

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

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

**[2025] NZEmpC 205  
EMPC 349/2025**

IN THE MATTER OF            an application for freezing orders

AND IN THE MATTER OF    applications to vary or discharge freezing  
orders

BETWEEN                    OPEN COUNTRY DAIRY LIMITED  
Applicant

AND                            SIMON STEWART  
Respondent

Hearing:                    11 September 2025 (heard by AVL)

Appearances:            M J Hammond and J Russ, counsel for applicant  
E Macpherson, counsel for defendant

Judgment:                12 September 2025

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**JUDGMENT (NO 3) OF JUDGE M S KING  
(Application to discharge the freezing order)**

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[1]     On 19 August 2025 I granted the applicant, Open Country Dairy Ltd (the Company), a freezing order. The order covered any funds held in any and all bank accounts in the name of the respondent, Mr Stewart, and a property registered in both Mr Stewart and his wife's name to the value of USD 1,048,74 (the family home).<sup>1</sup>

[2]     On 2 September 2025 the freezing order was varied by consent. The variation allowed for Mr Stewart to undertake refinancing with ASB Bank to allow him to pay for legal fees and some living expenses. The variation also provided him and his wife

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<sup>1</sup>     *Open Country Dairy Ltd v Stewart* [2025] NZEmpC 182.

with restricted access to a nominated bank account to pay for ordinary living expenses, up to a capped amount of \$10,400 per month.<sup>2</sup>

[3] On 4 September 2025 the Authority issued a minute adjourning its investigation into the quantification of losses arising out of Mr Stewart's conduct, pending the disposal of the Serious Fraud Office (SFO) prosecution. It records Mr Stewart's request for the adjournment on that basis:

Mr Stewart, for his part, maintains the matter should be adjourned in the Authority pending disposal of the SFO prosecution. He says proceeding may affect his rights, he is not seeking to evade the Authority's jurisdiction and observed that OCDL [the Company] already had an unchallenged liability determination of the Authority and a freezing order of the court.

[4] In granting the adjournment, the Authority noted that the Company had the benefit of the freezing order of the Court, which would be unaffected by the adjournment.

[5] On 11 September 2025 I received detailed submissions from Mr Stewart in support of his application to discharge the freezing order against his assets. The Company opposed the application and sought for the order to be extended until its claim for damages has been determined. Affidavits were filed by the parties.

### **Application to discharge freezing order**

[6] Mr Stewart is seeking to discharge the order on the following grounds:

- (a) there is no real risk of dissipation of assets;
- (b) the applicant unreasonably delayed applying for the order;
- (c) the adverse impact on third parties; and
- (d) the balance of convenience favours its discontinuance.

[7] The Company opposes the application for a discharge. A summary of the key grounds relied upon in its opposition include:

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<sup>2</sup> *Open Country Dairy Ltd v Stewart* [2025] NZEmpC 197.

- (a) there is a risk that Mr Stewart will dissipate his assets before the Company's damages claim can be heard by the Authority;
- (b) Mr Stewart will be able to continue using funds obtained through improper purposes for his living expenses and to support his legal expenses;
- (c) the Authority has made the decision not to progress its investigation while the SFO prosecution is underway;
- (d) the Company will be forced to incur additional costs to recover funds that Mr Stewart has acknowledged receiving and for which he has been found liable for in the Authority; and
- (e) the balance of convenience favours the continuation of the freezing order until the Company's damages claim has been heard.

### **Legal framework**

[8] A freezing order is an interim injunction that prevents a defendant from moving assets beyond the reach of judgment creditors. The jurisdiction is codified in pt 32 of the High Court Rules 2016.

[9] In cases such as this, where the Company has already obtained a determination of liability against Mr Stewart, and the issue of quantum is yet to be decided, the applicable rule is r 32.5(4).<sup>3</sup>

[10] Rule 32.5(4) provides that the Court may make a freezing order if there is a danger a judgment or prospective judgment will be wholly or partly unsatisfied because the assets of the respondent might be "disposed of, dealt with, or diminished in value (whether the assets are in or outside New Zealand)".<sup>4</sup>

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<sup>3</sup> High Court Rules 2016, r 32.5(4).

<sup>4</sup> High Court Rules 2016, r 32.5(4)(b)(ii).

[11] In *Shaw v Narain*, the Court of Appeal also emphasised the importance of the overall justice of the case, balancing the need to protect the applicant against prejudice of hardship caused to a respondent or third parties.<sup>5</sup>

### **Quantum of prospective judgment**

[12] Mr Stewart has not challenged the Authority's determination that he has breached his obligations to the Company and is liable for its losses. However, he does dispute the Company's assessment of its losses which it claimed to be USD 3,657,497.

[13] In its consideration of the untested evidence filed by the Company, the Court assessed the quantum of the Company's claims against Mr Stewart to be up to the value of USD 1,048,743. However, the Court acknowledged that this quantum may be revised and amended at a later stage upon further evidence.<sup>6</sup>

[14] Although the Authority has adjourned its investigation into the quantum of losses, neither Mr Stewart nor the Company have filed evidence setting out in detail why the quantum assessed by the Court should be revised.

### **Assets in the jurisdiction**

[15] Mr Stewart's evidence confirmed that his bank accounts do not contain sufficient funds to meet his ordinary living expenses or legal expenses. The family home has a mortgage and there is equity in the property.

[16] Mr Stewart was in the process of refinancing the family home from ANZ Bank to ASB Bank when the freezing order stalled the process. The refinancing provided for Mr Stewart to pay off ten invoices related to his ordinary living expenses and legal expenses, leaving him with a balance of just under \$20,000. He intends to use the remaining balance pay for his ongoing legal expenses and ordinary living expenses.

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<sup>5</sup> *Shaw v Narain* [1992] 2 NZLR 544 (CA) at 548.

<sup>6</sup> *Open Country Dairy Ltd v Stewart*, above n 1, at [26].

[17] Given Mr Stewart is facing a prosecution by the SFO, the Authority investigation into the Company's losses, and the present proceedings, the legal expenses he is likely to incur in the near future will exceed the \$20,000 balance.

### **Risk of dissipation remains**

[18] As stated above, r 32.5(4)(b) provides that the Court may make a freezing order if there is a danger a judgment will be wholly or partly unsatisfied because the assets of the respondent might be disposed of, dealt with or diminished in value.

[19] Mr Stewart submits that the test is whether "a prudent, sensible, commercial person can properly infer a danger of default", a standard described as "not unduly exacting".<sup>7</sup> Mr Stewart maintains that there is no credible evidence of any intention or risk that he will dissipate or conceal assets so as to frustrate the enforcement of the Authority's determination on liability.

[20] The Company's position is that Mr Stewart has been found liable for breaching obligations he owed it and is facing a significant claim for losses in the Authority, as well as related criminal charges in the SFO proceedings. Mr Stewart has failed to provide a full and frank disclosure of his financial position. His evidence has largely been confined to setting out his liabilities. The Company is concerned that if a freezing order is not made, Mr Stewart will dissipate or diminish the value of his assets before it can obtain and enforce a determination on damages from the Authority.

[21] Mr Stewart raised concerns regarding the delay of the Company's application for a freezing order, which was a point considered by the Court in its judgment of 19 August 2025. In that judgment I expressed reservations over the timing of the application but ultimately determined that due to the nature of Mr Stewart's conduct and the recently filed SFO prosecution, there was a risk of dissipation. My view of the timing of the application has not changed.

[22] The evidence concerning Mr Stewart's financial circumstances remains sparse. He has confirmed that he is employed in a new job that requires him to fly and work

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<sup>7</sup> Relying on *Raukura Moana Fisheries Ltd v The Ship "Irina Zharkikh"* [2001] 2 NZLR 801 (HC).

from Hong Kong. His salary, the value of which is undisclosed, is paid into a bank account that is affected by the freezing order. His counsel submitted his income for the new role was comparable to his previous income with the Company. Mr Stewart has provided a snapshot of his bank account balances which are largely overdrawn and has identified other liabilities he owes at this point in time.

[23] The Authority's determination records that Mr Stewart admitted to receiving approximately USD 100,000 while he was employed by the Company, in addition to receiving a salary of \$230,000 per annum, excluding bonuses. The Authority ultimately determined that the money received in addition to his salary and bonuses was a breach of his obligations to the Company. However, Mr Stewart has yet to disclose any bank statements showing the movement of the money he received. Mr Stewart says that he has no cash assets and even if he did, he has no intention of transferring his assets overseas or otherwise dissipating them. However, Mr Stewart's evidence lacks transparency. It is not clear from his evidence whether he has other, non-cash assets either in New Zealand or overseas.

[24] Mr Stewart's lack of transparency is further reflected in the absence of any explanation as to how his substantial income and his modest living expenses<sup>8</sup> can be reconciled with his reported financial liabilities. The opacity surrounding Mr Stewart's financial position raises concerns over whether the Court can rely on his evidence that he will not further dissipate or diminish the value of his assets if the freezing order were discharged. While mere assertion or belief in dissipation is insufficient to justify the continuation of the freezing order, a real risk of dissipation can be inferred from the lack of full disclosure of Mr Stewart's financial circumstances.

[25] After weighing up the evidence before me, at this preliminary stage I infer that there is a risk of dissipation from the partial disclosure of Mr Stewart's financial circumstances. The inference is supported by the Court's earlier findings that there was prima facie evidence of fraud committed by Mr Stewart, and evidence to suggest that he had taken active steps to evade anti-money laundering requirements and detection by the Company.<sup>9</sup>

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<sup>8</sup> *Open Country Dairy Ltd v Stewart*, above n 2, at [23(b)].

<sup>9</sup> *Open Country Dairy Ltd v Stewart*, above n 1, at [34]–[36].

## **Balance of Convenience and overall justice**

[26] When weighing the balance of convenience, I must assess the prejudice which the Company would suffer if funds, which have been misappropriated, were dissipated before an enforceable judgment could be obtained. I have accepted that there is a risk of dissipation in the circumstances.

[27] However, I must also consider the position of Mr Stewart and his family, who have suffered the inconvenience, if not hardship, by the making of the freezing order. When the order was first made on 19 August 2025, it expressly provided that Mr Stewart was to be given access to his assets to pay his ordinary living expenses and legal expenses. The order was varied by consent on 2 September 2025 to provide:<sup>10</sup>

- (a) that Mr Stewart's refinancing with ASB bank identified in [5] above can proceed; and
- (b) an agreed method for Mr Stewart to pay his ongoing and current legal and living expenses. This includes Mr Stewart and his wife having restricted access to a nominated bank account, which will allow them to access ordinary living expenses up to a capped amount of \$10,400 per month.

[28] Despite the variation, Mr Stewart has been unable to access his bank accounts to pay his ordinary living expenses or legal fees. His evidence details the hardship that this has had on him and his family.

[29] I have considered the value of the balances of the bank accounts affected by the freezing order. On the evidence before me, the balances are insufficient to pay Mr Stewart's ordinary living expenses and legal expenses. Combined with the degree of hardship the freezing order is having, leads me to the conclusion that the balance of convenience and interests of justice favour varying the freezing order so that it only applies to the family home, and not to Mr Stewart's bank accounts. For the sake of completeness, the order does not prohibit Mr Stewart from dealing with the family home, in the manner covered by the order, being for the purposes of paying ordinary living and legal expenses. However, I would expect this to be done with the agreement of the Company.

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<sup>10</sup> *Open Country Dairy Ltd v Stewart*, above n 2, at [23].

[30] I consider that any prejudice caused to Mr Stewart by continuing the freezing order over his family home can be repaired by utilising the undertaking as to damages filed by the Company. This is appropriate in the circumstances.

### **Non-publication**

[31] The interim non-publication order that was granted on 19 August 2025 and extended by the Court on 2 September 2025 is continued. The order prevents the publication of any information or identifying details in these proceedings relating to Mr Stewart's family members, his health, and/or any information that identifies the Company's customers or its confidential pricing information. The Court file is not to be inspected by any person without leave of the Judge.

[32] This judgment and the Court's earlier judgments of 19 August 2025 and 2 September 2025 are not to be published until further order of the Court.

### **Outcome**

[33] The freezing order will be varied so that it only applies to the family home.

[34] This order will continue until 4 November 2025 with a review hearing to be scheduled for the day before this date.

[35] Leave is reserved to any party to apply for any necessary direction in respect of the varied freezing order on two working days' notice.

[36] Costs are reserved.

M S King  
Judge

Judgment signed at 4.55 pm on 12 September 2025