

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

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

**[2025] NZEmpC 83
EMPC 148/2025**

IN THE MATTER OF a without notice application for a freezing
order and ancillary orders

AND IN THE MATTER OF an application to vary or discharge orders

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT
Applicant

AND THOM DAO
First Respondent

AND VIET HUNG NGUYEN
Second Respondent

AND DUONG ALEX NGUYEN
Third Respondent

Hearing: 28 April 2025
(Heard at Auckland)

Appearances: M Denyer, counsel for applicant
Kenneth Sun, counsel for respondents

Judgment: 28 April 2025

**JUDGMENT (NO 3) OF JUDGE KATHRYN BECK
(Application to vary or discharge orders)**

Introduction

[1] This judgment resolves an opposed application by the applicant to continue a freezing order and an application by the respondents to vary such order.

[2] By minute dated 4 April 2025, I issued a freezing order and ancillary orders on a without notice basis, with reasons to follow.

[3] On 9 April 2025, I issued a judgment setting out those reasons.¹ The background to the situation is set out at [4]–[13] of that judgment. Accordingly, I need not repeat it here.

[4] On 15 April 2025, the respondents filed a memorandum seeking to vary the orders. A telephone hearing was held on 17 April 2025. In my judgment dated 17 April 2025, I varied the orders by releasing certain bank accounts, allowing the establishment of a separate bank account subject to undertakings filed by the respondents, and releasing funds for the payment of living and legal expenses. All other aspects of the freezing orders already made continued.²

[5] In accordance with the first judgment, such orders were to lapse at 4 pm on Tuesday 29 April 2025 unless extended by order of the Court. A review hearing was scheduled to take place at 10 am today, 28 April 2025.

[6] That review hearing took place today. At the hearing the applicant sought for the freezing and ancillary orders to continue. The respondents sought to vary the orders by:

- (a) releasing the bank account belonging to HK89 Investment Ltd; and
- (b) releasing the bank account belonging to the H&K Family Trust.

[7] The respondents' sworn affidavits of assets and liabilities were filed in Court today (draft affidavits having been provided earlier). Amongst other things, these affidavits state that three properties which are subject to the freezing orders, and which are in the first and second respondents' names, are owned by the H&K Family Trust. Those three properties are:

¹ *A Labour Inspector of the Ministry of Business, Innovation and Employment* [2025] NZEmpC 73.

² *A Labour Inspector of the Ministry of Business, Innovation and Employment* [2025] NZEmpC 82.

- (a) 385 Lake Road, Hauraki, Auckland;
- (b) 25 Sylvan Avenue, Northcote, Auckland; and
- (c) 20 Taharoto Road, Takapuna.

[8] Mr Sun, counsel for the respondents, submits that the equity of approximately \$2.1 million in two of the three properties currently subject to the freezing orders is sufficient to provide security for any successful claims by the Labour Inspector. He submits that on that basis, given the principle that it is not appropriate to freeze more assets than would be necessary to cover any claim, at least the two bank accounts should be released.

[9] On the other hand, he also questions whether the properties are properly caught by the freezing orders as they are owned by the H&K Family Trust and not the respondents themselves.

[10] Mr Denyer, counsel for the Labour Inspector, agrees that freezing orders should not freeze more assets than are necessary, but he submits that there is insufficient information to date in relation to the extent of the assets – in particular, the ownership of the three properties. He has not yet had an opportunity to consider the affidavits provided by the respondents.

[11] The certificates of title for the properties in question currently list the first and second respondents as registered owners. It may well be that such ownership is on behalf of the trust. However, I agree that there is insufficient information before the Court as to whether that is the case.

[12] Further, if the properties are held by the respondents as trustees, consideration will need to be given to the impact of such ownership, if any, on the orders. I note that under the terms of the trust deed, the first and second respondents are not only trustees but, along with the third respondent, are also discretionary beneficiaries who cannot be removed.³

³ Paragraph 1.3 of the trust deed.

[13] Accordingly, in the circumstances, pending the provision of further information, it is appropriate that the freezing and ancillary orders continue in their current form.

Outcome

[14] The respondents are ordered to file and serve an affidavit setting out all relevant information in relation to the ownership of the properties by 12 pm on Friday 2 May 2025. If they wish to make any application, they must file and serve it, together with any supporting memorandum, by the same date.

[15] The Labour Inspector will provide any response and updating memorandum by 4 pm on Monday 5 May 2025.

[16] The current freezing and ancillary orders will continue until 4 pm on Wednesday 7 May 2025.

[17] A review hearing will be held, if necessary, on Tuesday 6 May 2025 at 10 am.

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

[19] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 5.30 pm on 28 April 2025