



Employment Court of New Zealand

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Marryatt v Silver Ridge Group Limited [2017] NZEmpC 126 (16 October 2017)

Last Updated: 24 October 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 126](#)

EMPC 276/2017

IN THE MATTER OF an application for freezing order

BETWEEN SUZANNE LIZETTE MARRYATT
Applicant

AND SILVER RIDGE GROUP LIMITED First
Respondent

AND SILVER RIDGE PROPERTIES LIMITED
Second Respondent

Hearing: 16 October 2017
(Heard at Auckland)

Appearances: A Twaddle, counsel for applicant
M Breckon, counsel for first and second
respondents

Judgment: 16 October 2017

JUDGMENT (NO 2) OF JUDGE J C HOLDEN

[1] On 2 October 2017, on the application of Ms Marryatt, I issued a freezing order under [s 190\(3\)](#) of the [Employment Relations Act 2000](#) (the Act)¹ for the reasons given in my judgment of 3 October 2017.² That freezing order was made over \$42,043.73 from the proceeds of sale of the Palmers Garden World – Hamilton franchise, but only to the extent that funds were available after allowing the first respondent to make the payments required to creditors with registered interests and/or from whom consent was required to settle the sale of the Palmers Garden

World – Hamilton franchise.

¹ *Marryatt v Silver Ridge Group Ltd* [\[2017\] NZEmpC 119](#) (freezing order).

² *Marryatt v Silver Ridge Group Ltd* [\[2017\] NZEmpC 121](#) (reasons).

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[2] The order was made after hearing from counsel for the applicant and from Drs Ankush and Swati Bajaj as representatives for the respondents. The matter was heard and dealt with urgently, and the respondents had not filed any evidence.

[3] The freezing order was made against both the first and second respondents but on limited terms and for a limited period of time.

[4] Dr Ankush Bajaj now has sworn an affidavit on behalf of both the first and second respondents. His evidence is that the second respondent did not have any interest in the Palmers Garden World – Hamilton franchise. He gives evidence of the settlement price for the Palmers Garden World franchise and the debts to be paid by the first respondent on settlement. The evidence is that the debts exceeded the settlement price. For that reason, Dr Bajaj says that he and his wife, Dr Swati Bajaj, made a cash contribution of \$25,000 that was drawn from another company in which they are shareholders, (ASB Dental Services Ltd). Taking that sum into account the

amount currently held in Pabla Law's trust account pursuant to the freezing order is

\$987.28.

[5] However, there are other substantial unpaid debts of the first respondent, including debts to the Accident Compensation Corporation and to Meridian Energy Ltd being debts that were incurred in the ordinary course of business.

[6] As noted in my reasons for judgment to succeed in obtaining a freezing order an applicant must satisfy the Court of four essential ingredients:³

- (a) that the applicant has a good arguable case;
- (b) that the respondent has assets within the jurisdiction;
- (c) that there is a real risk that the assets will be removed from New

Zealand or disposed of, dealt with, or diminished in value; and

3 At [22].

(d) that the balance of convenience and interests of justice require that the order be made.

[7] I apply those four ingredients here also in considering whether the freezing order should continue beyond today.

The first respondent has no assets

[8] In respect of the first respondent, the evidence is that there are no assets to which the freezing order can apply.

[9] At best, continuing with the freezing order may cause the solicitors holding the funds to pause in paying outstanding debts that would be expected to be paid in the ordinary course of business.

No evidence second respondent's assets are dissipating

[10] In respect of the second respondent, there is no evidence as to its assets. At the 2 October 2017 telephone conference, mention was made of an investment property, but that is not referred to in the evidence that has been filed with the Court. In any event, Ms Marryatt has not provided any evidence that there is a risk that any assets that the second respondent may have will be removed from New Zealand or disposed of, dealt with or diminished in value.

Orders lapse

[11] For these reasons, I do not order a continuation of the freezing order made on

2 October 2017, and so it lapses at 5pm on 16 October 2017.

[12] There is also no basis for the continuation of the order restricting publication of my earlier judgments and that order also ceases to have effect from 5pm on

16 October 2017.

[13] I note that the parties are to attend mediation this Friday, 20 October 2017. I

wish them well in endeavouring to resolve their differences and to settle this matter.

[14] At this stage, there is no order as to costs. If, following mediation, any party seeks costs in relation to the application for a freezing order that party is to file a memorandum with the Court by 5pm on 3 November 2017.

[15] Any memorandum in response then is to be filed by 5pm on 17 November

2017.

J C Holden

Judge

Judgment signed at 3.45 pm on 16 October 2017