Employment Court of New Zealand

LAF v MEC [2026] NZEmpC 34 (25 February 2026)

Last Updated: 26 February 2026

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2026] NZEmpC 34
EMPC 29/2026

IN THE MATTER OF	an application for freezing and ancillary orders
BETWEEN	LAF Applicant
AND	MEC First Respondent
AND	NIR Second Respondent

Hearing:	19 February 2026 (Heard at Tauranga)
Appearances:	P Anderson and A Cox, counsel for applicant D Pawson, counsel for first respondent No appearance for second respondent S Shaw, counsel to assist the Court
Judgment:	25 February 2026

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] The applicant's application for freezing and ancillary orders came before the Court for hearing on 19 February 2026. After hearing from counsel I declined the application and said that my reasons would follow. These are my reasons.

Background

[2] An earlier application for freezing and ancillary orders against the first respondent (a former employee of the applicant company), and the first respondent's family trust, was declined in February 2025.1 A renewed application was advanced in January 2026, initially on a without notice basis. I directed that the respondents were to be served with the application and provided with an opportunity to be heard on it. A sworn affidavit was filed and served by the first respondent who appeared via counsel at the hearing of the opposed application; there was no appearance on behalf of the second respondent.

[3] The key basis for the original decision to decline the application was that I was not satisfied, based on the evidence before the Court, that there was a real risk of dissipation. The renewed application was made on the ground that new information had come to light that justified the Court looking again at the question of whether freezing and ancillary orders

ought to be made.

[4] The new information relied on by the applicant was focused on an advertisement of the respondent's home for sale, and the wording of that advertisement. I was prepared to deal with the application in light of these developments.

Freezing orders - framework for analysis

[5] The Employment Court may make freezing and ancillary orders, and has the same powers as the High Court as provided in the High Court Rules.2 An application must be advanced in the Employment Court because the Employment Relations Authority has no power to make such orders.3

[6] The Court may make a freezing or ancillary order or both against a judgment debtor or prospective judgment debtor; in this case, the first respondent is a

1 *LAF v MEC* [2025] NZEmpC 23.

2 High Court Rules 2016, rr 32.2 and 32.3; Employment Relations Act 2000, s 190(3).

3 Employment Relations Act 2000, s 160(4).

prospective judgment debtor. The proceedings filed in the Employment Relations Authority have not yet been determined, and have apparently been placed on an "administrative hold".

[7] In respect of a prospective judgment debtor, the Court may make freezing and ancillary orders if it is satisfied, having regard to all of the circumstances, that there is a danger that a prospective judgment will be wholly or partially unsatisfied because of one of three things, as specified in r 32.5(4)(a) and (b), namely that the prospective judgment debtor might abscond; or the assets of the prospective judgment debtor or another person might be either removed from New Zealand or from a place inside or outside New Zealand; or those assets might be disposed of, dealt with, or diminished in value.

[8] Even where the Court is satisfied that one of these factors is met, it retains a discretion not to make an order, as use of the word "may" makes clear.

[9] Counsel for the applicant submitted that, when exercising the discretion conferred on the Court to make (or not make) a freezing order, regard is appropriately had to the objects of the Employment Relations Act 2000, particularly the object in s 3(ab), namely, to promote the effective enforcement of employment standards. I do not disagree with that point on a broad level, but I do not consider that it materially alters the approach to be adopted or expands the circumstances in which an order might be made.

[10] The draconian nature of freezing and ancillary orders is reflected in the hurdles that must be overcome by an applicant, as set out in r 32.5. First, there must be a proceeding within the jurisdiction of the Court or the Authority to which the application relates. Second, a written and signed undertaking as to damages must be filed with the application, and evidence provided (via affidavits) of the applicant's financial ability to meet an order for damages pursuant to the undertaking. Third, a draft order must be filed which refers to the undertaking as to damages. Fourth, the applicant must show that there is a good arguable case on a cause of action; that there are assets of the respondent to which the order can apply; and that there is a real risk

of dissipation. Any prejudice or hardship to the respondent and/or third parties must be considered, and consideration must be given to the overall interests of justice.

[11] Once made, a freezing order restrains a party from removing assets located in or outside New Zealand, or disposing, dealing with or diminishing the value of those assets.

Analysis

[12] A statement of problem has been filed in the Employment Relations Authority. The causes of action are within the jurisdiction of the employment institutions.

[13] An undertaking has been filed in the appropriate form together with a supporting affidavit setting out the applicant's financial ability to meet an order for damages pursuant to the undertaking. A draft order has also been filed.

[14] I remain satisfied, based on the material before the Court, that the applicant has a good arguable case. The basis for that view is set out in my earlier judgment, supplemented by what appears to have now occurred in the criminal proceedings.

[15] The applicant has identified assets of the first and second respondents to which the order can apply.

[16] As I have said, the central issue is focused on a risk of dissipation of the respondents' primary asset, namely their family home.

[17] I accept that the applicant is not required to affirmatively prove the likelihood of dissipation or nefarious intent on behalf of the first respondent.4 However, and as Asher J pointed out in *Oaks Hotels*, the jurisdiction is not designed to provide an applicant with pre-judgment security.5 There must be a danger that the applicant will

4. See *Bank of New Zealand v Hawkins* [1989] NZHC 198; (1989) 1 PRNZ 451 (HC) at 454; *Oaks Hotel & Resorts NZ Ltd v Body Corporate 358851* [2013] NZHC 2695 at [17] and *Moglin v Jo* HC Auckland CIV- 2011-404-1584, 26 August 2011 at [34].

5 *Oaks Hotel*, above n 4, at [20].

be left with an unsatisfied judgment if it succeeds in its proceedings. Being left with an inconvenient enforcement procedure is not enough.6

[18] The danger that the applicant identifies in this case centres on steps that the first respondent might take to diminish the property's value or sell it. The applicant says that the concerns they had about dissipation crystallised in on-line marketing they became aware of, advertising the house for sale under the banner "Price Reduced - we need to move."

[19] The difficulty for the applicant is that the first respondent has now confirmed via affidavit evidence, with supporting exhibits, that the house has been taken off the market and there is now no intention to sell it. The first respondent also confirms that there is no intention to leave the country - a step that would be difficult having regard to their spouse's apparent medical condition and, I infer, in light of parallel criminal proceedings.

[20] The applicant says that absent a freezing order there is nothing to stop the first respondent from putting the property back on the market, perhaps privately. The applicant also points to a remortgaging of the property with Heartland Bank towards the end of 2025, which may have involved a reverse mortgage arrangement and/or the first respondent reducing equity in the home.

[21] In respect of the assurances contained within the first respondent's affidavit, the applicant submits that little or no weight should be placed on them. The first respondent has admitted fraudulent conduct and there are aspects of their evidence which appear to be contradicted by other information that the applicant has located, which was annexed to an updating affidavit handed up at the outset of the hearing, and to which the first respondent had no opportunity to respond to. The applicant also notes that the first respondent did not accept a compromise to protect against dissipation by registering a mortgage against the property.

6 At [26].

[22] The burden is on the applicant to satisfy the Court that there is a prospect that the assets will be removed, dissipated or diminished in value. The test is not unduly exacting. The Court of Appeal has said that:7

[16] The second stage requires the Court to be satisfied there is a danger that judgment will not be satisfied because assets may be removed or dealt with in a way that frustrates the judgment.

The Court went on to observe that the test could be put in the following way:8

The plaintiff must point to circumstances from which a "prudent, sensible commercial man, can properly infer a danger of default".

[23] An assertion of a belief that a respondent will dissipate its assets unsupported by solid grounds justifying that belief is insufficient; mere suspicion does not suffice.9 As the evidence currently stands, the first respondent's house is not being marketed. There is no evidence that the respondent has already begun disposing of assets or is planning to dispose of assets or is reducing the value of their assets. The evidence is that the first respondent has paid reparation to the applicant, which is (as Mr Pauson, counsel for the first respondent, pointed out) relevant to assessing the danger of default. The lack of a compromise, especially one as onerous as registering a mortgage on the property, does not in my view take the application any further.

[24] Freezing and ancillary orders are draconian. They are not to be lightly imposed. A number of judgments of this Court10 have cited with approval an observation made by the High Court in *Shen v An Ying Group Ltd*, that freezing orders are not designed as a tool to enable a claimant to secure a fund against future success.11 The observation reflects the point that freezing orders are designed for a limited purpose (namely to preserve an asset when there is a real risk of dissipation) rather than to preserve an asset on the hypothetical possibility of a future success when there is no real risk of dissipation.

7 *Murren v Schaeffer* [2018] NZCA 318, (2018) 24 PRNZ 285.

8 Citing *Raukura Moana Fisheries Ltd v The Ship "Irina Zharkikh"* [2001] 2 NZLR 801 (HC).

9 *Kang v Saena Co Ltd* [2022] NZEmpC 36 at [43].

10. *Whare Manaaki Inc v Anderson* [2024] NZEmpC 209 at [17]; *Kang*, above n 9, at [48]; *LAF v MEC* [2025] NZEmpC 23 at [25]; and *Soundhomes NZ Ltd v Doughty* [2025] NZEmpC 42 at [22].

11 *Shen v An Ying Group Ltd (No 3)* [2006] NZHC 999; (2006) 3 NZCCLR 351 (HC) at [77].

> [25] The High Court made a similar point that the risk that there would be no fund to satisfy a judgment is a position that a number of plaintiffs potentially face, but it is not a basis for the grant of a freezing order.12 These comments were made by the Court when setting aside a freezing order made on a without notice basis, as there was no longer sufficient evidence to demonstrate a risk of dissipation. The applicant in that case had argued that the first respondent was a flight risk because he had the ability to leave and travel overseas and had regularly done so. This was not accepted by the Judge. The applicant invites me to make similar inferential leaps in the present case.
>
> [26] Further, and as the High Court observed in *Washbourn v City Apartments Ltd*, without proper evidence of propensity on the respondent's part to dissipate money or arrange their affairs so as to defeat any judgment, it would be wrong to grant an injunction to restrain them from going about their ordinary affairs and business in an ordinary way.13 In that case, a freezing order had been made without notice but was discharged because the respondent presented clear evidence that all proceeds of the sale had been properly applied and accounted for, rebutting the applicant's substantive claim. The respondent also had two businesses in New Zealand and no intention of leaving permanently. In these circumstances the Court was satisfied, after hearing from the respondent, that there was no real risk of dissipation. Again, the case has synergies with the present case – the first respondent has effectively rebuffed the applicant's claims as to risk of dissipation via their affidavit evidence.
>
> [27] A further, related, point may be made. Any orders made should be the least restrictive possible, reflecting the significant impact of them on a respondent at a time when the respective rights and liabilities of the parties have yet to be determined. In this case, the applicant seeks a freezing order over an asset that is said to be worth approximately $800,000, plus three separate bank accounts. A forensic report suggests that a total figure of around $70,000 is in issue, $26,000 of which the first respondent appears to accept, and the residual which they dispute. Material put before the Court at hearing, and without objection, reflects that the first respondent has paid $26,000 in reparation to the applicant in the context of the criminal proceeding. The remainder

12. *Ilion Technology Corp v Johannink* HC Auckland CIV 2004-404-003358, 17 August 2004 at [39], cited with approval in *LAF*, above n 1, at [26].

13 *Washbourn v City Apartments Ltd* HC Wellington CP 46/00, 28 November 2001 at [40].

may itself be subject to a deduction for any amount the applicant may ultimately be found to owe to the first respondent (all of which will need to be determined by the Employment Relations Authority).

> [28] The short point is that even taking into consideration the possibility that costs and penalties will weigh in the ultimate equation, the orders sought might reasonably be described as excessive. As r 32.6(2) makes plain:

If the likely maximum amount of the applicant's claim is known, the value of the assets covered by the freezing order must not exceed that amount together with interest on that amount and costs.

> [29] For these reasons I did not consider it appropriate to make the orders sought and declined to do so.
>
> [30] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 8.15 am on 25 February 2026