



Employment Court of New Zealand

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Kumar v Jai Mata Di Foods Ltd [2012] NZEmpC 152 (5 September 2012)

Last Updated: 8 September 2012

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2012\] NZEmpC 152](#)

CRC 31/12

IN THE MATTER OF an application for freezing and ancillary orders

BETWEEN SANJAY KUMAR Plaintiff

AND JAI MATA DI FOODS LTD First Defendant

AND ANKIT BIST Second Defendant

Hearing: By memorandum filed on 5 September 2012

Appearances: Tim Oldfield, counsel for plaintiff

Jonathan Smith, counsel for defendants

Judgment: 5 September 2012

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The parties have settled the plaintiff's application for freezing and ancillary orders and have invited the Court to make orders by consent without the necessity for a hearing.

[2] Before doing so, however, I should give my reasons for making interim freezing orders on Monday 3 September 2012 as I said I would in the brief judgment^[1] issued that day.

[3] The plaintiff's proceedings were filed at 4.30 pm last Friday 31 August 2012.

They were brought on notice to the defendants and there was no application in writing for an urgent hearing.

SANJAY KUMAR V JAI MATA DI FOODS LTD NZEmpC CHCH [\[2012\] NZEmpC 152](#) [5 September 2012]

[4] The matters were the subject of a first telephone directions conference at

12.30 pm on Monday 3 September 2012. The defendants were represented by counsel who did not have sufficient instructions from the defendants' employment law advocate on whom the proceedings had been served on the previous Friday. In these circumstances, the telephone conference call was adjourned to 5 pm that afternoon to enable Mr Smith to obtain further instructions and to allow the parties the opportunity to consider what interim or holding arrangements might be able to be made until the Court could hear the proceedings on a defended basis on Thursday 6

September 2012 in Christchurch.

[5] No agreement was able to be reached between the parties on this issue and in these circumstances I made (and recorded in a brief judgment) the most minimal orders possible to preserve the plaintiff's position until the defendants had an opportunity to be heard. In doing so, I was satisfied from the plaintiff's papers that the plaintiff has a good arguable claim to the sums against each of the defendants set out in that judgment. The orders effectively froze those sums (or lesser sums if the defendants' bank accounts contained lesser balances) in those accounts until further order of the Court or until the hearing on 6 September 2012.

[6] Although the plaintiff did not have any information about the bank accounts which might have enabled the orders to be served on the relevant bankers, if the plaintiff had subsequently been entitled to ancillary disclosing these details, then the orders would have been effective in the sense that any breach could be detected and remedies for any such breach pursued by the plaintiff. I was satisfied, also, that there was evidence of the first defendant's sale of its restaurant businesses, of the second defendant's ownership of the first defendant, and of the second defendant's intention to leave New Zealand for India on a long-term or permanent basis.

[7] The parties have now settled their disputes and have submitted to the Court a joint memorandum setting out the terms of settlement which they wish to remain confidential. I so direct.

[8] Pursuant to those terms of settlement, the interim freezing orders made on 3 September 2012 are now set aside.

[9] In the event of non-compliance with the parties' terms of settlement, leave is reserved to the plaintiff to make a without notice application for a further freezing order or orders.

[10] The plaintiff's proceedings are discontinued on these terms.

GL Colgan

Chief Judge

Judgment signed at 3.30 pm on Wednesday 5 September 2012

[\[1\]](#) [\[2012\] NZEmpC 150.](#)

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