

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

CIV-2008-488-000053

BETWEEN I A MIKITASOV
 Plaintiff

AND B J COLLINS
 First Defendant

AND PACIFIC VIEW PROPERTIES LIMITED
 Second Defendant

Judgment: 9 November 2009 at 4:00 pm

RESERVED JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 9 November 2009 at 4:00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar
Date.....

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Introduction

[1] This proceeding is scheduled for hearing on 16 November 2009. I recently refused Mr Collins' application for adjournment of that fixture. His counsel, Mr Mark, has no current instructions and anticipates having to seek leave to withdraw.

[2] In the meantime, the plaintiff, Mr Mikitasov, has applied to vary a freezing order made by Lang J on 16 March 2009 and also seeks freezing orders in respect of two other properties. On 5 November 2009 I heard counsel on that application and made some orders. However, in the absence of the complete file, I was unable to deal with all the issues and adjourned the application to 6 November 2009. On that day there was no appearance for Mr Collins. I made further orders, with my reasons to follow in this judgment.

[3] The application relates to two properties in Paihia (referred to as Lot 3 and Lot 4) and one in Auckland (referred to as Aotea Street). On the material I have seen it is apparent that Mr Mikitasov has a good arguable case on his substantive claim. I note here that I have more information than was before Lang J because Mr Mikitasov's briefs of evidence are now available.

[4] Mr Collins is in serious financial difficulty. The company from which he derived his main income has gone into liquidation. He has significant mortgages that he is unable to service. There have been unsuccessful attempts at selling some of his properties, including the property that is the subject of the existing freezing order. It is also clear that Mr Collins has conducted his affairs through the use of several companies and that assets have been transferred between those companies and between Mr Collins and the companies. In addition, the disposition of a property in Warkworth in unexplained circumstances has caused both Lang J and I to conclude that there is a real risk of assets being disposed of.

Lot 3

[5] Lot 3 is a property in Paihia owned by Mr Collins personally. It has been on the market for some time and is heavily mortgaged. Lot 3 was the subject of the freezing order made by Lang J in March 2009. However, because of the Judge's reservations about the nature of Mr Mikitasov's claim the freezing order was of limited effect, attaching only to the first \$30,000 from any net proceeds of the sale of Lot 3.

[6] The claim has since been amended and I have also had the benefit of seeing Mr Mikitasov's briefs of evidence. I am satisfied that there is a good arguable case for an amount at the level of his claim for \$470,000 and that the existing freezing order in relation to Lot 3 should be varied so as to remove any limitation on the extent of net proceeds to which it will attach.

Lot 4

[7] Lot 4 is also a property in Paihia but this is not owned by Mr Collins personally. It is owned by International Recruitment Partners Limited, a company of which Mr Collins is the sole shareholder and director. Mr Collins therefore has the power to dispose of this property even though he is not the registered owner, as the sole shareholder he stands to benefit from any such disposition. I am satisfied that a freezing order should attach to this property as well.

123 Aotea Street

[8] This is a property in Auckland, the registered proprietors of which are Mr Collins' son, Sean Collins, and Mr Collins' former partner Angelina Flego. At the time of the hearing before Lang J Mr Collins was living at this property.

[9] The reason that Mr Mikitasov seeks a freezing order over this property, notwithstanding that Mr Collins is not the registered owner, is the suspicious timing of its acquisition by the current owners. In or around November 2007 Mr Collins bought a property in Warkworth for \$380,000. In June 2008 he transferred that

property to Ms Flego and Mr Collins junior at a figure substantially less than what he had paid for it. In September 2008 Ms Flego and Mr Collins junior, in turn, transferred the property to a trustee company.

[10] Ms Flego and Mr Collins junior acquired Aotea Street in July 2008 and Mr Mikitasov questions a possible link between Mr Collins' disposition of the Warkworth property and their acquisition of Aotea Street. In considering the earlier application for a freezing order Lang J expressed a suspicion about these transactions. Even though the legitimacy of the disposition of the Warkworth property was directly in issue and the circumstances in which the Aotea Street property had been acquired were directly in issue, Mr Collins did not deal with these issues in his affidavit opposing the application for freezing order. Lang J observed that it would have been a simple matter for him to have explained why he transferred the Warkworth property to his son and partner, to confirm that he had no beneficial interest in the property subsequently and to confirm that he had no beneficial interest in the Aotea Street property. Mr Collins simply ignored these issues. Of some significance to me is the fact that in his affidavit 14 October 2009 sworn in support of his application for adjournment Mr Collins specifically referred to the earlier freezing order, deposing that

...in my haste to reply to the allegations [I] did not fully explain one property transaction...

[11] This statement is quite disingenuous given Lang J's comments and, further, Mr Collins made no effort to rectify the situation, knowing that these issues are still live. In these circumstances, where there are grounds to suspect that Mr Collins does have an interest in the property and, knowing of that concern, Mr Collins has done nothing to explain the relevant transactions, I am satisfied that a freezing order should attach.

[12] I note that Ms Flego and Mr Collins junior have not yet been served, despite the plaintiff's efforts to do so. I therefore made an order that service on them may be effected by delivery to Mr Collins' address for service because I consider that service there will ensure that documents will be brought to their attention.

Other matters

[13] Mr Mikitasov also seeks orders requiring Mr Collins, Ms Flego and Mr Collins junior to file and serve affidavits deposing to various matters connected with Mr Collins' properties and his disposition of assets over the last 18 months or so.

[14] Given my concerns about Mr Collins' failure to address these issues in previous affidavits, coupled with his acknowledged financial difficulties it is reasonable to expect him to provide information about these various transactions.

[15] Although Ms Flego and Mr Collins junior are not facing any assertions of wrongdoing, for the reasons I have already outlined, serious concerns exist regarding the circumstances in which they acquired Aotea Street. Although not parties to the proceeding given that I have made a freezing order in relation to that property, it is necessary for them to give details about the acquisition of it.

Orders

[16] The orders I made on 5 November 2009 were that:

- a) The freezing order made by Lang J 16 March 2009 is varied so that it shall attach to the first \$470,000 out of any net proceeds of sale;
- b) Mr Collins is to file and serve an affidavit within ten working days disclosing his assets and liabilities and all transactions since December 2007 where he has disposed of assets (by sale or otherwise) over the value of \$10,000 and explain the sale of 18 Hauti Drive, Warkworth to Mr Collins junior and Ms Flego.

and the orders I made on 6 November 2009 were:

- c) There will be a freezing order over the property in Paihia known as Lot 4 DP327999 CT11329;

- d) Mr Collins is to file and serve an affidavit within ten working days disclosing International Recruitment Partners Limited's assets and liabilities and explaining the details of his transfer of Lot 4 DP327999 to International Recruitment Partners Limited;
- e) Sean Collins and Angelina Flego shall file and serve affidavits within ten working days disclosing the details of the acquisition by them of 123 Aotea Street, Orakei, including the source of the purchase price and whether Mr Collins has any interest in the property;
- f) International Recruitment Partners Limited, Mr Collins junior and Ms Flego may apply on three days notice to vary or discharge any order affecting them;

[17] Costs are reserved.

P Courtney J