspector will provide advice on the process to be followed for making such requests and will then facilitate appropriate requests promptly.

[27] A review hearing will be held, if necessary, at 10 am on Wednesday 9 July 2025. The following timetable applies for that hearing:

- (a) The applicant is to file a memorandum and any other relevant documents by 4 pm on Friday 4 July 2025.
- (b) The respondents are to file a memorandum and any other relevant documents by 4 pm on Tuesday 8 July 2025.

[28] This judgment and the orders which I now make are to be served immediately on the relevant banks.

[29] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 1 pm on 5 June 2025