



# Employment Court of New Zealand

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## A v B [2021] NZEmpC 191 (3 November 2021)

Last Updated: 8 November 2021

### NON-PUBLICATION ORDER AS TO NAMES AND IDENTIFYING DETAILS OF BOTH PARTIES IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2021\] NZEmpC 191](#)  
EMPC 247/2021

IN THE MATTER OF	an application for a freezing order
AND IN THE MATTER	of a non-publication order
BETWEEN	A Applicant
AND	MS B First Respondent
AND	ASB BANK LIMITED Second Respondent
AND	KIWIBANK LIMITED Third Respondent

Hearing: (on the papers)  
Appearances: C McGuinness, counsel for applicant  
J Boyle and J G Drayton, counsel for the first respondent  
Judgment: 3 November 2021

### INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL:

#### (Application for a non-publication order)

[1] The applicant seeks a permanent non-publication order. The application is supported by the first respondent. The second and third respondents have taken no step in the proceeding.

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[2] I refer briefly to the background. On 2 August 2021, I considered an application for an interim freezing order. The application followed an accountant's investigation that identified A had suffered losses resulting from alleged misappropriation of funds carried out between January and June 2021. The amount thought to be involved at that stage was in excess of one million dollars. Ms B had been linked to those activities. It was accordingly satisfied that an interim freezing order should be made for a short period.<sup>1</sup>

[3] At the same time, the applicant sought non-publication orders as to the parties' names, on the basis it was necessary to protect the interests of both the applicant and the first respondent. I accordingly made non-publication orders until further order of the Court. I also directed that the file may not be searched without leave of a Judge.

[4] The freezing order was to have effect until 10 August 2021, unless prior to that date the orders were continued or renewed.

[5] On 9 August 2021, counsel for the applicant, Mr McGuinness, and for the first respondent, Ms Drayton, appeared before me.

[6] Mr McGuinness stated that he did not intend to seek an extension of the freezing orders which had been made, because it had been established there were no funds in the subject bank accounts to which the order related. He made no further application at that stage, although he indicated the position may change. The interim freezing order accordingly lapsed, although the possibility of further orders being sought was left open.

[7] I recorded that there had been a brief discussion about the existing orders as to non-publication of names, and that the file not be searched without leave of a Judge. I recorded that it was appropriate to defer reconsideration of those orders until a later stage in the proceeding. I noted that comprehensive submissions had been made on these topics by Ms Drayton.

[8] Updating memoranda were filed on several occasions thereafter.

1 A v Ms B [2021] NZEmpC 118.

[9] On 14 September 2021, the Court was advised that the applicant had accepted the first respondent's resignation the previous day and would pay wages for her notice period, in lieu of it being worked out; her employment was, on this basis, terminated.

[10] On 6 October 2021, Mr McGuinness advised the Court that he was filing a notice of discontinuance. In a memorandum filed at the same time, he said the New Zealand Police (Police) were now investigating the matters that had been considered by the Court for the purposes of the application for the freezing order. The applicant would now await the outcome of the Police investigation before determining whether, or how, to file further proceedings in the Employment Relations Authority.

[11] He submitted that given the ongoing Police investigation, the applicant sought continuation of the non-publication orders relating to the parties' names on a permanent basis.

[12] Counsel indicated that although there was an open justice presumption against non-publication orders, the specific adverse consequences that could arise from publication of the parties' names included potential prejudice to the Police investigation and to the proper administration of justice, as well as reputational damage.

[13] At the request of Mr Boyle, on behalf of Ms B, I have also considered the submissions as to non-publication which were placed before the Court on her behalf on 9 August 2021. It was emphasised in those submissions that there was a potential for serious prejudice to arise, given the serious allegations made against Ms B; and that publication could also have serious adverse consequences for members of Ms B's family.

[14] I accept the submissions made for both the applicant and the first respondent. In the circumstances referred to by counsel, is in the interests of justice for permanent orders to be made in respect of the names and identifying details of both parties.

[15] The order that the file not be searched without the leave of a Judge will stand.

[16] There is no issue as to costs.

B A Corkill Judge

Judgment signed at 4.00 pm on 3 November 2021

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