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Horton Media Limited v Tither [2012] NZEmpC 116 (20 July 2012)

Last Updated: 3 August 2012

IN THE EMPLOYMENT COURT AUCKLAND

[\[2012\] NZEmpC 116](#)

ARC 44/12

IN THE MATTER OF an application for a freezing order and ancillary orders

BETWEEN HORTON MEDIA LIMITED Applicant

AND NORAH LAURENCE TITHER Respondent

Hearing: 19 July 2012 (by telephone) and memoranda filed on 19 and 20 July

2012

Appearances: Stephen Langton, counsel for applicant

Charlotte Parkhill, counsel for respondent

Judgment: 20 July 2012

JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The applicant has applied urgently for a freezing order, and ancillary orders, affecting monies it says the respondent misappropriated for her own benefit during the course of her employment.

[2] [Section 190\(3\)](#) of the [Employment Relations Act 2000](#) empowers the Employment Court to make such orders as the High Court can make under Part 32 of the High Court Rules. The purpose of a freezing order is to preserve property for enforcement purposes.

[3] The application was on notice and the respondent consents to the orders sought.

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[4] A statement of problem has been filed in the Employment Relations Authority, alleging that the respondent misappropriated funds for her own benefit during the course of her employment, and over a lengthy period of time. It is alleged that the respondent deposited such funds in numerous instalments into bank and credit card accounts jointly held by the respondent and her husband. The total amount of the applicant's claim is said to be \$638,586.48, although the amount referred to in the amended statement of problem is just over \$500,000. Mr Horton deposes that the greater sum reflects the fact that the applicant has only recently become aware that payments were made over a longer period than originally pleaded. However, the parties have agreed that any freezing order will only apply to the \$428,322.48 (comprising what is referred to as the Waiuku Publishing Payments).

[5] If established, the respondent's alleged actions would plainly constitute a breach of her employment obligations. The respondent accepts (for the purposes of the application presently before the Court) that the applicant has a good arguable case in respect of its claim against her, and as pleaded in the amended statement of problem dated 9 July 2012.

[6] The respondent also acknowledges that the applicant considers that there is a danger that she will dissipate or dispose of assets, so that any judgment obtained by the applicant could be wholly or partly unsatisfied. In these circumstances, the

respondent consents to the freezing order, and ancillary orders, sought. The parties further agree that the respondent has assets to which the orders sought can apply. These are set out in detail in the interlocutory application, joint memorandum of counsel, and affidavit filed in support of the application.

[7] An undertaking as to damages has been provided by the applicant, confirming its financial ability to meet an order for damages pursuant to the undertaking.

[8] Issues relating to the position of the respondent's husband were canvassed during the course of the telephone conference on 19 July 2012, given that he jointly holds bank and credit card accounts with the respondent, and is part owner of a residential property which would be affected by the proposed order. While the joint memorandum of counsel referred to Mr Tither neither consenting to, nor opposing, the application it was evident (from a letter from his lawyer appended to the memorandum) that this expressed position was based on his access to funds for ordinary living expenses and legal fees not being impeded. There was no provision for this in the draft order. In the circumstances, I considered that Mr Tither ought to be given an opportunity to be heard on the application. He has been served with a copy of the draft orders, joint memorandum of counsel, and interlocutory application and has confirmed, through his lawyer, that he does not wish to be heard. The parties agree that Mr Tither may apply for modification of the orders, on reasonable notice, and leave is reserved in that regard.

[9] I am satisfied, based on the material filed in support of the application, and after having heard from counsel for the applicant and the respondent, that the orders sought (as set out in the draft orders filed) ought to be made having regard to the overall interests of justice.

[10] Freezing and ancillary orders are accordingly made in terms of the draft orders filed. They will remain in force pending resolution of and (if necessary) enforcement of the applicant's claim against the respondent, or any settlement of the claim, or until further order of the Court.

[11] Costs on this application are reserved.

Judge Christina Inglis
Judge

Judgment signed at 4.15 pm on Friday 20 July 2012