Employment Court of New Zealand

Soundhomes NZ Limited v Doughty [2025] NZEmpC 42 (13 March 2025)

Last Updated: 20 March 2025

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU

[2025] NZEmpC 42
EMPC 393/2024

IN THE MATTER OF	an application for a freezing order and ancillary orders
AND IN THE MATTER OF	an application to vary orders
BETWEEN	SOUNDHOMES NZ LIMITED Applicant
AND	PHILIP CARL DOUGHTY First Respondent
AND	PROCLADD EXTERIOR SOLUTIONS LIMITED Second Respondent
AND	BLACKDOG FINISHES LIMITED Third Respondent
AND	PREVENT SERVICES LIMITED Fourth Respondent

Hearing:	10 March 2025 (Heard at Auckland)
Appearances:	J Leenoh, counsel for applicant MC Donovan, D Montepara and JP Robinson, counsel for respondents
Judgment:	13 March 2025

JUDGMENT (NO 8) OF JUDGE KATHRYN BECK

(Application to vary orders)

SOUNDHOMES NZ LIMITED v PHILIP CARL DOUGHTY [2025] NZEmpC 42 [13 March 2025]

[1] This proceeding involves freezing and ancillary orders that were made on 4 October 2024, with reasons given by Judge Corkill on 7 October 2024.1 The proceeding has come before the Court several times since then. The history is helpfully set out in Judge Corkill's most recent judgment and does not need to be repeated.2

[2] A review hearing took place on 10 March 2025. I issued a minute the next day, summarising my conclusions and granting the application for an extension of the orders. I indicated that I would provide reasons for doing so. These are my reasons.

[3] The applicant has applied to the Court for a further extension and variation of the orders. Its position, in summary, is that the orders are necessary because there remains a substantial risk of dissipation of assets by the respondents, which is reflected in what it submits are the respondents' ongoing breaches of the freezing and ancillary orders to date. It says the respondents have breached the orders multiple times, whether technical or deliberate, through the late disclosure of a term loan agreement, registration of a mortgage on the first respondent's family home, refinancing of motor vehicles, non-disclosure (in breach of ancillary orders), and the use of a company vehicle as collateral.

[4] The respondents strongly oppose the continuation of the freezing and ancillary orders as well as the further ancillary orders sought. It is submitted that all available assets have been disclosed and that there is no evidence that assets might be moved out of the jurisdiction or dissipated. Mr Donovan, counsel for the respondents, submitted that the respondents have taken significant steps to provide the applicant with security and an assurance that dissipation of any remaining assets, for the purpose of defeating their ability to meet a judgment, will not occur. The respondents deny that there is any pattern of non-compliance and argue that there is no justification for further ancillary orders. They also claim that the balance of convenience and interests of justice favour the refusal of the application to extend the freezing order and for

1 *Soundhomes NZ Ltd v Doughty* [2024] NZEmpC 194.

2 *Soundhomes NZ Ltd v Doughty (No 6)* [2024] NZEmpC 252 at [2]–[11].

additional ancillary orders. They say that the freezing order should be permitted to lapse.

Should the freezing order continue?

[5] Three elements must be satisfied to justify the imposition or continuance of a freezing order:

(a) that the applicant has a good arguable case;
(b) that the respondents have assets within the jurisdiction; and
(c) that there is a real risk that property will be dissipated or, if relevant, moved out of the jurisdiction.

[6] The balance of convenience and interests of justice must also favour the making/continuation of the orders.

[7] While not admitting the claims made against them in their entirety, the respondents do not contest the first two elements of the test above, but deny that there is a risk of dissipation or removal of the assets.

[8] The available assets are recorded by Judge Corkill in his judgment of 18 December 2024.3 They are a home (which is mortgaged) which Mr Doughty co- owns with his wife, chattels, a motor vehicle, various vehicles and tools and an operating bank account owned by the second respondent, and some assets owned by the third and fourth respondents.

[9] Security has also been provided through the payment of a sum into Court. The balance currently sits at $120,000 after a payout of $50,000 to the applicant by consent.

3 At [25]–[27].

Risk of dissipation

[10] The applicant submits that there remains a substantial risk of dissipation, which it says is illustrated by the various breaches of the freezing and ancillary orders it says have occurred to date. It is helpful to deal with each of these in turn.

Term loan agreement and registration of mortgage

[11] On 24 October 2024, the respondents personally provided undertakings to the Court not to deal with or diminish any assets. In December 2024, the first respondent registered a new mortgage against his Riverhead property. In his judgment of 18 December 2024, Judge Corkill accepted that such conduct was a technical breach of the freezing order and undertaking, but noted he was unable, on the basis of the affidavit evidence, to determine whether such breach was deliberate.4 The applicant submits that, deliberate or not, it was still a breach with a risk of dissipation.

[12] Mr Donovan submits that the breach was not deliberate and did not disadvantage the applicant. He submits that the mortgage reflected pre-existing rights and does not affect the market value of the property. It should not, therefore, be treated as evidence that there is a risk that the remaining assets will be dissipated to deflect the respondents' ability to meet a judgment.

[13] I agree that there is no immediate evidence of disadvantage to the applicant in the case of a pre-existing liability. However, Mr Doughty did deal with the asset in breach of his undertaking and, notwithstanding his knowledge of the orders, failed to seek advice before doing so. Such actions do not assist him in this analysis.

Refinancing and using the company vehicle as collateral

[14] The respondents were served with the freezing and ancillary orders on 7 October 2024.

[15] On 15 October 2024, the second respondent's vehicle, a 2017 Volkswagen Amarok, was used as collateral for a joint loan in the first respondent's name. The

4 At [43] and [45].

applicant says this is a further illustration of Mr Doughty's disregard of the Court's orders.

[16] In response, Mr Doughty refers to his affidavit evidence of 7 March 2025. He says the registration was in support of loans from Future Finance to purchase the vehicle. He says that although Future Finance did not have any security interest registered over it, in order for him to be able to sell the classic car (which the applicant consented to and which I deal with below), the security interest over the classic car had to be released. Future Finance required that a security interest over the Amarok vehicle be registered in its place. Mr Doughty says that had that security not been registered, the classic car could not have been sold.

[17] I accept that the series of events is as set out by Mr Doughty. However, the concern is that while he sought the applicant's consent to the sale of the classic car, he did not disclose the need to place a security on the Amarok vehicle, and such liability was not part of his initial disclosure.

[18] Again, while not necessarily disadvantaging the applicant, it is a technical breach of the orders.

Steps taken to provide security and assurance

[19] Mr Donovan submits that the respondents have made material efforts to allay any concerns that they would dissipate assets, including by promptly arranging for

$170,000 to be paid into Court from the sale of a classic car owned by Mr Doughty. The sale was made with the consent of the applicant; $50,000 of the proceeds have subsequently been paid to it. He says the applicant should also be reassured by the provision of undertakings not to diminish any property or assets, or redirect payments or funds for the purposes of defeating the respondents' ability to meet a judgment.

[20] I accept that the arrangement of the sale of the vehicle (with the applicant's consent) and the payment of the security into Court are significant steps in providing the applicant with security and an assurance. While the provision of undertakings would also provide some security and assurance, that has been somewhat undermined by Mr Doughty's actions in relation to the registration of the mortgage and the interest

over the vehicle on the Personal Properties Securities Register. While I accept that these did not disadvantage the applicant, they were in breach of the undertakings. Had Mr Doughty sought advice, there may well have been a more transparent pathway that could have been followed.

[21] Accordingly, I find the applicant has established that there currently remains a real risk of dissipation of assets.

[22] However, it appears that the realisable assets have already been paid into Court. The evidence currently before the Court indicates that there is minimal equity elsewhere. Accordingly, there may well be a real issue as to whether there are any further assets that can appropriately be frozen. This is relevant given that freezing orders are not designed as a tool to enable a claimant to secure a fund against future success.5

[23] I agree with the applicant, however, that it is not yet clear that the entire picture of the respondents' assets and liabilities has been disclosed.

[24] That leads to the next issue, that of ancillary orders.

Should further ancillary orders be made?

[25] The applicant alleges that there have been issues with disclosure and concerns with regard to compliance with the existing ancillary orders.

[26] It also seeks further ancillary orders as follows:

> (a) Westpac New Zealand Ltd (Westpac) to disclose directly to the applicant the full and unredacted bank statements, including running balances, for account number 1322-XXXXXXX-001, covering the period from 6 May 2019 to the date of disclosure;

5 *Whare Manaaki Inc t/a Porirua Women's Refuge v Anderson* [2024] NZEmpC 209 at [17].

> (b) Bank of New Zealand (BNZ) to disclose directly to the applicant the full and unredacted bank statements, including running balances, for account number 02-XXXX-XXXXXXX-91, covering the period from 6 May 2019 to the date of disclosure;
>
> (c) requiring any bank holding accounts for the first, second, third, and/or fourth respondents to disclose to the applicant, within five working days of service of the application, either:
>
> > (i) the full and unredacted transaction details of all such accounts, including running balances, from 6 May 2019 to the date of disclosure; or
> > (ii) a comprehensive list of all bank accounts under the control of the first, second, third, and/or fourth respondents, including any accounts for which they are owners or authorised signatories, from 6 May 2019 to the date of disclosure.

[27] Ancillary orders are designed to ascertain the existence, value and whereabouts of relevant assets and thereby ensure that any freezing orders made can be properly policed and are effective.6

Non-disclosure – alleged breach of order

[28] Much of the applicant's concern around non-disclosure relates to a difference of opinion between the respective legal counsel as to the interpretation of paragraph [11](a) in the orders made by Judge Corkill on 4 October 2024.7

[29] Mr Donovan considers that such order only requires that the respondents provide disclosure relating to payments made from the applicant's bank account to the respondents' bank accounts and/or any other bank accounts in the first, second, third

6 *Yangtze Industrial Cooperation Ltd (in liq) v Lee* [2024] NZHC 3552 at [13].

7. *Soundhomes NZ Ltd v Doughty* EmpC Auckland EMPC 393/2024, 4 October 2024 (Freezing and Ancillary Orders).

or fourth respondents' control. He says Mr Doughty has complied with the order through the provision of his various affidavits.

[30] Ms Leenoh, counsel for the applicant submits that the order requires that the respondents disclose their assets from 9 May 2019 to 9 October 2024, verifying such disclosure through the production of bank statements and financial records, and that they disclose all documents relating to payments made from the applicant's bank accounts to the listed bank accounts and/or any other bank accounts in the first, second, third or fourth respondents' control. She says that while the respondents have complied with the last aspect of that order, they have not complied with the first part. She seeks a direction that they do so.

[31] In order to move matters forward, Mr Donovan has adopted a helpfully pragmatic approach. The disputed documents have been provided to the applicant's expert witness, Ms Johnstone, on a without prejudice basis and with the agreement that such documents would not be disclosed to the applicant or its solicitor.

[32] Ms Johnstone has been able to complete her report, and this was provided to the Court in her affidavit dated 5 March 2025. At paragraph [1.1.6] of her report, she includes a table setting out a summary of the bank statements provided by the respondents. In relation to all such statements, with the exception of statements from the second respondent, Procladd Exterior Solutions Ltd (Procladd), she notes that nothing further is required. It is apparent from her evidence that this has been, to an extent, an iterative process. Once she was provided with the documentation, she sought further information and documentation by way of clarification, which was then provided with the process continuing until she was satisfied. I do not consider this process to be unusual. I do not agree that it indicates evasiveness on the respondents' part. With the exception of the issue with Procladd, according to Ms Johnstone's table, the current position is that nothing further is required by her.

[33] In relation to the second respondent, the outstanding issue seems to be that Mr Doughty needs to confirm when the bank account was opened.

[34] Accordingly, I do not accept that the respondents have been evasive with respect to disclosure. The refusal to file an

affidavit, and to instead provide that information on a without prejudice basis, was as a result of a genuine and reasonably held belief in relation to the meaning of the orders. The practical workaround that has been adopted in the meantime indicates good faith on the respondents' part.

[35] Further, Judge Corkill has previously dealt with this issue and found that such material is not appropriate to be the subject of an ancillary order, although it may be relevant for disclosure purposes.8 Accordingly, it is not appropriate to make the direction sought.

BNZ loan account

[36] As part of the ongoing disclosure, an issue has arisen in relation to a BNZ bank account. The applicant seeks an order for disclosure direct from the bank.

[37] Ms Johnstone had requested an explanation from the respondents as to why the BNZ bank account had not been disclosed. They say that they have made inquiries and that this is a shadow bank account that is not accessible by them. As they understand it, it is an account used by BNZ for internal purposes. Mr Doughty, however, has been able to deposit funds into the account.

[38] It is unclear as to whether this impacts the explanation provided by the respondents, but in any event the fact that the account may be operational provides a basis for the ancillary order sought in relation to that account.9 Given the lack of clarity around the account, it is appropriate that inquiries be made directly to BNZ. The order is made accordingly.

Blackdog Finishes Ltd – Westpac accounts

[39] The applicant also seeks ancillary orders in relation to a Westpac bank account relating to the third respondent. However, given that Ms Johnstone says that nothing further is required, such an order is not appropriate. Further, the material provided by

8 *Soundhomes NZ Ltd v Doughty (No 6)*, above n 2, at [54].

9 See above at [26](b).

Mr Doughty in his affidavit provides balances for the account for the period in question which should be sufficient for the purposes of ascertaining whether there are assets relevant to the freezing order.

Other bank accounts

[40] Because there have been issues with bank statements that have only been disclosed as a result of further inquiry, the applicant remains concerned that there are other bank accounts of which it is unaware. It therefore seeks ancillary orders in relation to direct inquiries to the banks. I agree that such orders are appropriate to ensure that there is full and frank disclosure to the applicant and to provide some certainty in relation to the assets relevant to the freezing order. However, clarity should be provided to the banks as to what information is already held by the applicant. The order was amended accordingly on 11 March 2025.

Balance of convenience and interests of justice

[41] It is accepted that the freezing order has a significant impact on the respondents

– in particular, the first respondent and his wife. They have limited access to a single account with BNZ to pay their family's living expenses. While this is an administrative constraint on them, it does enable them to meet their day-to-day living expenses.

[42] The second respondent is able to pay its creditors directly from its operating account although it continues to be under an obligation to provide bank statements to the applicant on a fortnightly basis.

[43] The applicant has sought that the freezing orders continue until the substantive matter is determined in the Employment Relations Authority or by the Court. That is not appropriate. Such orders are not intended to remain in place indefinitely, and I agree that it would be unjust and out of proportion to leave them in place for such a length of time.10 Accordingly, I have set a review date for 3 April 2025.

10 High Court Rules 2016, r 32.8(2).

[44] The restrictions on the respondents are not inconsiderable and should not be permitted to continue indefinitely. I would expect that, if there is full and frank disclosure and no issues are raised by the further information provided as part of compliance with the new ancillary orders, in the face of the security already provided, it may well be appropriate for the freezing orders to lapse.

[45] I consider that the respondents' concerns about the restrictions are balanced by the short period for which the current freezing orders will be extended, that is until 4 April 2025. Such a timeframe is proportional to the current evidence of the risk of dissipation. It will provide sufficient time for further information to be provided and the parties to gain some certainty. It is noted that the Authority proceedings should also be progressed expeditiously.

[46] I agree that the respondents have provided significant information to the applicant. However, there is a legitimate basis for the further information and orders sought. The timing of the review date is intended to enable that information to be provided, and for the parties to be able to proceed from there with all relevant information before the Court. The freezing order will therefore remain in place until 4 April 2025.

Outcome

[47] The ancillary orders are granted in part and as amended in the orders made on 11 March 2025.

[48] The freezing order continues until 4 pm on 4 April 2025, with a review hearing scheduled to take place on 3 April 2025.

[49] This judgment and the orders authorised in it are to be served on the banks involved as soon as possible.

[50] Costs are reserved.

Kathryn Beck Judge

Judgment signed at 12.30 pm on 13 March 2025