

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTEPOTI ROHE**

**CIV-2020-412-000040  
[2020] NZHC 1278**

BETWEEN PALMERSTON NORTH CITY COUNCIL  
Plaintiff/Applicant

AND FORTRESS INFORMATION SYSTEMS  
LIMITED  
Defendant/Respondent

Hearing: On the papers

Appearances: N Jessen for Plaintiff/Applicant

Judgment: 9 June 2020

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**JUDGMENT OF DUNNINGHAM J**

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*This judgment was delivered by me on 9 June 2020 at 4.30 pm, pursuant to r 11.5  
of the High Court Rules*

*Registrar/Deputy Registrar  
Date: 9 June 2020*

[1] The Court is in receipt of an interlocutory application without notice for a freezing order in respect of funds to the value of \$675,958.40 held by the respondent in its Bank of New Zealand bank account, or in any other bank account under the respondent's ownership or control.

[2] The application is made pursuant to part 32 of the High Court Rules which provides for the Court to make an order, either on or without notice to a respondent, restraining a respondent from removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of those assets. The application is accompanied by a signed undertaking that the applicant will comply

with any order for the payment of damages to compensate the respondent for any orders as deemed in consequence of the freezing order.<sup>1</sup>

### **The statement of claim**

[3] The facts giving rise to the application are set out in the plaintiff's statement of claim dated 5 June 2020. The plaintiff, Palmerston North City Council (the Council), owns an arena in central Palmerston North which is used for large scale events, and an arm of the Council manages this venue.

[4] The defendant (who is the respondent in this application), Fortress Information Systems Ltd (FISL) is the company behind the brand of Ticket Rocket (formerly Ticket Direct). The Council appointed FISL as ticketing agent in respect of events at the arena, including, relevantly, the Teams Champs 2020 event organised by Palmerston North Speedway and held over two nights on 7 and 8 February 2020. All revenue from ticket sales for those events was deposited into the identified BNZ bank account owned by FISL.

[5] The proceeds from ticket sales are paid out in accordance with a settlement report prepared by FISL and confirmed by the Council, which identifies gross ticket sales revenue, agreed deductions due to the Council and net ticket sales revenue payable to the Palmerston North Speedway.

[6] Apart from paying \$500,000 to Palmerston North Speedway on 11 February 2020 as a part payment directed by the Council, FISL has not made payment of the following amount on the Council's instructions in accordance with the settlement report:

- (a) \$178,380.64 for venue hire charges and fees in accordance with the agreement between the Council and Palmerston North Speedway;
- (b) \$30,450.94 to external ticketing outlets for sale of tickets;

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<sup>1</sup> As required by High Court r 32.2(5).

- (c) \$458,770.53 to Palmerston North Speedway (being the amount owed after payment of \$500,000 on 11 February 2020).

[7] The sole director of FISL, Mr Matthew Davey, has admitted that the funds are held on trust and that payment is due, but has failed to make payment, including failing to comply with a commitment given to the Council that the funds would be paid out by the end of May.

[8] There is a similar claim in respect of the Under 18 Men's Softball World Cup event held at another venue, Colquhoun Park, which is owned by the Council. Again, FISL was the ticketing agent appointed by the Council. FISL prepared a settlement report in respect of this event and the Council instructed payment based on the settlement report on or about 11 March 2020, but FISL has failed to pay the Council the amount due of \$8,356.29.

### **The application for a freezing order**

[9] The application applies for the following orders:

- (a) an ancillary order requiring the respondent to file and serve bank statements in respect of the respondent's Bank of New Zealand bank account, account number 02-0912-0002535-00, showing the current balance of that account;
- (b) an ancillary order requiring the respondent to file and serve a list of any other bank accounts under its ownership or control with current balances; and
- (c) a freezing order for three months or until the trust funds have been distributed, restraining the respondent from moving, disposing, dealing with, or diminishing money to the value of \$675,958.40 held by the respondent in its Bank of New Zealand bank account number 02-0912-0002535-00, or any other bank account under the ownership or control of the respondent.

[10] The application is accompanied by an affidavit from the Council's venue manager, Mr John Patrick Lynch and from an event promoter, Mr Andrew Bruce Robertson, who organised the Team's Champs event at the Council's arena.

[11] Mr Lynch explains how, as part of the licence agreement for the Team's Champs events, the Council requires the services of a ticketing agent, and the history of how the Council, FISL and event organisers operate. He explains how he received the final settlement report on 28 February 2020, which was then finalised and confirmed as between FISL and the Council and instructions were then given to FISL to settle the event and release the funds to the event promoter after the appropriate payments were made to the Council for venue hire and for agency fees.

[12] He explains that typically payment is actioned without delay following the Council's instruction, but that was not the case following the Team's Champ's event. He then sets out the sequence of communications he had with Mr Davey, including an acknowledgement that FISL had "cashflow problems". In Mr Lynch's understanding, monies from ticket sales were held in trust until after the event and therefore should not be affected by cashflow issues.

[13] Mr Robertson, the event promoter for the Team's Champ's event reiterates much of what Mr Lynch says. He explains that as the promoter for Palmerston North Speedway, the organisation is licenced to use the Council's arena and, as part of the agreement with the Council, it uses the services of FISL as ticketing agent. As the event which was completed in February, he would normally expect the funds to be paid out by the end of February. The fact it is now June and no funds have been received, leaves him to hold concerns about the liquidity of FISL.

#### *Discussion*

[14] I accept that there is a good arguable case that FISL holds funds on trust to the value of \$667,602.11 in respect of the New Zealand Speedway Team's Championships event held in February 2020, and to the value of \$8,356.29 in respect of the Under 18 Men's Softball World Cup held in February 2020. Given the delays in payment despite admitting an obligation to make payment, I accept there is a real risk that FISL has

been using, or will use funds held on trust to meet its cashflow requirements, or debts unrelated to the trust fund. This is supported by communications from Mr Davey to the effect FISL has business cashflow problems.

[15] I am satisfied that it is in the interests of justice to determine the application without requiring it to be served on the respondent, particularly given the risk of dissipation of the funds. I also consider the ancillary orders sought are appropriate in order to ensure the efficacy of the order in the event the funds have moved to other accounts.

[16] I therefore make the orders as sought in the interlocutory application, but the orders are to endure only until 13 July 2020 when this matter will be scheduled for a telephone conference at 2.30 pm, unless the funds have been paid out in accordance with the settlement statements approved by the Council. The Court can then determine whether the freezing orders should be extended or not.

[17] In the interim, I reserve leave to the respondent to apply to the Court to discharge or vary the freezing order on 48 hours' notice to the applicant.<sup>2</sup>

Solicitors:  
Cooper Rapley Lawyers, Palmerston North

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<sup>2</sup> As required by High Court r 32.8.