



Employment Court of New Zealand

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MNO v PQR [2023] NZEmpC 128 (15 August 2023)

Last Updated: 19 August 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2023\] NZEmpC 128](#)

EMPC 240/2023

IN THE MATTER OF an application for a freezing and ancillary orders
BETWEEN MNO Applicant
AND PQR Respondent

Hearing: 14 August 2023 (by telephone)
Appearances: L Bercovitch, counsel for applicant Respondent in person
Judgment: 15 August 2023

JUDGMENT (NO 3) OF JUDGE KATHRYN BECK

[1] On 19 July 2023, a judgment was issued by this Court making freezing and ancillary orders under [s 190\(3\)](#) of the [Employment Relations Act 2000](#) and [pt 32](#) of the [High Court Rules 2016](#) in respect of a bank account and any other assets held by the respondent, to prevent them from disposing or otherwise dissipating that property pending the determination of the applicant's substantive claims.¹

[2] The Court ordered that the matter be brought back before it on 7 August 2023. On 7 August 2023, the orders were extended until 14 August 2023.² The Court ordered that the matter be brought back before it on that date. The purpose of this hearing is to review the orders made.

¹ [MNO v PQR \[2023\] NZEmpC 109](#).

² [MNO v PQR \[2023\] NZEmpC 119](#).

MNO v PQR [\[2023\] NZEmpC 128](#) [15 August 2023]

[3] Both parties have filed further memoranda.

[4] The applicant seeks an extension of the freezing orders for a further four weeks.

[5] The respondent opposes the extension. They ask that the orders be lifted and that the non-publication orders remain.

[6] At the end of the hearing, I made orders that the current freezing and ancillary orders and the interim non-publication orders would continue and be reviewed at a hearing on 28 August 2023. This judgment records the reasons for those orders.

Events since the last hearing (7 August 2023)

[7] Since the orders were extended on 7 August 2023, the respondent has filed a statement in reply in the Employment Relations Authority. This was received by the applicant on 11 August 2023. The respondent admits the allegations.

[8] The freezing orders required the respondent to file and serve an affidavit setting out the nature, value and extent of their assets. They have provided an affidavit dated 28 July 2023. The applicant is still in the process of reviewing that document, including for completeness.

[9] In the meantime, however, the applicant advises that four ANZ bank accounts and two ASB bank accounts have been disclosed by those banks as a result of the orders. These accounts were not included in the respondent's affidavit.

[10] Further, it appears that the respondent operated those accounts, including withdrawing funds, after they were served with the orders and before the applicant was advised of the existence of the accounts.³

3. The affidavit of service dated 24 July 2023 confirms that the respondent was served with the orders at approximately 2.22 pm on 20 July 2023.

Extension of orders sought

[11] The applicant seeks that the freezing orders remain in place for a further four weeks while it reviews the information to date and any further information arising.

[12] It says the basis on which the Court imposed the freezing orders remains. It says the factors justifying the continuation of the freezing orders are reinforced by a number of additional factors: the respondent's disclosed account records which confirm that funds were in fact paid into her personal accounts; the admissions in the statement in reply; the failure to disclose bank accounts; and the apparent movement of funds after the orders.

[13] The respondent filed a memorandum and attended the telephone hearing yesterday afternoon in person. They seek that the freezing orders be lifted on the grounds that they have been unable to access any funds (even to meet ordinary living expenses) and that there are no funds left to freeze. I took it they were saying there is therefore no risk of dissipation.

[14] As noted in my earlier judgment, the current orders include that the respondent is not prohibited from dealing with the assets covered by the order for the purposes of paying ordinary living expenses. It is up to them to pursue any processes set out by any bank for this purpose. They confirm they have been provided with the contact details of a person to assist. Counsel for the applicant confirms that it has not been contacted by any bank to date.

[15] As already noted, it is for the respondent to commence the process to access funds. Once a bank makes contact, the applicant is directed to work with the respondent and the bank(s) to ensure that the terms of the order are met; and in particular, that the respondent is able to deal with the funds in the accounts for paying ordinary living expenses.

[16] I consider that there continues to be a need for the freezing orders to remain in effect for a further limited period of 15 days. The situation with the additional discovered accounts needs to be established, as does the completeness of the affidavit filed to date. As noted, the statement in reply in the Authority and the statements of

the respondent in this proceeding to date admit the substance of the allegations against them. They say they are remorseful.

[17] Accordingly, I am satisfied that the current freezing order should continue.

[18] The respondent seeks for the interim non-publication orders to remain. Counsel for the applicant does not currently have instructions. Given the admissions by the respondent, it is appropriate to revisit the orders at the next hearing. The following timetable orders are made by consent:

- (a) The respondent will file and serve any memorandum and affidavit in support of their request that the interim non-publication orders remain by 4 pm on 17 August 2023.
- (b) The applicant will file and serve any memorandum and affidavit in relation to the interim non-publication orders by 4 pm on 22 August 2023.
- (c) The respondent may file any memorandum and affidavit strictly in reply by 4 pm on 24 August 2023.

[19] In the meantime, the interim non-publication orders will continue.

[20] The current orders are to have effect until 5 pm on 29 August 2023 unless, prior to that time, they are continued or renewed. The case will be called again in Court at

10.30 am on 28 August 2023. The purpose of the hearing will be to review the orders including the interim non-publication orders. The hearing will be by telephone. Any party may apply in the meantime to vary or discharge the terms of the orders on two working days' notice.

[21] Costs are reserved.

Judgment signed at 2.40 pm on 15 August 2023

Kathryn Beck Judge

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