

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

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

**[2025] NZEmpC 138
EMPC 393/2024**

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

AND IN THE MATTER OF an application to vary orders

AND IN THE MATTER OF an application for costs

BETWEEN SOUNDHOMES NZ LIMITED
Applicant

AND PHILIP CARL DOUGHTY
First Respondent

AND PROCLADD EXTERIOR SOLUTIONS
LIMITED
Second Respondent

AND BLACKDOG FINISHES LIMITED
Third Respondent

AND PREVENT SERVICES LIMITED
Fourth Respondent

Hearing: On the papers

Appearances: J Leenoh, counsel for applicant
MC Donovan and D Montepara, counsel for respondents

Judgment: 7 July 2025

COSTS JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment deals with an application for costs following the conclusion of an extensive process involving freezing and ancillary orders. The initial orders were

granted on 4 October 2024, with reasons given by Judge Corkill on 7 October 2024.¹

[2] There is no dispute between the parties that the applicant is entitled to a contribution towards its costs in relation to these proceedings. The issue is one of quantum.

[3] In the first instance, the applicant seeks full indemnity costs of \$183,772.61 plus disbursements of \$76,125.74, less \$50,000 which has already been received from the respondents.

[4] In the alternative, it seeks an uplift of scale costs, calculated on a Category 2, Band B basis, by 50 per cent, that is an uplift from \$78,452 to \$117,678, plus disbursements and allowance for monies already received.

[5] A further and least favoured alternative is a claim for scale costs of \$78,452 plus disbursements, less \$50,000 already received. The disbursements are for the filing fee of \$889 and \$75,236.74 for an expert accounting witness.

[6] The respondents deny that their conduct warrants indemnity or increased costs. They agree that scale costs should be awarded but disagree with the applicant's calculations of scale costs on a Category 2, Band B basis. They calculate those costs at \$36,686.50. They also dispute the recovery of the expert accounting fee.

Background

[7] On 4 October 2024, Judge Corkill granted freezing and ancillary orders on an ex parte basis in favour of the applicant against the first, second, third, and fourth respondents. The orders were set to expire at 9 am on 24 October 2024.

[8] On 22 October 2024, the applicant filed a memorandum seeking to extend the orders until further order of the Court.

¹ *Soundhomes NZ Ltd v Doughty* [2024] NZEmpC 194.

[9] On 23 October 2024, the respondents filed a memorandum opposing the extension, arguing that the orders were unnecessary and imposed an undue burden.

[10] Subsequent extensions of the orders were granted by Judge Corkill by consent, as follows:

- (a) 24 October 2024 – extended until 10 am on 25 October 2024;²
- (b) 25 October 2024 – extended until 10 am on 19 November 2024;³
- (c) 14 November 2024 – extended until 10 am on 10 December 2024;⁴ and
- (d) 4 December 2024 – extended until 10 am on 18 December 2024.⁵

[11] On 12 December 2024, the applicant filed an application to amend the orders.

[12] On 16 December 2024, the parties again appeared before Judge Corkill. The applicant sought to extend the orders on an amended basis, while the respondents opposed any further extension.

[13] On 18 December 2024, Judge Corkill granted amended freezing and ancillary orders, extending them until 10 am on 11 February 2025.⁶

[14] Further extensions of the amended orders were granted by me as follows:

- (a) 7 February 2025 – extended until 10 am on 11 March 2025;⁷
- (b) 13 March 2025 – following a hearing on 10 March 2025 – extended until 4 pm on 4 April 2025;⁸

² *Soundhomes NZ Ltd v Doughty (No 2)* [2024] NZEmpC 201.

³ *Soundhomes NZ Ltd v Doughty (No 3)* [2024] NZEmpC 203.

⁴ *Soundhomes NZ Ltd v Doughty (No 4)* [2024] NZEmpC 217.

⁵ *Soundhomes NZ Ltd v Doughty (No 5)* [2024] NZEmpC 241.

⁶ *Soundhomes NZ Ltd v Doughty (No 6)* [2024] NZEmpC 252.

⁷ *Soundhomes NZ Ltd v Doughty (No 7)* [2025] NZEmpC 14.

⁸ *Soundhomes NZ Ltd v Doughty (No 8)* [2025] NZEmpC 42.

- (c) 3 April 2025 – at a further hearing, I declined an application to amend the ancillary aspects of the amended orders; however, by consent, the amended orders were extended until 4 pm on 11 April 2025.⁹

[15] The amended orders lapsed after 4 pm on 11 April 2025.

Legal principles

[16] The Court has a broad discretion as to costs.¹⁰ While the discretion is broad, it must be exercised on a principled basis and consistently with equity and good conscience.¹¹

[17] Regulation 68 of the Employment Court Regulations 2000 gives the Court a broad discretion to award costs and the Court may take into account conduct that tends to increase costs.¹²

[18] Indemnity costs may be ordered where there is “exceptionally bad” behaviour.¹³ The applicant has referred to the non-exhaustive list of circumstances in which indemnity costs have been ordered, as outlined by Baragwanath J in *Bradbury v Westpac Banking Corp*:¹⁴

- (a) the making of allegations of fraud knowing them to be false and the making of irrelevant allegations of fraud;
- (b) particular misconduct that causes loss of time to the court and to other parties;
- (c) commencing or continuing proceedings for some ulterior motive;
- (d) doing so in wilful disregard of known facts or clearly established law; and
- (e) making allegations which ought never to have been made or unduly prolonging a case by groundless contentions, summarised in French J’s “hopeless case” test.

⁹ *Soundhomes NZ Ltd v Doughty (No 9)* [2025] NZEmpC 68.

¹⁰ Employment Relations Act 2000, sch 3 cl 19; and Employment Court Regulations 2000, reg 68.

¹¹ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

¹² Employment Court Regulations 2000, reg 68.

¹³ *Bradbury v Westpac Banking Corp* [2009] NZCA 234 at [28].

¹⁴ At [29].

Analysis

[19] The applicant submits that the respondents have breached Court orders and undertakings and have conducted their defence in a manner that was improper or unnecessarily obstructive. It submits that in these circumstances, the Court has jurisdiction to award indemnity costs and that such an award is appropriate.

[20] The applicant has particularised the alleged unreasonable conduct of the respondents throughout the course of the proceeding as:

- (a) ignoring or disobeying the order of the Court by failing to:
 - (i) file and serve affidavit evidence pursuant to the ancillary orders; and
 - (ii) disclose the obligation to place security over a vehicle, which was not included in initial disclosure.
- (a) breaching undertakings given to the Court on two occasions; and
- (b) acting improperly or unnecessarily in defending the proceeding from the outset.

[21] The applicant has gone into some detail in relation to each of these matters. However, they are dealt with in the body of the nine judgments and do not need to be revisited here.

[22] The respondents submit that the breaches referred to were not deliberate and would not qualify as “exceptionally bad” behaviour to warrant indemnity costs.¹⁵ The respondents say the failure to file and serve affidavit evidence pursuant to the ancillary orders was due to counsel oversight rather than deliberate disobedience of the Court’s order. In relation to non-disclosure, they say that this was inadvertent in the course of an effort to provide substantial cash security for the applicant’s benefit. They argue it

¹⁵ The applicant relies on *Bradbury v Westpac Banking Corp*, above n 12.

did not amount to deliberate disobedience that would warrant an award of indemnity or increased costs, even if the Court did identify it as a technical breach of the orders.

[23] In relation to alleged breaches of undertakings, the respondents say that these were technical breaches only. Disadvantage was not suffered by the applicant, and does not warrant an award of indemnity or increased costs. Further, they submit that despite their concerns regarding the relevance of the material sought by the applicant's expert forensic accountant, they provided information to her on a without prejudice basis by way of a practical solution. They say that ultimately, the concern for the Court for present purposes is whether the ancillary orders were satisfied; they say they were satisfied, albeit that there were two "technical breaches".

[24] Concerning the allegation that the respondents acted improperly or unnecessarily in defending the proceeding, and by opposing the freezing orders, the respondents note that they were entitled to do so. They highlight the repeated extensions sought, and security in the sum of \$170,000 having been paid into Court. They also record that the Court extended the freezing order twice and in five cases they agreed to those extensions in order to permit the parties to attend mediation, and to allow the applicant's forensic accountant to provide further analysis.

[25] Overall, they say that any breaches were technical breaches only rather than knowing or deliberate breaches. They argue that these actions do not amount to exceptionally bad behaviour such as to warrant indemnity costs.

[26] I do not consider that the respondents' conduct goes as far as to fall within the categories set out above. There was genuine dispute as to the interpretation and breadth of the ancillary orders and the respondent's position was upheld by Judge Corkill.¹⁶ Amended orders were sought by the applicant and Judge Corkill's previous ruling had to be reiterated in a later judgement.¹⁷ Although the respondents' breaches were technical in nature, the risk of dissipation remained live and the continuation of the orders was necessary. While not justifying indemnity costs, such conduct justifies an uplift in scale costs.

¹⁶ *Soundhomes NZ Ltd v Doughty (No 6)*, above n 6, at [53]-[54].

¹⁷ *Soundhomes NZ Ltd v Doughty (No 8)*, above n 8, at [35].

[27] The applicant has sought an uplift of 50 per cent. That is significant. I consider 30 per cent to be appropriate in all the circumstances. It is not inconsequential but takes into account that responsibility for some of the delay and extensions of time lies with the applicant.

Scale costs

[28] The applicant has sought scale costs of \$78,452. It attached a schedule particularising amounts claimed. The respondents take issue with this calculation and have listed a number of items that they say are not justified.

[29] Some of the respondents' criticisms are justified. I deal with each in turn.

[30] I agree that a separate claim in relation to the application for urgency accompanying the originating application is not recoverable.

[31] I agree that second counsel was not necessary from 24 October 2024. However, I do consider that in the initial stages of the proceedings, second counsel was appropriate.

[32] I do not agree that no amount should be awarded for issuing the freezing and ancillary orders as if they were certificates of judgment. While the sealed orders were issued by the Court, it was necessary for the applicant to prepare the orders, provide them to the Court, and make amendments as directed by the Court. The amount sought in regard to this work is justified.

[33] I agree that no amount should be allowed for the preparation of a bundle of documents. No bundle of documents was provided; documents were all contained within the extensive affidavits provided to the Court. A bundle of authorities is not what is contemplated by the reference in the Court's Practice Directions Guideline Scale.¹⁸ The preparation of any bundle of authorities is included in the allowance for the preparation of submissions.

¹⁸ Employment Court of New Zealand "Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

[34] The respondents have proposed that the time allocated to preparing affidavits is 0.5 days per affidavit (there being no items separately listed in the scale for preparation of briefs of evidence on an interlocutory application). They say that the applicant's approach of claiming 2.5 days per affidavit is disproportionate. However, while 2.5 days may be disproportionate, 0.5 is insufficient. I consider that one day for each affidavit is appropriate.

[35] In order to work through the impact of these findings, it is helpful to have regard to the applicant's schedule. That schedule is reproduced and attached as Appendix A to this judgment but is amended to take into account the findings.

[36] Accordingly, having re-calculated the amounts and having regard to the schedule attached, the sum arrived at when applying Category 2, Band B is \$53,361. I agree with the applicant that this is not sufficient in all the circumstances as set out above. As already noted, I consider that a 30 per cent uplift should be applied. Accordingly, I find that the sum of \$69,369.30 is an appropriate contribution to the applicant's costs.

Disbursements

[37] The applicant has also sought two disbursements. The first is the filing fee of \$889, which is not disputed. This should be paid. The second relates to the fees¹⁹ incurred by the forensic accountant who provided two affidavits to the Court and who was engaged to investigate and uncover the full extent of the fraudulent conduct of the respondents. The applicant says the work was integral to the enforcement process and that it is well settled that expert fees are recoverable as disbursements.²⁰

[38] The respondents say that the freezing and ancillary orders were not intended to determine the extent of the alleged fraudulent conduct. They say that it is for the Employment Relations Authority to decide that issue in proceedings before it. They argue that this is supported by the fact that the forensic

¹⁹ \$75,236.74.

²⁰ *Air New Zealand Ltd v Commerce Commission* [2007] NZCA 27, [2007] 2 NZLR 494 at [47].

accountant's fees are claimed as special damages in the amended statement of problem filed in the Authority. They submit that these costs cannot be claimed twice.

[39] The applicant says that should the expert's fees be ordered to be paid as a disbursement, it will amend the statement of problem to remove the forensic fees as special damages, thereby avoiding any risk of double recovery.

[40] The purpose of freezing and ancillary orders is to prevent the dissipation of assets pending the determination of proceedings. I accept that at least some of the forensic accountant's work will have been directed at investigating the movement of the assets between the various respondents and to third parties.

[41] I accept that a significant amount of her work would have been appropriately directed towards the issues relevant to the granting and maintenance of the freezing and ancillary orders. However, as noted by the respondents, she was also tasked with "investigating and uncovering the full extent of the alleged fraudulent conduct". That is potentially outside the ambit of these proceedings but properly within those before the Authority. Accordingly, I consider that it is appropriate that the applicant be able to recover a proportion, but not all, of the expert fees.

[42] While the invoices have been provided, there is no itemisation. As such it is not possible to assess what fees were incurred as part of these proceedings and what were incurred in preparation for the substantive proceedings in the Authority. In all the circumstances, I consider that one-half of her fees, being \$37,618.37, is an appropriate contribution to the costs of these proceedings.

Outcome

[43] The respondents are ordered to pay the applicant the following sums by way of contribution to its costs:

- (a) \$53,361 with an uplift of 30 per cent, being \$69,369.30; and
- (b) disbursements of \$889 and \$37,618.37, totalling \$38,507.37.

[44] This is a total of \$107,876.67. The applicant has already received the sum of \$50,000 towards its costs.²¹ Accordingly, the sum of \$57,876.67 is now payable.

[45] The sum of \$120,000 plus interest is currently held in the Court pending further orders.²² I order that the sum of \$57,876.67 be released to the applicant from the amount held in the Court within seven days of the date of this judgment.

[46] The parties should confer with a view to agreeing steps to be taken in relation to the balance of the funds. Memoranda should be filed within 14 days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 4.25 pm on 7 July 2025

²¹ *Soundhomes NZ Ltd v Doughty (No 7)*, above n 7, at [5](e).

²² *Soundhomes NZ Ltd v Doughty (No 3)*, above n 3, at [7].

APPENDIX A

Item	Description	Allocated Days	Rate	Amount
49	Filing application and supporting affidavit (originating application dated 4 October 2024)	2	\$2,390	\$4,780
34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 4 October 2024)	0.2	\$2,390	\$478
11	Preparation for first directions conference (telephone conference on 4 October 2024)	0.4	\$2,390	\$956
16	Appearance at case management for sole/principal representatives (telephone conference on 4 October 2024)	0.25	\$2,390	\$598
17	Second and subsequent representative (telephone conference on 4 October 2024)	0.125	\$2,390	\$299
15	Filing memorandum for case management meeting (memorandum of counsel dated 22 October 2024)	0.4	\$2,390	\$956
49	Plaintiff's preparation of briefs or affidavits (affidavit of Daniel John Wright dated 22 October 2024)	1	\$2,390	\$2,390
39	Appearance at hearing for sole or principal representative (23 October 2024)	0.5	\$2,390	\$1,195
40	Second and subsequent representative (23 October 2024)	0.25	\$2,390	\$598
34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 24 October 2024)	0.2	\$2,390	\$478
15	Filing memorandum for case management meeting (joint memorandum of counsel dated 24 October 2024)	0.4	\$2,390	\$956

34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 25 October 2024)	0.2	\$2,390	\$478
15	Filing memorandum for case management meeting (Joint Memorandum of Counsel dated 31 October 2024)	0.4	\$2,390	\$956
42	Plaintiff's preparation of briefs or affidavits (affidavit of Daniel John Wright dated 6 November 2024)	1	\$2,390	\$2,390
42	Plaintiff's preparation of briefs or affidavits (Affidavit of Kare Johnstone dated 6 November 2024)	1	\$2,390	\$2,390
16	Appearance at case management for sole or principal representatives (telephone directions conference on 11 November 2024)	0.25	\$2,390	\$598
15	Filing memorandum for case management meeting (Joint memorandum of counsel dated 13 November 2024)	0.4	\$2,390	\$956
16	Appearance at case management for sole/principal representatives (telephone directions conference on 4 December 2024)	0.25	\$2,390	\$598
52	Preparation of written submissions (submissions seeking extension of freezing orders dated 12 December 2024)	1	\$2,390	\$2,390
28	Filing applications (application to amend and/or vary freezing orders and ancillary orders dated 12 December 2024)	0.6	\$2,390	\$1,434
42	Plaintiff's preparation of briefs or affidavits	1	\$2,390	\$2,390
15	Filing memorandum for case management meeting (memorandum of counsel dated 13 December 2024)	0.4	\$2,390	\$956
49	Plaintiff's preparation of briefs or affidavits (affidavit of Kare Johnstone 16 December 2024)	1	\$2,390	\$2,390
39	Appearance at hearing for sole or principal representative (16 December 2024)	0.5	\$2,390	\$1,195

34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 18 December 2024)	0.2	\$2,390	\$478
15	Filing memorandum for case management meeting (Memorandum of counsel dated 21 January 2025)	0.4	\$2,390	\$956
15	Filing memorandum for case management meeting (joint memorandum of counsel dated 31 January 2025)	0.4	\$2,390	\$956
16	Appearance at case management for sole or principal representatives (telephone conference on 3 February 2025)	0.25	\$2,390	\$598
34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 7 February 2025)	0.2	\$2,390	\$478
16	Appearance at case management for sole/principal representatives (telephone conference on 4 March 2025)	0.25	\$2,390	\$598
28	Filing application (application to amend and/or vary freezing and ancillary orders dated 5 March 2025)	0.6	\$2,390	\$1,434
49	Plaintiff's preparation of briefs or affidavits (Daniel Wright and Kare Johnston)	2	\$2,390	\$4,780
52	Preparation of written submissions (submissions seeking extension of freezing orders dated 10 March 2025)	1	\$2,390	\$2,390
34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 11 March 2025)	0.2	\$2,390	\$478
16	Appearance at case management for sole/principal representatives (10 March 2025)	0.25	\$2,390	\$598
15	Filing memorandum for case management meeting (memorandum of counsel dated 31 March 2025)	0.4	\$2,390	\$956
15	Filing memorandum for case management meeting (joint memorandum of counsel dated 2 April 2025)	0.4	\$2,390	\$956

15	Filing memorandum for case management meeting (further memorandum of counsel dated 2 April 2025)	0.4	\$2,390	\$956
16	Appearance at case management for sole or principal representatives (telephone conference on 3 April 2025)	0.25	\$2,390	\$598
34	Obtaining certificate of judgment (sealed freezing and ancillary orders dated 3 April 2025)	0.2	\$2,390	\$478
15	Filing memorandum for case management meeting (memorandum of counsel dated 9 April 2025)	0.4	\$2,390	\$956
15	Filing memorandum for case management meeting (memorandum of counsel dated 9 April 2025)	0.4	\$2,390	\$956
15	Filing memorandum for case management meeting (memorandum of counsel dated 11 April 2025)	0.4	\$2,390	\$956
	Total		\$22,325	\$53,361