



Employment Court of New Zealand

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Auckland International Airport Limited v APC [2016] NZEmpC 9 (15 February 2016)

Last Updated: 2 March 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 9](#)

EMPC 39/2016

IN THE MATTER OF an application for a freezing order

BETWEEN AUCKLAND INTERNATIONAL
AIRPORT LIMITED
Applicant

AND APC
First respondent

AND ASB BANK LIMITED Second
Respondent

AND WESTPAC NEW ZEALAND LIMITED
Third Respondent

Hearing: By memoranda and affidavits filed on 15 February
2016

Appearances: K Dunn and S Fitzgerald, counsel for applicant

Judgment: 15 February 2016

Reasons: 15 February 2016

REASONS FOR INTERLOCUTORY WITHOUT NOTICE JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] These are the reasons for the judgment delivered earlier today granting freezing orders in favour of Auckland International Airport Limited (AIAL) against APC affecting nominated bank accounts with ASB Bank Limited and Westpac New Zealand Limited and affecting the property at APC's residential address in Auckland.¹

[2] The same restrictions on publication that attached to the brief judgment issued earlier today attach also to this judgment.

¹ *Auckland International Airport Ltd v APC* [2016] NZEmpC 8.

AUCKLAND INTERNATIONAL AIRPORT LIMITED v APC NZEmpC AUCKLAND [\[2016\] NZEmpC 9](#) [15

February 2016]

[3] I was satisfied that it was appropriate to make these orders without notice to APC. The sums of money affected are very substantial and, if held in bank accounts, may be the subject of easy transfer and/or alienation, especially to someone experienced in accounts' payment as APC was. Although the first respondent has clearly been domiciled in New Zealand for a long time, the evidence discloses overseas connections which might make easier the alienation of those funds. It appears that APC may, inadvertently, have become aware of AIAL's investigations late last week into the relevant financial discrepancies, which may also provide an incentive to dissipate those funds.

[4] In these circumstances, urgent consideration of the applicant's application was warranted and I was satisfied that if the application was brought to the first respondent's notice before orders were made, there was a substantial risk of the dissipation of the funds which may be in one or more of a number of bank accounts identified as being held solely or jointly by the first respondent.

[5] The affidavits filed with the Court and the submissions of counsel for AIAL disclose a seriously arguable case of employee fraud against the first respondent by the creation of a second payment for the same work performed for AIAL by a firm of professional engineers. The evidence establishes prima facie that this was perpetuated by the first respondent several months ago but was only discovered very recently. I do not propose to disclose any further detail about the methodology of the alleged fraud which may have involved manipulation and misuse of AIAL's accounting security procedures.

[6] The applicant's claims against the first respondent will, if established, constitute a serious breach of express or implied terms and conditions of the first respondent's employment agreement, entitling AIAL to recover its losses against APC. The evidence establishes that there are unlikely to be any other assets of sufficient substance to meet such a judgment.

[7] The orders made, which are attached to this judgment (although with particulars including account numbers and a residential address redacted) will ensure that when served on the first respondent, she has an opportunity to challenge them at

a hearing scheduled for later this week or earlier (if that is appropriate). Further, the application as originally framed has been required to be amended to allow the first respondent the specific sum of \$5,000 for living expenses and for preliminary legal advice and representation so that this sum is exempt from the freezing orders.

[8] Although the applicant only filed a substantive proceeding in this Court, all such proceedings based on breach of employment agreements must be commenced at first instance in the Employment Relations Authority, even if only the Employment Court has the specific jurisdiction to make freezing orders. The orders are being made on condition that the applicant applies forthwith to the Authority for substantive relief, and non-publication orders attach to those prospective proceedings, at least until execution of the freezing orders.

[9] Costs on the application (including the costs of the banks in complying with the orders) are reserved.

GL Colgan
Chief Judge

Judgment signed at 3 pm on Monday 15 February 2016

IN THE EMPLOYMENT COURT

AUCKLAND REGISTRY EMPC 39/2016

UNDER the [Employment Relations Act 2000](#)

BETWEEN AUCKLAND INTERNATIONAL AIRPORT LIMITED Applicant

AND APC

First Respondent

AND ASB BANK LIMITED Second Respondent

AND WESTPAC NEW ZEALAND LIMITED Third Respondent

FREEZING AND ANCILLARY ORDERS

15 FEBRUARY 2016

TO: APC

AND TO: ASB Bank Limited

AND TO: Westpac New Zealand Limited

1. The Applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in the Employment Relations Authority.
2. The Court has considered the Applicant's application for freezing and ancillary orders, and has read the memorandum of counsel for the Application in support.
3. The Court is satisfied, having regard to all the circumstances disclosed by affidavit evidence filed in support of the application, that there is a danger that judgment in favour of the Applicant will be wholly or partly unsatisfied,

because the assets of the First Respondent might be disposed of, dealt with, diminished in value or removed from New Zealand.

4. The freezing order is made in respect of the assets set out in paragraph 1 of the Annexure.

5. This order also requires compliance with the ancillary orders set out in paragraphs 2 and 3 of the Annexure.

6. Subject to paragraph 7, this order restrains you from removing any of the assets listed in paragraph 1 of the Annexure from New Zealand, or from disposing of, dealing with, or diminishing the value of, those assets, whether they are in or outside New Zealand.

7. This freezing order does not prohibit you from dealing with the assets covered by the order for the purpose of:

(a) paying ordinary living expenses or legal expenses related to the freezing order to the amount of \$5,000; or

(b) disposing of assets, or making payments, in the ordinary course of your business, including business expenses incurred in good faith.

8. As the freezing order has been made without notice to you, it will have no effect after 5 pm on 18 February 2016, unless on that date it is continued or renewed. On that date you or your counsel are entitled to be heard by the Court in opposition to the continuation or renewal of the order.

9. You may apply to the Court by interlocutory application to discharge or vary the order. If you apply, you must give the Applicant notice of not less than 24 hours.

10. An undertaking as to damages given by the Applicant is attached to this order.

11. This order does not affect anyone outside New Zealand until it is declared enforceable by a court in the relevant country, (in which case it affects a person only to the extent that it has been declared enforceable) unless the person is:

(a) a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person; or

(b) a person who:

(i) has been given written notice of this order at that person's

residence or place of business within New Zealand; and

(ii) is able to prevent acts or omissions outside the jurisdiction of this court that constitute, or assist, a breach of this order.

12. This order does not prevent, in respect of assets located outside New

Zealand, any third party from complying with:

(a) what it reasonably believes to be the third party's obligations, contractual or otherwise, under the laws of the country in which those assets are situated or under the proper law of any contract between the third party and the respondent; and

(b) any orders of the courts of that country, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

13. Notice of these orders shall be given to the First Respondent by personal service. Notice of these orders shall be given to the Second and Third Respondents by delivery to their registered offices.

14. Pending any further order of the Court, copies of only these orders and the Court's judgment are required to be served on the Second and Third Respondents.

15. Except in relation to costs, upon compliance with orders 2 and 3 in the Annexure, the Second and Third Respondents, respectively, will be removed as a Respondent to this application.

16. The costs of and incidental to the application be reserved.

BY THE COURT

Registrar

Sealed this 15th day of February 2016

ANNEXURE

FREEZING AND ANCILLARY ORDERS

Named assets: Disposal by the First Respondent prohibited

1. Pending further order of this Court, or agreement between the parties by way of consent memorandum filed in this Court, the First Respondent is restrained from removing or causing to be removed from the jurisdiction, or otherwise charging or disposing of, or dealing in any manner whatsoever with, or diminishing the value of, any of her assets whether real or personal or held in her name or jointly with any other party, or any such assets in which they may have a beneficial interest (together "**assets**"), within the jurisdiction or coming into the jurisdiction, save as to the extent that the aggregate value of such assets exceeds \$586,412.35 and including, but not limited to, the following assets:

(a) Bank account 12-3011- ... (b) Bank account, 03-1760- ... (c) Bank account 12-3061- ... (d) The property at ...

Disclosure by the Second and Third Respondents of the First

Respondent's New Zealand and worldwide assets

2. The Second Respondent is required to disclose and/or provide (as the case may be) to the Applicant's solicitors within 3 working days of service of this order:

(a) The current balance of Bank account 12-3011- ... (all suffixes).

(b) Bank statements for the accounts set out in paragraph (a) for the last 36 months.

(c) Account details (account names, account numbers and a copy of the account mandate) and balances of any other accounts held in the name of (including jointly with any other party) the First Respondent, including account 12-3061-

3. The Third Respondent is required to disclose and/or provide (as the case may be) to the Applicant's solicitors within 3 working days of service of this order:

(a) The current balance of Bank account 03-1760- ... (all suffixes).

(b) Account details (account names, account numbers and a copy of the account mandate) and balances of any other accounts held in the name of (including jointly with any other party) the First Respondent.