

ORDER PROHIBITING PUBLICATION

IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2025] NZEmpC 169
EMPC 353/2025

IN THE MATTER OF	a without notice application for freezing and ancillary orders
BETWEEN	A LABOUR INSPECTOR Applicant
AND	SSM INVESTMENTS LIMITED First Respondent
AND	SHAZNEEN SHARIZA KHAN Second Respondent

Hearing: 11 August 2025
(Heard at Christchurch via telephone)

Appearances: A Webster and S Calderwood, counsel for applicant

Judgment: 11 August 2025

JUDGMENT OF JUDGE K G SMITH

[1] A Labour Inspector has applied without notice for freezing orders and ancillary orders in relation to both respondents.

[2] The applicant is a warranted Labour Inspector with the Ministry of Business, Innovation and Employment. Following lengthy investigations, she lodged proceedings in the Employment Relations Authority against both respondents.

[3] The first application was lodged on 21 August 2024 and the second on 1 April 2025. The first respondent, SSM Investments Ltd is a company that operated a takeaway restaurant in Cromwell and traded as “Souvlaki & Kebab Grill Cromwell”. It employed staff who worked in that business and, later, for a company in Auckland called Chicken Bites Ltd.

[4] The second respondent, Shazneen Shariza Khan, is the sole director of SSM Investments and Chicken Bites.

[5] In the Authority, the Inspector is seeking orders on behalf of five employees for several alleged breaches of the Minimum Wage Act 1983, the Wages Protection Act 1983, the Holidays Act 2003 and the Employment Relations Act 2000 (the Act). She seeks payment of wages, the recovery of alleged unlawful deductions from wages, holiday pay arrears, interest and penalties. The amount sought by the Inspector as debts is \$167,773.97, before calculating the amount of any possible penalties.

[6] SSM Investments is sued as the employer. Mrs Khan is sued in the Authority in two capacities. The first capacity is for breaches of employment standards for allegedly aiding and abetting the breaches by SSM Investments. The second is, to the extent that SSM Investments is unable to pay, that she is liable to do so under ss 142W and 142Y of the Act.

[7] While the Inspector lodged separate claims, the Authority has directed that the proceedings be consolidated. Four of the five employees the Inspector represents have given evidence. SSM Investments and Mrs Khan deny liability. Ms Webster informed me during the hearing today that the investigation is adjourned and is expected to resume later this year, perhaps in October or November.

[8] A fuller description of the actions taken by the Labour Inspector would not, at this stage, be appropriate given that the Authority is still investigating the employment relationship problems.

The application

[9] The Labour Inspector sought freezing and ancillary orders relating to the assets of the respondents up to the amount of \$167,773.97. While the Inspector initially sought orders relating to other companies in which Mrs Khan appears to have a shareholding, and therefore a financial interest, during the hearing Ms Webster confirmed that what is sought is confined to SSM Investments and Mrs Khan.

[10] Ancillary orders sought against SSM Investments and Mrs Khan are to require it and her to list the extent of their assets.

Power to make freezing orders and ancillary orders

[11] Section 190(3) of the Act provides the Court with the same powers to make freezing orders as the High Court possesses. The High Court Rules 2016 are applied to applications for freezing orders, and ancillary orders, in this Court with modifications as appropriate.

[12] Rule 32.2 empowers the Court to grant a freezing order. Rule 32.3 provides for ancillary orders. A freezing order may be made against a prospective judgment debtor.¹

[13] The test to apply requires the Inspector to establish that:

- (a) there is a good arguable case;
- (b) the respondents have assets within the jurisdiction;
- (c) there is a real risk the property will be disposed of, or diminished in value; and
- (d) the balance of convenience and the interests of justice favour making the orders applied for.

¹ High Court Rules 2016, r 32.4.

Good arguable case

[14] This application was heard urgently and without notice to the respondents. The comments which follow are therefore based on the Inspector's uncontested evidence.

[15] In the context of an application for a freezing order a good arguable case is established if the allegations made are capable of tenable argument and are supported by sufficient evidence, bearing in mind the early stage in which an application is likely to be brought.²

[16] Ms Webster submitted that there is a good arguable case that the respondents' actions breached the provisions of the Minimum Wage Act, Holidays Act 2003, Wages Protection Act 1983 and the Act.

[17] In summary, the Inspector says that there have been breaches by failing to pay five employees at least the minimum wage for all hours worked, failing to keep adequate wage and time records, not paying holiday pay appropriately, failing to provide leave and to pay for public holidays, or to provide employees with alternate days if they worked public holidays, failing to pay the entire wage in breach of the Wages Protection Act and for unlawful wage deductions.

[18] I am satisfied that there is sufficient evidence, rising to the level of a good arguable case, that there were breaches of those statutes in the way in which SSM Investments and/or Mrs Khan dealt with the five employees on whose behalf the Inspector has brought this action.

[19] The next assessment is whether there is a good arguable case in relation to the second respondent, Mrs Khan. The available evidence is that she is the controlling mind of SSM Investments in relation to all of the claims. She has potential liability if it is established that she aided, abetted, counselled or procured those breaches and also as a person who is knowingly concerned in them as provided for in ss 142W and 142Y of the Act.

² *Mudajaya Corp Berhad v Chua* [2019] NZHC 1436 at [22], referring to *Hannay v Mount* [2011] NZCA 530 at [22].

[20] The first limb for obtaining the orders is satisfied.

Assets within the jurisdiction

[21] Responsibly, Ms Calderwood indicated that the available evidence shows that the first respondent's only asset was a takeaway business in Cromwell, which was sold in March 2024. What became of the purchase price and the extent of any other assets that might be owned by the company is not clear, although it is possible that the company continues to hold cash from the sale.

[22] Despite that uncertainty, I am satisfied that the sale is likely to have generated proceeds that are sufficient for this application.

[23] Ms Khan has assets in the jurisdiction. She owns the shares in SSM Investments. She continues to hold shares in three other companies, SSM Holdings Ltd, Chicken Bites Ltd and NIDA Holdings Ltd, which are assets within the jurisdiction. She also has an interest in a residential property in Cromwell.

[24] The second ground for the application is satisfied.

Risk of dissipation

[25] Ms Calderwood submitted there was a significant risk of dissipation as a result of recent steps taken by SSM Investments and/or Mrs Khan. The Inspector has justifiable reasons to be concerned about the risk of dissipation. First, SSM Investments' business in Cromwell was sold while the Inspector was conducting an investigation, but she was not told about that until after the sale was completed.

[26] Second, two of SSM Investments' employees were assigned to work at Chicken Bites, in Auckland. That business was sold within a month of the Inspector informing Mrs Khan that proceedings in the Authority relating to those employees were imminent. Mrs Khan had not told the Inspector that the business was for sale.

[27] Third, there is evidence that Mrs Khan is planning to move to Australia and is facilitating that move by:

- (a) selling the businesses;
- (b) SSM Investments being liable to be struck off the Companies Register for failing to file an annual return (the Inspector has objected);
- (c) placing on the market for sale the Cromwell house she has a substantial interest in and is the family home;
- (d) visiting Australia in early July 2025, shortly after the Cromwell property was listed for sale; and
- (e) her husband's business being for sale, or having been sold.

[28] It is notable that, when Mrs Khan was asked during the Authority investigation (but not while she was on oath) where she and her husband lived, the answer was Cromwell. That answer was given when the property they live in as the family home had been listed for sale with advertising stating the owners were relocating.

[29] I accept the inference invited from this combination of factors is that Mrs Khan is in the process of closing down operations and realising assets in anticipation of leaving New Zealand.

[30] This limb is established.

Balance of convenience and overall interest of justice

[31] Ms Calderwood submitted that the overall balance of convenience and interests of justice favour granting the Inspector's application. I agree.

[32] There is a real risk that assets are being realised so that money can be moved offshore, making it harder for the Inspector to pursue any determination in favour of the employees on whose behalf she is acting.

[33] I accept Ms Calderwood's submission that any hardship to the respondents that might arise from an order being made is outweighed by the interests of the five

employees. In any event, any potential hardship, at least in the interim, is ameliorated because the effect of the freezing orders does not prohibit paying ordinary living expenses, meeting legal expenses, disposing of assets or making payments in the ordinary course of business. The orders will also be subject to a review in the near future.

Possible defences

[34] As a without notice application the Inspector is required to advise the Court of any possible defences that might assist the respondents.

[35] Ms Webster referred to the statements in reply in the investigation and Mrs Khan's witness statement. Based on those pleadings and that anticipated evidence the submission was that the primary focus of the investigation meeting appeared to be claims that the five employees had exaggerated their claims, or that nothing is owed. There has also been a claim by the respondents that the employees were placed under improper pressure to make complaints and/or give evidence.

[36] Ms Webster also referred to the prospect that Mrs Khan may claim she will only be liable to pay arrears if the first respondent cannot pay them.

[37] These possible defences are insufficient to decline the application. Even if there are aspects of the employees' claims that are overstated, that is unlikely to remove all potential liability.

Undertaking as to damages

[38] The last issue to address is whether the Labour Inspector is required to give an undertaking as to damages. The Inspector is a statutory officer appointed pursuant to s 223 of the Act. An undertaking is not required from her for the purposes of seeking a freezing order.³

³ See for example *Labour Inspector v Taste of Egypt Ltd* [2016] NZEmpC 31, [2016] ERNZ 309 at [31]-[33]; *A Labour Inspector of the Ministry of Business Innovation and Employment v Jeet Holdings Ltd* [2019] NZEmpC 188 at [26]; *Labour Inspector of the Ministry of Business, Innovation and Employment v Samra Holdings Ltd* [2020] NZEmpC 184 at [37]-[41].

Orders

[39] Having considered the application and heard from counsel, I am satisfied that the orders are appropriate subject to the following amendments:

- (a) Paragraph [3] of the draft is to be amended by deleting the words “by way of written memorandum in support”.
- (b) Paragraph [5] is to be amended by deleting references to “other companies” and “to surrender assets”.
- (c) Paragraph [6](a)(i) is to be deleted or amended to take account of the orders granted not extending to the companies listed in the draft.
- (d) Paragraph [10] is to be amended to provide that an application to review the orders may be made on 24 hours’ notice.
- (e) The ancillary order at paragraph [11] is to specify that compliance is required within **ten working days** of the date on which the orders are served on the respondents.

[40] As amended the orders are granted. The orders are subject to the following:

- (a) They will have no effect after **5 pm on 20 August 2025** unless they are continued or renewed before then.
- (b) This proceeding is adjourned to be heard on **20 August 2025 at 10.30 am at Courtroom 9, Level 2, 20 Lichfield Street, Christchurch**. Leave is granted for the applicant’s counsel to appear via audio visual link. On that date the Court will consider whether the orders are to be continued or renewed. For the avoidance of doubt, on that date, the respondents or any counsel appointed to represent them will be entitled to be heard in opposition to the continuation or renewal of the orders.

- (c) Given the serious nature of the allegations made it would not be appropriate at this stage for the names of the parties or any information that may tend to identify them and the circumstances leading to the making of these orders to be published on the Court's website or otherwise. This non-publication order does not apply to any publication by the Labour Inspector incidental to her taking steps to secure compliance with and enforcing the freezing and ancillary orders. This non-publication order is made pursuant to cl 12 of sch 3 to the Act and will lapse at **5 pm on 20 August 2025** unless on that date it is continued.
- (d) The Court file is not to be searched except by leave of a Judge, which will be obtained only after notice has been given to the parties who will then be provided with an opportunity to address such an application.

[41] Leave is reserved to apply to vary or rescind these orders at short notice.

[42] Costs are reserved.

K G Smith
Judge

Judgment signed at 4.45 pm on 11 August 2025