

**ORDER PROHIBITING PUBLICATION OF NAME AND IDENTIFYING  
DETAILS IN THE CONTEXT OF THIS JUDGMENT.**

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 146  
EMPC 302/2023**

IN THE MATTER OF      a without notice application for freezing and  
ancillary orders

BETWEEN                A LABOUR INSPECTOR OF MINISTRY  
OF BUSINESS INNOVATION AND  
EMPLOYMENT  
Applicant

AND                      ZAQ LTD  
First Respondent

AND                      YBU  
Second Respondent

Hearing:                1 September 2023  
(via telephone)

Appearances:         G La Hood, counsel for applicant

Judgment:             1 September 2023

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**JUDGMENT OF JUDGE J C HOLDEN  
(Application for freezing and ancillary orders)**

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[1]      This judgment resolves a without notice application by the Labour Inspector for freezing and ancillary orders.

**Interim non-publication orders made**

[2]      As this application is made without notice, the respondents have not had the opportunity to address the allegations or to try and protect their identities. The

allegations currently made are such that they may cause reputational damage, including to the businesses operated by the first respondent. Therefore, it is necessary to consider whether to make an interim non-publication order.

[3] While there is no application before me in relation to interim non-publication, Mr La Hood, counsel for the Labour Inspector, has advised that the Labour Inspector agrees to the interim non-publication order on the basis that it will be made subject to further order of the Court, to be considered again when the application is heard on notice. Further, the Labour Inspector would want to be able to provide the unredacted freezing and ancillary orders to banks and other entities for the purposes of execution. That is understandable.

[4] Accordingly, there is an interim non-publication order over the identity of the respondents, including their names and any details that would tend to identify them, and over the evidence filed, except as referred to in this judgment. Further, I make an order that the Court file may not be inspected by a non-party without leave of the Court. These orders do not prevent the Labour Inspector from providing a copy of the unredacted freezing and ancillary orders to banks and other entities for the purposes of execution.

[5] This issue will be considered again when the application is heard on notice.

### **The Labour Inspector has filed proceedings**

[6] On 31 August 2023, the Labour Inspector filed proceedings in the Employment Relations Authority (the Authority) against the respondents. The first respondent is a company, referred to in this judgment as ZAQ Ltd, and the second respondent, referred to as YBU, is the sole director and shareholder of ZAQ Ltd. The Labour Inspector says that YBU is in a position to exercise significant influence over the management or administration of ZAQ Ltd.

[7] The Labour Inspector seeks from the Authority findings of breaches of the Employment Relations Act 2000 (the Act), the Minimum Wage Act 1983, and the Holidays Act 2003 by ZAQ Ltd in respect of a total of four of its employees, and findings in respect of YBU as a person involved in the breaches.

[8] The Labour Inspector seeks orders for minimum wage arrears and holiday pay arrears from ZAQ Ltd totalling \$107,121.30. The Labour Inspector also seeks orders for penalties as a result of the breaches from both ZAQ Ltd and YBU. The Labour Inspector says that the proceedings could result in substantial penalties being ordered, likely to exceed the amount of arrears sought in the event of the Labour Inspector's case being proved.

[9] This proceeding for freezing and ancillary orders has been commenced by way of a statement of claim in the Court. It is supported by an affidavit of Ms MacRury, who is a principal Labour Inspector, and a memorandum from Mr La Hood. In addition, draft proposed orders were filed with the Labour Inspector's statement of claim. Revised draft orders were then filed following a telephone hearing this afternoon.

[10] Mr La Hood has certified that:

- (a) the grounds on which the application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

### **The Employment Court may make freezing orders**

[11] Under s 190(3) of the Act, the Employment Court has the same powers as the High Court to make freezing orders, as provided for in the High Court Rules 2016.

[12] Part 32 of the High Court Rules is therefore applied by this Court, with appropriate modifications. This means that a freezing order may be made under r 32.2 and ancillary orders may be made under r 32.3.

[13] Rule 32.5 provides that the Court may make the freezing order or an ancillary order against a prospective judgment debtor if the Court is satisfied that there is a danger that a judgment will be wholly or partly unsatisfied because the assets of that

prospective judgment debtor, or of another person, might be removed from New Zealand; or disposed of, dealt with, or diminished in value.

[14] In order to obtain such orders, the Labour Inspector must satisfy four essential requirements:<sup>1</sup>

- (a) The Labour Inspector has a good arguable case.
- (b) The respondents have assets within the jurisdiction.
- (c) There is a real risk that the property will be moved out of the jurisdiction or dissipated.
- (d) The balance of convenience and interests of justice require the order to be granted. In making this assessment, the Court will need to consider any potential defences that a respondent may have.

[15] The orders sought by the Labour Inspector comprise:

- (a) An order pursuant to s 190(3) of the Act and r 32.2 of the High Court Rules freezing the assets of the respondents specified in the draft order provided after the telephone hearing this afternoon.
- (b) An order dispensing with service of this application on any person.
- (c) An order dispensing with the requirement for the Labour Inspector to give a signed undertaking as required by r 32.2(5) of the High Court Rules.
- (d) An ancillary order requiring the respondents to each provide a schedule particularising their assets.

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<sup>1</sup> See for example *A Labour Inspector of Ministry of Business Innovation and Employment v Jeet Holdings Ltd* [2019] NZEmpC 188 at [5] and the cases there referred to.

## **Labour Inspector has a good arguable case**

[16] Ms MacRury has included in her affidavit a copy of her investigation report into the alleged breaches and statements from two former employees of ZAQ Ltd.

[17] She also advises that further investigations are underway in respect of two other former employees.

[18] The Labour Inspector deposes that, after the investigation report was provided to the lawyer for the respondents, four extensions of time have been sought to provide information. Although the Labour Inspector agreed to the first three extensions, she did not agree to the fourth and advised the respondents that proceedings in the Authority would commence and they would have an opportunity at that time to file a statement in reply.

[19] ZAQ Ltd operates several businesses. YBU is the 100 per cent shareholder of ZAQ Ltd. He is also the director and 100 per cent shareholder of two other companies, operating other businesses. These businesses are within New Zealand.

[20] When YBU was interviewed by the Labour Inspector, in July 2023, he said that one of the related businesses was not currently listed for sale, although it had previously been listed and that he may put it on sale again.

[21] Despite YBU suggesting that the business was not currently listed for sale, the Labour Inspector subsequently learnt it was listed for sale on a real estate website.

[22] The Labour Inspector has since learnt that the businesses owned by ZAQ Ltd are listed for sale, on four real estate websites. Those listings have not been advised to the Labour Inspector.

[23] The Labour Inspector considers there is a real risk that the respondents will seek to dissipate, diminish, or otherwise place out of reach their assets if a freezing order is not granted:

- (a) ZAQ Ltd is in the process of selling several businesses;
- (b) the respondents have omitted to advise the Labour Inspector of these potential sales; and
- (c) the circumstances of the possible sale and the marketing for sale of the businesses is of considerable concern to the Labour Inspector.

[24] She submits that, in circumstances where the respondents knew that proceedings for breaches of minimum employment standards were imminent, the respondents' omission to advise the Labour Inspector of the intention to sell these assets demonstrates a real risk that the respondents are reorganising their business affairs in a manner that could place their assets out of reach should orders be made against them. This is, the Labour Inspector says, indicative of a risk that the respondents may seek to further dissipate assets in their ownership or control.

[25] The Labour Inspector submits that the balance of convenience and overall justice of the case support the granting of a freezing order. She submits that because of the real risk that the assets will be dissipated, any order for the payment of arrears or penalties would be rendered nugatory on the basis that the respondents will have no assets against which such orders could be enforced. She submits that any hardship to the respondents is outweighed by that which would be suffered by the Labour Inspector, and the affected employees, if the orders are not made.

[26] Counsel for the Labour Inspector submits that any potential hardship that the respondents may incur as a result of the orders being made are mitigated by r 32.6(3) of the High Court Rules, which provides that the freezing order must not prohibit the respondents from dealing with the assets covered by the order for the purposes of paying ordinary living expenses, legal expenses related to the freezing order, or

disposing of assets or making payments in the ordinary course of business, including business expenses incurred in good faith.

[27] The Labour Inspector also seeks ancillary orders requiring the respondents to serve on the Labour Inspector a schedule fully particularising their financial position and identifying all their assets and their value. This would enable the parties to refine the terms of the freezing order (to cover a more limited range of assets), or to make arrangements for the payment of security into Court or to a trust account that would obviate the need for ongoing freezing orders.

[28] The Labour Inspector has identified possible defences, in particular in relation to YBU, who may argue that he is not a person involved in breaches and therefore not personally liable for any arrears or penalties at this juncture. The Labour Inspector submits, however, that there is ample prima facie evidence of YBU's involvement in the breaches.

### **Orders appropriate**

[29] I am satisfied that, in all the circumstances, it was appropriate for the Labour Inspector to file a without notice application. There is an urgent need to restrict the respondents' actions at this stage. Having to proceed on notice would have caused the Labour Inspector undue delay and prejudice. In all the circumstances of this case, that would have been contrary to the interests of justice. An order is made dispensing with service of this application.

[30] No undertaking as to damages has been filed, as required by r 32.2(5). That requirement is tempered by r 32.6(4), however, which says that the Court must require an applicant for such orders to file the appropriate undertakings, "[u]nless there are special circumstances". Rule 32.6(4) and its exception for "special circumstances" has a qualifying effect due to the greater specificity and workability it provides to the requirement.<sup>2</sup>

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<sup>2</sup> *Official Assignee v Sharma & Family Trustee Ltd* [2016] NZHC 1843, [2016] NZAR 1145 at [10]-[12].

[31] This is an application brought by the Labour Inspector as a statutory officer warranted under s 223 of the Act. The Labour Inspector is not expressly authorised under any enactment to give a guarantee or an indemnity. The Labour Inspector submits it would not be lawful to require her to provide an undertaking in these proceedings.<sup>3</sup> In any event, there can be no suggestion that the Labour Inspector would not be capable of meeting any damages arising from this matter. It is expected, of course, that the Labour Inspector will honour and abide by any orders of the Court or of the Authority. In these special circumstances, the Court excuses the filing of an undertaking.

[32] I am further satisfied that the orders in the revised form submitted this afternoon should be made. The proposed freezing and ancillary orders are made accordingly.

[33] As the orders will be made without notice, they have limited effect so that they expire after 4 pm on Monday 18 September 2023. At 10 am on Monday 18 September 2023 the matter will be called in the Employment Court at Wellington for review as to whether to continue or renew the orders. The respondents or their representatives will be entitled to be heard by the Court on that date. The date by which the respondents are to serve the Labour Inspector with a schedule fully particularising their financial position and identifying all of their assets and their value is Tuesday 12 September 2023.

[34] I also direct:

- (a) That a copy of the order, this judgment and all documents filed by the Labour Inspector are to be served on the respondents as soon as possible.
- (b) The Court is to be notified as soon as the documents referred to in subparagraph (a) above are served. An affidavit of service also must be filed.

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<sup>3</sup> Public Finance Act 1989, s 65ZC.



(c) This judgment is to be published after that notification has been received.

[35] Costs are reserved.

J C Holden  
Judge

Judgment signed at 3:30 pm on 1 September 2023