

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

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

**[2025] NZEmpC 89
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: 6 May 2025
(Heard at Auckland)

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

Judgment: 6 May 2025

**JUDGMENT (NO 4) OF JUDGE KATHRYN BECK
(Application to vary or discharge orders)**

Introduction

[1] This judgment resolves an opposed application 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 17 April 2025, I issued a consent judgment varying the freezing orders by releasing certain bank accounts, allowing the establishment of a separate bank account subject to undertakings, and releasing funds for the payment of living and legal expenses. All other aspects of the freezing orders already made continued.²

[5] On 28 April 2025, I issued a judgment continuing the freezing and ancillary orders.³ In accordance with that judgment, the orders were to lapse at 4 pm on 7 May 2025 unless extended by order of the Court.⁴

[6] A review hearing took place today. Mr Sun, counsel for the respondents, submitted that the value of the assets covered by the freezing order must not exceed the total value of the claim against the respondents. He submitted that there is more than enough equity in the properties owned by the H&K Family Trust to cover any sums ordered against the respondents who are all beneficiaries of that trust. He therefore submitted that the freezing orders in respect of all other assets should be lifted.⁵

[7] Mr Denyer, counsel for the applicant, sought for the freezing and ancillary orders to continue. He acknowledged that the freezing orders should not freeze more assets than are necessary but submitted that it is not clear whether the trust assets could be realised to satisfy a debt arising in these proceedings, particularly in relation to the third respondent who is only a beneficiary and not a trustee of the trust.

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

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

³ *A Labour Inspector of the Ministry of Business, Innovation and Employment v Dao* [2025] NZEmpC 83.

⁴ At [16].

⁵ At [7].

[8] Mr Denyer also sought for the Court to make further ancillary orders requiring the respondents to provide the balances of the banks accounts covered by the freezing orders and also a range of bank statements from those accounts. He argued that those ancillary orders are necessary to establish what money is available to be frozen and also whether money is being diminished.

[9] Although the Court must not freeze assets exceeding the value of the applicant's claim, it is currently unclear whether the equity in the properties held by the H&K Family Trust could be realised to satisfy a debt of any of the respondents.⁶ There is sufficient equity on paper, but in the absence of an undertaking from the trustees to make any distributions necessary to meet the debts of the respondents, I am not satisfied that the equitable interests of any of the respondents to the frozen assets necessarily exceed the value of the applicant's claims against the respondents.

[10] Turning to consider the ancillary orders sought by Mr Denyer, I accept that it is appropriate for orders to be made requiring the banks to provide the balances of the banks accounts of the respondents. Given the uncertainty about the legal status of the trust property, it is important that the Court has clear information before it in relation to the quantum of assets that could be subject to any freezing orders going forward.

[11] On the other hand, I do not accept that the other ancillary orders sought by Mr Denyer are necessary. He suggested that further bank statements will help the Court to determine whether there is a risk of money being diminished from accounts. However, it is unnecessary for further information to be supplied on that account as the Court is already satisfied that such a risk exists – the goal now is simply to determine which assets should be covered by the freezing order.

[12] Accordingly, in the circumstances, pending the provision of further information, it is appropriate that the freezing and ancillary orders continue along with one further ancillary order.

⁶ High Court Rules 2016, r 32.6.

Outcome

[13] The current freezing and ancillary orders will continue until 4 pm on Thursday 22 May 2025. The following further ancillary order is also made in addition to those which have already been made:

[13] All banks holding any accounts the Respondents are the holder of, or a signatory to, or over which they are in effective control are to advise the Applicant of the names, numbers and balances of all such accounts including the account referred to in [14] below.⁷

[14] A review hearing will be held, if necessary, at 10 am on Wednesday 21 May 2025. The following timetable applies for that hearing:

- (a) the applicant is to file a memorandum and any other relevant documents by 4 pm on Monday 19 May 2025;
- (b) the respondents are to file an updating memorandum and any other relevant documents by 4 pm on Tuesday 20 May 2025.

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

[16] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 3.15 pm on 6 May 2025

⁷ For completeness, paragraph 14 states: “A bank account is to be created in the Respondents’ joint names for the purposes of receiving and paying ordinary living and business expenses, with the Respondents undertaking that the unfrozen account will only be used for the purposes of receiving and paying living and business expenses and will not be used to redirect funds from frozen accounts. An undertaking to this effect must be filed. The bank must not put a hold on this new account.”