

ORDER PROHIBITING PUBLICATION OF THIS JUDGMENT

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

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

**[2025] NZEmpC 15
EMPC 51/2025**

IN THE MATTER OF	a without notice application for a freezing order and ancillary orders
BETWEEN	TRADEZONE INDUSTRIAL GROUP LTD Applicant
AND	MICHAEL STANTON Respondent

Hearing: 7 February 2025
(via telephone)

Appearances: S Langton and B Colgan, counsel for applicant

Judgment: 7 February 2025

JUDGMENT OF JUDGE M S KING
(Application for without notice freezing and ancillary orders)

Introduction

[1] This judgment resolves a without notice application for a freezing order and ancillary orders.

[2] The application is supported by affidavit evidence, a memorandum of counsel, a draft order, and draft statement of problem and an undertaking as to damages. After discussion with counsel as to some issues pertaining to the proposed draft order, a further draft order was filed.

[3] The application was heard today. I was satisfied that the circumstances justified the application being heard promptly on an ex-parte basis.

Background

[4] TradeZone Industrial Group Ltd describes itself as a management cooperative and nationwide distribution network made up of locally owned and operated “TradeZone” stores throughout New Zealand. The stores supply high-end specialist tools, components and consumables to the engineering industry and for DIY. TradeZone has 28 shareholders (members), with each member owning one store or more. TradeZone has five employees, who all work in its head office.

[5] TradeZone employed the respondent, Michael Stanton, as its general manager in 2022.

[6] Prior to Mr Stanton joining TradeZone, each member store would receive invoices from suppliers for wholesale product they bought. Each member would then send a spreadsheet of suppliers to pay, with corresponding amounts, and TradeZone’s operations manager would reconcile the invoice amounts and pay each supplier.

[7] In his role as general manager, Mr Stanton was responsible for the implementation of a significant project to introduce a centralised billing system for TradeZone and its members. The project had a budget of \$200,000; however, the overall cost of the project ballooned to \$400,000.

[8] Once the centralised billing system was implemented, all invoices from suppliers were sent to TradeZone’s head office (not its members) through a software system called Tranzsoft. Invoices and statements are then automatically generated and sent to members. Members pay the head office, which then pays the suppliers.

[9] Mr Stanton would authorise invoices relating to marketing, the building of the contracted billing system and relationships he had created with new suppliers for advertising, sponsorship, and search engine analytics. When doing so, Mr Stanton would print out the invoices, authorise their payment by dating and signing them and give a physical copy of the invoice to TradeZone’s operations manager, Dianne

Mitchell, who would then pay the invoice and file it in a physical folder. Mr Stanton was authorised to sign off invoices up to \$5,000. All invoices over this amount, and invoices relating to advertising, required Board approval, but once obtained, Mr Stanton would follow the same process.

[10] TradeZone's Board were unhappy with the overspend on the centralised billing project and questioned whether Mr Stanton had adequately managed the costs. In mid-November 2024 Mr Stanton was invited to a meeting with the Board. Following the meeting Mr Stanton was stood down. On 19 December 2024 Mr Stanton and the Board signed a record of settlement which provided for Mr Stanton to resign from his employment and to receive \$53,000, comprising an ex-gratia payment and garden leave.

[11] Shortly after Mr Stanton had finished employment, TradeZone became aware of irregularities with one of its suppliers. It investigated further and found irregularities involving supplier invoices totalling \$62,021.25 between August 2023 and December 2024. In summary, TradeZone alleges that:

- (a) Mr Stanton manipulated invoices that he received from suppliers by inflating the value of the invoices and changing the bank account details to his own bank account. He would then authorise TradeZone to pay the inflated invoices to his account. Once that payment was received, he would personally pay the correct invoice, with the lower amount to the correct supplier account, retaining the difference. It is alleged that Mr Stanton did this to thirteen invoices.
- (b) Mr Stanton fabricated invoices from suppliers and authorised payment of these fake invoices to his account. It is alleged he fabricated three invoices in total.

[12] TradeZone did not become aware of the facts giving rise to its claims against Mr Stanton until 20 January 2025, after it had signed the record of settlement and paid him the agreed settlement amounts.

[13] TradeZone engaged a computer forensic expert to review Mr Stanton's work laptop. It alleges that it has suffered losses totalling \$10,000 for legal and computer forensic costs and wasted management time investigating Mr Stanton's conduct.

[14] Accordingly, TradeZone seeks orders restraining Mr Stanton from removing, disposing of, dealing with, or diminishing the value of certain assets to a value of no more than \$125,000. These are sought to preserve the company's position so that any funds that have been, or may be, paid into Mr Stanton's bank accounts or used to acquire property, over which Mr Stanton has control, remain in New Zealand and are not dissipated pending determination of proceedings it intends to bring promptly in the Employment Relations Authority.

[15] Further, it also seeks ancillary orders requiring disclosure of Mr Stanton's assets and accounts. Such orders would ensure the freezing order sought will be complied with and will establish the true extent of the theft and identify assets against which recovery could be sought.

Relevant principles

[16] The purpose of a freezing order is to preserve property for enforcement purposes in circumstances where there is a risk of dissipation.

[17] Section 190(3) of the Employment Relations Act 2000 (the Act) provides that the Court has the same powers as the High Court to make a freezing order, as provided for in the High Court Rules 2016.

[18] Part 32 of those rules is applied by this Court, therefore, with appropriate modifications. This means that a freezing order may be made under r 32.2. The Court may make such an order without notice, albeit subject to full and frank disclosure to the Court of all material facts.

[19] Rule 32.5 provides that the Court may make a freezing order against a respondent if an applicant has a good arguable case on a prospective cause of action. The allegations in relation to a proposed claim must be capable of tenable argument

and supported by sufficient evidence.¹ The cases emphasise that the sufficiency of evidence required must reflect the early stage of the proceeding.² Further, an order may be made if there is a sufficient prospect that another judicial body – here the Authority – will give judgment in favour of the applicant.³

[20] Ancillary orders may be made if the Court considers it just to do so, including where this is necessary to elicit information relating to assets relevant to the freezing order.⁴

[21] Numerous cases have established that in order to obtain such orders, the applicant must satisfy four essential requirements:⁵

- (a) that it has a good arguable case;
- (b) that the respondent has assets within the jurisdiction;
- (c) that there is a real risk the property will be dissipated or, if relevant, will be moved out of the jurisdiction; and
- (d) that the balance of convenience and interests of justice require the grant of interim relief.

Analysis

Good arguable case

[22] In a supporting affidavit, Ms Mitchell, operations manager for TradeZone, explained how her concerns over Mr Stanton’s conduct came to light and were developed.

¹ *Hannay v Mount* [2011] NZCA 530 at [21]–[22].

² *Dotcom v Twentieth Century Fox Film Corp* [2014] NZCA 509, (2014) 22 PRNZ 479 at [18] and [31].

³ High Court Rules 2016, r 32.5(1) and (3).

⁴ Rule 32.3.

⁵ See *Labour Inspector v Taste of Egypt Ltd* [2016] NZEmpC 31, [2016] ERNZ 309 at [13]–[23]; *Borsboom (Labour Inspector) v Preet PVT Ltd* [2016] NZEmpC 168 at [25]; and *A Labour Inspector of Ministry of Business Innovation and Employment v Jeet Holdings Ltd* [2019] NZEmpC 188 at [5].

[23] Ms Mitchell did not have any concerns about Mr Stanton's conduct when he resigned from his employment in December 2024. Prior to his resignation Mr Stanton had emailed Ms Mitchell asking her to change the bank account details for one of TradeZone's suppliers (Supplier A). Ms Mitchell ultimately forgot to change the bank account number for Supplier A in TradeZone's system.

[24] On 17 January 2025 after Mr Stanton's employment with TradeZone had ended, Ms Mitchell paid an invoice from Supplier A dated 1 January 2025 into the bank account that she had previously used to pay invoices to Supplier A.

[25] On 20 January 2025 Ms Mitchell received a call from Supplier A seeking payment of their January invoice. When she advised that she had made the payment, Supplier A advised that they had not received any payment and requested proof of payment. Ms Mitchell emailed proof of payment, which included the bank account number into which the payment was made. Ms Mitchell also sought confirmation of Supplier A's email address on TradeZone's system. Supplier A advised Ms Mitchell that both the bank account and email address was incorrect. Despite the incorrect bank account number, Supplier A had been receiving payment for its invoices to TradeZone on time. Supplier A sent a screenshot from its bank account which showed payments of Supplier A's invoices had been made from an account with the reference "Mr M Stanton TradeZone TradeZone".

[26] TradeZone does not use an employee name in the reference field for a payment. Supplier A sent Ms Mitchell copies of invoices and statements dating back to when Supplier A's relationship with TradeZone commenced. Ms Mitchell could see that TradeZone was paying out more than Supplier A had been invoicing, to a bank account that did not belong to Supplier A (suspicious bank account).

[27] Ms Mitchell called TradeZone's bank and requested a printout of all money paid from TradeZone's bank account to the suspicious bank account number. The transactions provided by the bank showed payments with references to three different TradeZone suppliers. The transaction history also showed payments made into the TradeZone bank account from the suspicious account. These incoming payments were labelled "Mr M Stanton M Stanton Expense" and were payments made by Mr Stanton

to reimburse TradeZone for his personal expenses that he had put on his work credit card by accident.

[28] In summary Ms Mitchell concluded that Mr Stanton had received invoices from Supplier A between April 2024 and December 2024. He edited eight invoices from Supplier A by changing the bank account number for payment to the suspicious bank account number, increasing the invoiced amount and amending Supplier A's email address on the invoice. He would then print and sign the doctored invoices to authorise and arrange for TradeZone to pay them. Once the invoiced amount was paid into the suspicious bank account, he would pay the original invoiced amount to Supplier A from the same account and kept the balance of the invoice. When his employment at TradeZone ended, he had attempted to cover his tracks by sending a fake email from Supplier A to Ms Mitchell advising that its bank account number had changed and advising that its invoiced amounts would go down in the future due to business efficiencies.

[29] Ms Mitchell also concluded that Mr Stanton fabricated two further invoices from Supplier A for February 2024 and September 2024. Supplier A did not issue invoices on those months, and the invoices were paid into the suspicious bank account so that Mr Stanton would have received and kept the full amount of those invoices. TradeZone alleges that it has lost and Mr Stanton has gained \$22,202.50 as a result of the fraudulent invoices involving Supplier A.

[30] Ms Mitchell investigated the other supplier names identified in TradeZone's bank transaction history that were linked to the suspicious bank account number.

[31] Ms Mitchell found a June 2024 invoice from a sports club which TradeZone sponsored for \$8,050. TradeZone's bank transaction history showed that it had paid the invoiced amount into the suspicious bank account (and not the bank account number on the sports club's invoice). Ms Mitchell emailed the sports club, providing a copy of the invoice and following up on whether they received payment. The sports club advised that this was not their invoice. Ms Mitchell suspects that Mr Stanton generated a fake invoice for the sports club.

[32] Ms Mitchell also found that TradeZone had paid four invoices relating to a partnership agreement TradeZone had for signage and sponsorship into the suspicious bank account. Ms Mitchell checked her physical file for the invoices related to the partnership agreement and found four invoices dated between August 2023 and October 2024. The invoices provided for direct payment to be paid into the suspicious bank account. Ms Mitchell emailed the partnership and requested copies of the invoices. The four invoices received from the partnership were \$31,768.75 less than the invoices TradeZone had on file and had paid into the suspicious bank account.

[33] Ms Mitchell has attempted, with the assistance of a computer forensic consultant, to find original invoices on Mr Stanton's work laptop; however, they have not been able to find any evidence, such as copies of edited or fabricated invoices or original invoices on Mr Stanton's laptop.

[34] Mr Langton, counsel for TradeZone, said that a claim would be brought by the company against Mr Stanton, alleging a breach of his individual employment agreement (IEA), which required him to perform his duties diligently and faithfully, to work in the best interests of the company and to not act in any way which conflicts or which could adversely reflect on the company's business. A claim will also be brought under an implied duty of fidelity and good faith.

[35] I conclude that the allegations contained in TradeZone's proposed claim against Mr Stanton in relation to the manipulation and fabrication of invoices relating to Supplier A, the sports club and partnership agreement, considered above, are capable of tenable argument and are supported by sufficient evidence.⁶

[36] Mr Langton also claims that as a result of the alleged breaches by Mr Stanton, TradeZone has lost \$53,000, being the ex-gratia payment and paid garden leave it made under the record of settlement. Mr Langton claims that if TradeZone had been aware of the breaches, it would very likely have summarily dismissed him without making any payments to him. I accept that if TradeZone had been aware of the alleged breaches, it likely would not have entered into the settlement agreement. However, even if Mr Stanton's silence about the breaches had a causal connection with the

⁶ *Hannay v Mount*, above n 1, at [22].

settlement agreement, it would not mean that the breaches themselves caused a settlement agreement to be signed.

[37] Further, while it is accepted that TradeZone would likely not have entered into the settlement agreement if it had been aware of the alleged breaches, s 149(3)(ab) of the Act states the terms of a settlement agreement may not be cancelled under ss 36 to 40 of the Contract and Commercial Law Act 2017. The Court of Appeal made obiter remarks on that provision in *TUV v Chief of New Zealand Defence Force*:⁷

We note in passing that s 149(3)(ab) may have the surprising, and presumably unintended, consequence of preventing cancellation of a settlement agreement that was procured by fraud. We cannot see any policy justification for holding either party – employer or employee – to a settlement agreement that was procured by a fraudulent misrepresentation made by the other party. Yet that appears to be the consequence of s 149(3)(ab) precluding cancellation under s 37(1)(a) of the Contract and Commercial Law Act. Similar, though less acute, concerns arise in relation to a settlement agreement that is procured by a misrepresentation that is not fraudulent. This is an issue that Parliament may wish to consider in the context of any future review of the Act.

[38] In light of the Court of Appeal’s position in *TUV*, even if the settlement agreement was achieved as a result of the respondent fraudulently misrepresenting the real situation, it still remains binding. Therefore, I do not consider that the applicant has a good arguable case for the losses it claims under the record of settlement.

[39] Mr Langton in oral submissions sought to distinguish *TUV* on the basis that TradeZone was not seeking to cancel the settlement agreement, it was instead seeking refund damages. However, I was not satisfied that there was sufficient evidence before the Court to satisfy me that there was good arguable case for such a claim. This preliminary finding does not prevent TradeZone from raising such a claim in the future.

[40] Lastly, TradeZone has a claim for special damages for legal costs, computer forensic costs and wasted management time in an amount to be quantified prior to the Authority’s investigation meeting. This includes the costs incurred when engaging the computer forensic consultant and advisory legal costs prior to making this application. I consider that TradeZone has a tenable argument for special damages and consider a

⁷ *TUV v Chief of New Zealand Defence Force* [2020] NZCA 12, [2020] 2 NZLR 446 at [47].

nominal sum of \$10,000 is appropriate in the circumstances for the purposes of considering the extent of the freezing order.⁸

Assets within the jurisdiction

[41] Ms Mitchell's affidavit provides details of:

- (a) Two New Zealand bank accounts which she believes are associated with Mr Stanton as follows:
 - (i) An ASB bank account (suspicious bank account) is associated with Mr Stanton because payments were made by Mr Stanton to TradeZone to reimburse it for personal expenses he had put on his work credit card.
 - (ii) An ANZ bank account, which Mr Stanton's salary was paid into.
- (b) Mr Stanton's KiwiSaver account into which his salary from TradeZone was paid.
- (c) A residential property in Auckland, although it is not known if Mr Stanton is the owner, joint owner or has a beneficial interest in this property.

[42] I am satisfied, for preliminary purposes, that Mr Stanton has assets in the jurisdiction.

Risk of dissipation

[43] It was submitted that there is a high risk of dissipation here because:

- (a) There is evidence that Mr Stanton had misappropriated significant funds from TradeZone.

⁸ High Court Rules, r 32.6(2).

- (b) Mr Stanton's dishonest conduct in tampering with and fabricating supplier invoices was deliberate and sustained over a 17-month period.
- (c) Mr Stanton took extensive steps to conceal his actions during this period.

[44] After considering the evidence and submissions, I find that there is prima facie evidence of fraud committed by Mr Stanton which goes a considerable way to establishing there is a risk of dissipation of his assets.⁹

[45] I am satisfied there is a risk the property of Mr Stanton will be dissipated.

Possible defences

[46] Rule 32.2(3)(a) requires TradeZone to identify any possible defences available to Mr Stanton. TradeZone has done so.

[47] As a possible defence, it was noted that Mr Stanton may seek to rely on a clean disciplinary record and the fact that prior to these allegations there was no reason to suspect he was dishonest or untrustworthy. There is the prospect that he may claim he has been set up, either by Ms Mitchell alone or in collusion with the three suppliers involved. Counsel submitted that such a defence would be unlikely to succeed because of the level of detail which had been provided, including documents in Ms Mitchell's affidavit. This information was obtained from the three suppliers, two of which were unaware of TradeZone's concerns about Mr Stanton's conduct. The information provided by the suppliers and TradeZone's own bank collectively support the allegations made against Mr Stanton.

[48] There is also the possibility that Mr Stanton has sufficient assets to meet the value of the claims, making any freezing order against him unnecessary. However, Ms Mitchell's evidence is that she found emails confirming that Mr Stanton had obtained a personal loan for over \$55,000 shortly before his employment was terminated. Ms Mitchell also gave evidence that she is not aware of Mr Stanton

⁹ *Yakka Contracting Ltd v Naicker* [2021] NZEmpC 166, [2021] ERNZ 850.

obtaining new employment. This suggests a freezing order may be appropriate, at least in the interim until further information is sought.

[49] Those possible defences are acknowledged and have been taken into account.

Balance of convenience and overall justice

[50] I am satisfied that the effect of a freezing order would be to effectively preserve the status quo.

[51] When weighing the balance of convenience, I must assess the prejudice which TradeZone could suffer if funds which have been wrongly obtained were dissipated before an enforceable judgment could be obtained. I accept that risk is significant in light of the financial harm that may be suffered.

[52] I must also consider, if possible, the position of Mr Stanton, who may suffer inconvenience, if not hardship, by the making of a freezing order. I accept the submission that such hardship may be mitigated by:

- (a) a direction that the freezing order is made in respect of assets identified in the order and will be limited to a value of no more than \$72,000;¹⁰
- (b) a direction that the freezing order will not prohibit Mr Stanton from dealing with the assets covered by the order for the purposes of paying ordinary living expenses, legal expenses relating to the freezing order, or disposing of assets or making payments in the ordinary course of business;¹¹ and
- (c) the making of ancillary orders requiring the respondent to provide the details of their financial position, which may lead to greater clarity as to the position between the parties.

¹⁰ High Court Rules, r 32.6(2).

¹¹ Rule 32.6(3).

[53] I am satisfied that the balance of convenience and interests of justice favour the granting of the freezing order.

Undertaking as to damages

[54] The necessary undertaking as to damages has been provided. I have no reason to conclude that it cannot be relied upon.

Conclusion

[55] A freezing order is appropriate. Having regard to all the circumstances disclosed, I am satisfied that there is a danger that any judgment ultimately made in favour of TradeZone will be wholly or partially unsatisfied because relevant assets may have been disposed of, dealt with or diminished in value.

[56] I am also satisfied that it is in the interests of justice to grant the application for ancillary orders as sought.

[57] As the orders were made without notice, they must have limited duration.¹² At 9.30 am on 21 February 2025, the matter will be called in the Employment Court at Auckland for review. All parties may then appear and be heard. The orders will expire after 5 pm on 24 February 2025.

[58] One of the ancillary orders which was authorised was that Mr Stanton was to disclose and/or provide information on financial matters, assets or property within three working days of service of the documents on him in accordance of [60] below.

[59] This judgment is not to be published other than to the parties, their representatives and to authorised persons (including TradeZone's directors), 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 21 February 2025. At that time, or earlier, Mr Stanton will have an opportunity to address the allegations and decide whether to apply for a non-publication order to preserve his identity.

¹² Rule 32.7(1).

[60] A copy of the orders, this judgment and all documents filed by TradeZone are to be served on Mr Stanton as soon as possible. The Court is to be notified as soon as these documents have been served, and an affidavit of service must be filed.

[61] Costs are reserved.

M S King
Judge

Judgment signed at 5 pm on 7 February 2025