

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV 2007-470-001048**

BETWEEN JOHANNA FRANCINA FREEMAN  
Plaintiff

AND JAKOBUS PETRUS ABRIE  
First Defendant

AND ABRIE DENTAL 2002 LIMITED  
Second Defendant

Hearing: On the papers

Counsel: MJ Sharp for Plaintiff

Judgment: 26 June 2009 at 3:30pm

---

**JUDGMENT OF WYLIE J**

---

This judgment was delivered by Justice Wylie  
On 26 June 2009 at 3.30 p.m.  
Pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar  
Date:

Solicitors: Holland Beckett, Private Bag 12011, Tauranga 3143 for Plaintiff  
(email: [michael.sharp@hobec.co.nz](mailto:michael.sharp@hobec.co.nz))

[1] I have this morning received an interlocutory application filed by the plaintiff on a without notice basis seeking freezing orders against the first and second defendants, a mareva injunction against Isabella Cornelia Abrie, and an order that the ASB in Tauranga or any other bank with which either the first defendant, second defendant or Ms Abrie holds accounts, file and serve affidavits stating what documents they have in their possession or control on behalf of the parties.

[2] The substantive proceedings are set down for hearing on 8 July 2009 next.

[3] I have had some difficulty in dealing with the matter, because the files are held in part in the High Court in Tauranga, and in part in the High Court in Rotorua. The application for freezing orders and a Mareva injunction has been made available to me in Auckland. I have, however, obtained copies of the pleadings, and perused the register of documents filed in the Court. In an amended statement of claim, filed in August 2008, the plaintiff makes various allegations in regard to the equitable ownership of a dental practice known as the Bethlehem Dental Practice. She alleges that the second defendant holds the assets of that practice on a resulting trust for her and the first defendant. This is denied by the first defendant in a statement of defence he has filed dated 18 September 2008. There is also a statement of defence filed by the second defendant which is not in any conventional form, and which does not specifically address the assertions made in the amended statement of claim. There is a second cause of action which is not relevant for present purposes, and a third cause of action claiming an interest in the relationship property of the plaintiff and the first defendant. It is asserted that that property includes the Bethlehem Dental Practice, and a loan to a family trust. Again, the first defendant denies these allegations and the second defendant has not specifically pleaded to them.

[4] The plaintiff has filed an affidavit in support of her without notice application. She does not go into any further detail in relation to her claims. It is impossible to conclude on the basis of the limited materials before me that the plaintiff has a good arguable case against either the first defendant, or the second defendant. All that can be said is that she has made assertions and they have been denied at least by the first defendant.

[5] Nor is it obvious from the affidavit filed in support of the application that either the first defendant or the second defendant have assets in this country. While in appropriate circumstances the Court can infer that there are assets to which an order can apply, at best from the plaintiff's perspective, I can only conclude on the basis of the documents filed that either the first defendant, or the second defendant may have had an interest in the Bethlehem Dental Centre in Tauranga.

[6] Nor is there any obvious risk of dissipation. The risk of dissipation is central to the making of a freezing order and there is an obligation on an applicant for such an order to present evidence which, in all circumstances, shows risk. Mere assertion of belief that the defendant might dissipate assets, unsupported by solid grounds justifying that belief, is insufficient.

[7] Here all that I can glean from Mrs Freeman's affidavit is that the first defendant **was** part of a religious group which believes that the world is going to end (although, strictly, this evidence is hearsay), that the first defendant was intending to take the couple's children with him to go to a safe house overseas, and that the first defendant owes the plaintiff monies pursuant to various orders made by the Family Court. There is apparently a warrant for the first defendant's arrest for failure to comply with the Family Court's orders; certainly the plaintiff has no idea where the first defendant is at the moment. It also seems the first defendant may have been involved in selling the dental practice, to the extent he owned it, although this evidence is also hearsay. In my view, this is insufficient to show that there is a significant risk of dissipation. There is little more than an assertion that the first defendant might dissipate such assets as he has. There is nothing to justify any assertion of a risk of dissipation in respect to the second defendant.

[8] There are also difficulties with the plaintiff's undertaking. An undertaking must be given, and it must offer real protection in the event that a freezing order is wrongly issued. Here there is an undertaking, but there is only limited evidence of Ms Freeman's ability to honour the same. She states, in somewhat eclectic terms, that she has an interest with her husband in a rural property in Katikati which has a value in excess of \$600,000, and that she has a present income as a school teacher in excess of \$60,000 per annum. She also asserts that she has assets. She does not

disclose what interest she has in the rural property. No detail of any other assets is given.

[9] In the circumstances, I am not satisfied that a freezing order against either the first or second defendant is appropriate.

[10] In regard to the order sought against the first defendant's mother, Isabella Cornelia Abrie, the position is equally unsatisfactory. Mrs Abrie is not a party to the proceedings. A freezing order is not available against her under the High Court Rules. The plaintiff relies on the Court's inherent jurisdiction. Mrs Abrie resides in South Africa. How or whether the court could enforce any order made against her is not addressed in the papers filed. Mrs Abrie owns two properties in this country. The first defendant apparently used to reside in one of them. It seems that those properties are held by Mrs Abrie for a trust known as the Abri 01 Trust. The plaintiff is claiming that she has a caveatable interest in the properties because she says they have been paid for out of the dental practice in respect of which she has claimed a continuing interest. She has lodged caveats to protect that claimed interest. It is not, however, clear on the limited materials available that the Bethlehem dental practice had funded the purchases and there is little or no material on which I can reach any conclusion about the strength or otherwise of this claim. There is no obvious risk of dissipation by Mr Abrie and, again, there are difficulties with the plaintiff's undertaking. I conclude that it would be inappropriate to make the interim order sought.

[11] In regard to the application for non-party discovery, there is no reason why that application should be made on a without notice basis. The application sought is far too widely expressed. It is declined. If the plaintiff wishes to pursue it, the Bank and the defendants will have to be served.

---

Wylie J