

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2022] NZEmpC 66
EMPC 123/2022**

IN THE MATTER OF an application for freezing and ancillary
orders

AND IN THE MATTER OF an application for urgency

BETWEEN SOLANDER MARITIME LIMITED
Applicant

AND KENNETH JOHN MUNRO
Respondent

Hearing: Heard at Wellington
(by telephone)

Appearances: B McDonald, counsel for applicant
L Acland, counsel for respondent

Judgment: 14 April 2022

**JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for freezing and ancillary orders)
(Application for urgency)**

Introduction

[1] Solander Maritime Ltd (the applicant) has applied on notice for a freezing and ancillary order against Mr Munro, a former employee. The application follows the making of orders in the High Court, which were subsequently rescinded after the Supreme Court judgment of *FMV v TZB* was drawn to counsels' attention by the High Court.¹ Counsel filed a joint memorandum withdrawing the application seeking

¹ *FMV v TZB* [2021] NZSC 102, [2021] 1 NZLR 466.

continuation of the orders in the High Court by consent, on the basis that a claim would be filed in the Employment Relations Authority and freezing orders sought in this Court.

[2] The respondent opposes the making of the orders sought, for reasons set out below.

[3] I heard from counsel today on an urgent basis.

Framework for analysis

[4] 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 s 190(3) of the Employment Relations Act 2000. An application must be advanced in the Employment Court because the Employment Relations Authority has no power to make such orders.³

[5] There are a number of hurdles that must be overcome by an applicant.

[6] First, there must be a proceeding within the jurisdiction of the Court or the Authority to which the application relates. A statement of problem has been filed in this case. (I record that I discussed with counsel the way in which a number of the causes of action were currently framed, and whether a re-pleading might be required. That is a matter that may be dealt with in the Authority. What is clear is that at least some of the causes of action are squarely within the jurisdiction of the employment institutions. That is sufficient for present purposes).

[7] 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 (an undertaking in the appropriate form, and supporting affidavit have been filed by the applicant).

² High Court Rules 2016, rr 32.2 and 32.3.

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

[8] Third, a draft order must be filed which refers to the undertaking as to damages (this too has been provided by the applicant).

[9] Fourth, the applicant must show:

- (a) a good arguable case on a cause of action;
- (b) there are assets of the respondent to which the order can apply;
- (c) there is a real risk of dissipation.

[10] The need to protect the applicant from a barren judgment must be balanced against any prejudice or hardship to the respondent and/or third parties. 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] The focus of argument was on the dissipation of assets (there is plainly a good arguable case and assets which an order can attach to). Having read the affidavit evidence before the Court I am satisfied that there is a real risk that, if the orders sought are not made, the assets will be dissipated. I say that because of the nature of the alleged misconduct (misappropriation of company funds) to support an addiction; gaps in the information provided to date in respect of what sums were taken and where they have ended up; and the period over which the alleged misconduct is said to have occurred, and the steps allegedly taken during that time to cover up the alleged misappropriation of funds.

[13] I am satisfied too that it would be just to make the ancillary orders sought for

the purposes of eliciting information relating to assets relevant to the freezing order.⁴ The affidavits that have been filed by the respondent to date are incomplete and do not directly deal with some of the information sought.

[14] The balance of convenience and overall interests of justice support the making of the orders. If the orders are not made the applicant will be left exposed, will undermine its ability to obtain a clear picture at an early stage as to where the money said to have been appropriated has gone, and impede its ability to take recovery action. The amount at issue currently stands (on the applicant's evidence) at around \$320,000, but may be more depending on the outcome of the applicant's ongoing investigations.

[15] It appears that the respondent is confronting some practical difficulties in accessing money. The orders that I am making expressly prohibit the order from preventing the respondent from paying for ordinary living expenses and paying legal expenses relating to the freezing order. And I note that the recent sale of assets has freed up some money to meet the sort of expenses identified as problematic on behalf of the respondent.

Order

[16] I am satisfied that the orders in the form submitted with the application should be made subject to the following modifications:

- An extension to the date by which the ancillary orders must be complied with is made in light of the upcoming Easter holiday period. The date for filing an affidavit and serving the same on the applicant must occur by 5pm Friday 22 April 2022.
- The freezing order will have no effect after 29 April 2022, unless on that date it is continued or renewed.

⁴ High Court Rules 2016, r 32.3.

[17] Costs are reserved (I record that the respondent did not seek costs in respect of the proceedings in the High Court).

Christina Inglis
Chief Judge

Judgment signed at 4.45 pm on 14 April 2022