

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

**CIV-2014-404-1161  
[2014] NZHC 1102**

BETWEEN	EGER PROPERTIES LIMITED First Applicant
AND	MATAKANA 2008 LIMITED Second Applicant
AND	SUSAN THEREZIA BARANYAI Third Applicant
AND	DK KELSEY LIMITED First Respondent
AND	JONATHAN RICHARD BRANDT Second Respondent
AND	NATACHA ANN BRANDT Third Respondent

Hearing: 16 May 2014

Appearances: J Heard for the Applicants  
B Gustafson/M Taylor for the Respondent

Judgment: 16 May 2014

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**ORAL JUDGMENT OF S E THOMAS J**

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Solicitors:

B Gustafson, Lowndes Jordan, Auckland  
J Heard, Rainey Law, Auckland

[1] Just after 5.00 pm yesterday evening, 15 May 2014, the applicants filed an urgent ex parte interlocutory application for freezing orders.

[2] It was accompanied by an affidavit by a director of both applicants. At the time the application was made there were three applicants including Susan Baranyai who gave the affidavit.

[3] The application sought freezing orders, freezing the assets of DK Kelsey Limited, the first respondent, freezing the assets of the second and third respondents and freezing the joint assets of the second and third respondents being land held under a certificate of title. It sought also ancillary orders restraining the second and third respondents from leaving New Zealand and requiring them to surrender their passports. No statement of claim or notice of proceeding was filed.

[4] The genesis of it all appears to be that the applicants or one of them is the landlord of property leased to the first respondent and guaranteed by the second and third respondents. The property is a cafe and, as I understand it, the applicants sold the business of the cafe to the respondents.

[5] The application maintained that the lessee was in arrears in rent in the amount of \$50,000. Furthermore that the lessee owed approximately \$17,000 to the applicants for stock in trade sold with the business.

[6] Bearing in mind the extreme nature of the orders sought, I required the application to be sent to the respondents' lawyers. I was aware from the material provided with the applicants' affidavit that the lawyers were in relatively frequent communication, the most recent being an email exchange where the lawyer for the respondents emailed the applicants' lawyer at approximately midday yesterday. He suggested that there should be a meeting Thursday next week.

[7] The real genesis of the application is the applicants' fear that the respondents, who it seems come from South Africa and who are not New Zealand citizens, propose to abandon their obligations under the lease and decamp back to South

Africa. There was some evidence supplied in support of that, particularly an advertisement for the sale of the business noting that the vendors are “motivated” as they are going overseas. There was also a photocopy of a sign, apparently in the window of the cafe, saying “closing sale one week to go”.

[8] The respondents have appeared by counsel today and I am grateful to them for accommodating the direction of the Court. They have filed a photocopy of an affidavit from the second respondent, Jonathan Brandt. It is a photocopy because he had to go to Warkworth to swear the affidavit and it has been scanned and photocopied to counsel.

[9] Jonathan Brandt says on oath:

We have no intention or plans to leave the country as alleged by the applicants. My wife and I own a house...where my wife and I live with our three children...

We are in the process of closing down the Dragon Fly Cafe because the lease expires 19 July 2014 and we have been served with PLA notices for outgoings that we dispute. Our rental payments are up to date.

[10] Furthermore information that is relevant to all of this is information provided in an affidavit on behalf of the applicants filed just before lunch today, disclosing that there are proceedings in the High Court between the parties. The first respondent is the plaintiff suing the applicant and Ms Baranyai in respect of claimed breaches of warranties and misrepresentation concerning the business.

[11] In any event the matter was called this afternoon. Bearing in mind the content of the affidavit of Mr Brandt, counsel for the applicant accepted that there was no ability, in effect, to seek the orders seeking to restrain them leaving the country and surrendering their passports. He also acknowledged that, in the circumstances, he must withdraw the application. I note too he said that the third applicant, Susan Baranyai, could not continue as an applicant in any event because her only claim against the respondents was a contingent one.

[12] I will simply note the application is withdrawn.

[13] Costs for today's appearance are awarded to the respondents on a 2B basis.

[14] I understand that the applicants will file a counter-claim in respect of the existing proceedings but if and when they choose to do that is a matter for them and does not need further direction today.

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Thomas J