

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2018-404-572  
[2018] NZHC 675**

BETWEEN DATA RAM SHARMA AND GANESH  
DIXIT  
First Plaintiff

(plaintiff parties continued over)

AND MUJEEB RAHIMAN MUNDATH  
First Defendant

(defendant parties continued over)

Hearing: 11 April 2018

Appearances: B O'Callahan and J Ding for the Plaintiffs  
No appearance for the Defendants

Judgment: 13 April 2018

Reissued: 7 May 2018

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**JUDGMENT OF PALMER J  
[Re-issued for publication to omit bank account numbers]**

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*This judgment is delivered by me on 13 April 2018 at 2.30 pm  
pursuant to r 11.5 of the High Court Rules.*

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*Registrar / Deputy Registrar*

*Solicitors/Counsel:*  
K3 Legal Ltd, Auckland

(plaintiff parties continued)

AND

BIKANER FOODS MT ROSKILL  
LIMITED  
Second Plaintiff

JAYA INVESTMENTS LIMITED  
Third Plaintiff

WIANZ SERVICES LIMITED  
Fourth Plaintiff

TRAVELLERS INN LIMITED  
Fifth Plaintiff

V AND A LIMITED  
Sixth Plaintiff

VR ROTORUA LIMITED  
Seventh Plaintiff

V AND A 2012 LIMITED  
Eighth Plaintiff

VINDOD KUMAR SHARMA  
Ninth Plaintiff

BIKANER FOODS 2010 NZ LIMITED  
Tenth Plaintiff

BIKANER FOODS NZ LIMITED  
Eleventh Plaintiff

CAMELOT HOTEL LIMITED  
Twelfth Plaintiff

GATEWAY MOTEL LIMITED  
Thirteenth Plaintiff

M AND RA LIMITED  
Fourteenth Plaintiff

RAKESH KUMAR SHARMA AND  
MADHU SHARMA  
Fifteenth Plaintiff

RAKESH KUMAR SHARMA AND  
MADHU SHARMA  
Sixteenth Plaintiff

RAKESH KUMAR SHARMA AND  
ROGER CHI  
Seventeenth Plaintiff

SMARTBUY SOLUTIONS LIMITED  
Eighteenth Plaintiff

TRAVELLERS INN RECEIVERSHIP  
LIMITED  
Nineteenth Plaintiff

VR GROUP LIMITED  
Twentieth Plaintiff

VR HAMILTON BACKPACKERS  
LIMITED  
Twenty-First Plaintiff

VR HAMILTON LIMITED  
Twenty-Second Plaintiff

RAKESH KUMAR SHARMA  
Twenty-Third Plaintiff

ASHOK KUMAR SHARMA AND  
SUDHA SHARMA  
Twenty-Fourth Plaintiff

ANKUR ENTERPRISES LIMITED  
Twenty-Fifth Plaintiff

BIKANER FOODS METRO LIMITED  
Twenty-Sixth Plaintiff

NINETY FIVE NZ LIMITED  
Twenty-Seventh Plaintiff

AMAZON NZ LIMITED  
Twenty-Eighth Plaintiff

M & A LIMITED  
Twenty-Ninth Plaintiff

TE ATATU DEVELOPMENTS LIMITED  
Thirtieth Plaintiff

ANKUR INVESTMENTS LIMITED  
Thirty-First Plaintiff

(defendant parties continued)

AND

MOHAMMED HAFIZ  
Second Defendant

M H TRADING & CONSULTING  
LIMITED  
Third Defendant

## **Context**

[1] On 6 April 2018, Woolford J in the High Court of New Zealand issued a minute stating he was satisfied “that there is reasonable evidence of widespread and systematic fraud having been perpetrated by the first defendant, in particular, against the plaintiffs”. He was also satisfied “there are reasonable grounds to believe that the first defendant has recently transferred money overseas and there is a real possibility that he will continue to do so, as the amount of the alleged fraud is now more than \$4.9 million”. He made interim freezing orders, without notice.

[2] At the next call of the proceeding, in the duty list on 11 April 2018, I continued the orders until further order of the Court, except for one order the applicant has now concluded is not justified (in relation to a Citibank account).

## **Further orders**

[3] I have now had the opportunity to consider the applicants’ other requested amendments to those freezing orders and ancillary orders. I agree with Woolford J’s view noted above. I consider the plaintiffs have a good arguable case and there is a substantial risk the defendants and potential defendants will dissipate their assets or remove them from New Zealand.

[4] All of the 31 plaintiffs, apart from four, have provided signed undertakings as to damages and the reasonable costs of compliance by non-parties. I consider that is sufficient for the purposes of r 32.6(4) of the High Court Rules 2016.

[5] With one exception, I consider the ancillary orders sought are necessary to assist compliance with the freezing orders and to identify the potential defendants, the particulars of the claims against them and the assets against which recovery may be sought. The exception relates to JP Morgan Chase Bank. I do not consider sufficient evidence of grounds for the order to include that institution have been provided.

[6] I consider the application being made without notice to any other party is justified on the grounds giving notice would increase the risk of dissipation of the assets and therefore the risk of defeating the relief sought. And, without the orders

already being in place, the financial institutions would be free or obliged to inform their customers of the application, the nature of the information disclosed and the relief sought.

[7] Under part 32 of the High Court Rules 2016, I grant the application for amended freezing orders and for ancillary orders.

[8] Consistent with r 32.6, the orders do not prohibit the defendants from dealing with the assets covered by the order for the purposes of:

- (a) paying ordinary living expenses;
- (b) paying legal expenses related to the freezing orders; or
- (c) disposing of assets or making payments in the ordinary course of the respondents' business, including business expenses incurred in good faith.

[9] The first defendant has been sent the documents filed on 6 April 2016, including the sealed freezing orders, by email on 8 April 2018 and there is evidence of confirmation of receipt. The second defendant was served personally on 10 April 2018. The second defendant is director of the third defendant.

[10] The defendants may apply to the Court to discharge or vary any of the orders by interlocutory application, giving the plaintiffs notice of not less than two working days.

[11] Because the freezing orders are made without notice, they must be limited in duration under r 32.7. They will expire at 5.00 pm on 11 May 2018, to allow the plaintiffs time to assemble the information expected to result from the disclosure ordered. By that date the respondents must have an opportunity to be heard in court. The matter is to be called in a duty list in **the week of 9 May 2018**, or earlier if sought by any of the plaintiffs or defendants.

[12] For the sake of clarity, the full set of orders made are set out below.

## Freezing orders

[13] A freezing order with worldwide effect restraining the first to third defendants from removing, disposing of, dealing with, or diminishing the value of any of their assets including:

- (a) 14A Jasper Avenue, Three Kings, Auckland, certificate of title NA131C/761, of which the first defendant is one of two registered proprietors;
- (b) Bank account numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], of which the first defendant is the holder, or is related to the first defendant;
- (c) Bank account number [REDACTED], of which the second or third defendant is the holder;
- (d) All accounts of any of the defendants with the Commonwealth Bank of Australia, Bank of America, IDBI Bank, Syndicate Bank and HSBC Bank.

[14] A freezing order restraining the holders of the following bank accounts dealing with those accounts:

- (a) Bank account numbers [REDACTED] and [REDACTED];
- (b) Bank account number [REDACTED];
- (c) Bank account number [REDACTED];
- (d) Bank account number [REDACTED]; and
- (e) Bank account number [REDACTED] and [REDACTED].

### **Ancillary orders**

[15] An order requiring the first defendant, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold the following accounts and, in relation to each account, full transaction details for the dates specified below:

- (a) [REDACTED], from 6 September 2011 to the date of this judgment;
- (b) [REDACTED], from 24 August 2012 to the date of this judgment;
- (c) [REDACTED], from 6 September 2011 to the date of this judgment;
- (d) [REDACTED], from 10 October 2015 to the date of this judgment;
- (e) [REDACTED], from 10 October 2015 to the date of this judgment;
- (f) [REDACTED], from 4 January 2016 to the date of this judgment.

[16] An order requiring the second and third defendants, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold the following account, from 1 May 2016:

- (a) [REDACTED]; and
- (b) In the event either of the second or third defendants are or were an account holder of that account, full transactions details for the operation of that account from 18 June 2013 to the date of this judgment.

[17] An order requiring each of the defendants to disclose:

- (a) full particulars of all assets held by or under the control of that defendant worldwide, including assets held in that defendant's name solely or in common with others and all assets held by others on that

defendant's behalf or for which the defendant holds any power to direct how the asset is to be used or applied;

- (b) where any asset in order [17](a) is an account of any type, full transaction details of that account from 6 September 2011 to the date of this judgment; and
- (c) full particulars of, and full transaction details for, any credit card or debt card or cash card or any other line of credit facility issued for, or available for the use of, that defendant from 6 September 2011 to the date of this judgment.

[18] An order requiring ASB Bank Ltd, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold the following accounts with ASB Bank Ltd, and transaction details for the dates specified below:

- (a) **[REDACTED]**, from 31 March 2016 to the date of this judgment;
- (b) **[REDACTED]**, from 28 June 2016 to the date of this judgment;
- (c) **[REDACTED]**, from 6 September 2011 to the date of this judgment;
- (d) **[REDACTED]**, from 24 August 2012 to the date of this judgment;
- (e) **[REDACTED]**, from 12 September 2016 to the date of this judgment;  
and
- (f) **[REDACTED]**, from 22 July 2013 to the date of this judgment.

[19] An order requiring Westpac Banking Corporation, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold the following accounts with Westpac Banking Corporation, and transaction details for the dates specified below:

- (a) [REDACTED], from 4 January 2016 to the date of this judgment;
- (b) [REDACTED], from 10 October 2015 to the date of this judgment;
- (c) [REDACTED], from 10 October 2015 to the date of this judgment;
- (d) [REDACTED], from 4 January 2016 to the date of this judgment.

[20] An order requiring whichever bank or agency that operates the following accounts, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold these, and transaction details for the dates specified below:

- (a) [REDACTED] from 3 May 2016 to the date of this judgment;
- (b) [REDACTED] from 25 August 2016 to the date of this judgment;
- (c) [REDACTED] from 9 December 2015 to the date of this judgment;
- (d) [REDACTED] from 9 December 2015 to the date of this judgment.

[21] An order requiring ANZ Bank New Zealand, within 48 hours of being served with this judgment, to disclose the names, addresses and other identifying particulars of the person or persons who hold account number [REDACTED] with ANZ and transaction details from 18 June 2013 to the date of this judgment.

[22] An order requiring the following banks, within 48 hours of being served with this judgment, to provide full transaction details in relation to any bank account held by any of the defendants, whether jointly or in common with others, or for which any of the defendants are signatories:

- (a) the Commonwealth Bank of Australia;
- (b) Bank of America NA;

- (c) IBDI Bank;
- (d) Syndicate Bank;
- (e) HSBC Bank.

[23] An order requiring each of Tasman FX, HIFX, OFX, Cash Passport and Western Union, within 48 hours of being served with this judgment, to disclose:

- (a) in respect of any transactions conducted at the request of the defendants, the transaction details, including the issuance of any instructions, the amount of the transfer, the bank account from which the transfer was made, the bank account to which the transfer was made, the name of the recipient as instructed, and the location of the recipient as instructed; and
- (b) in respect of any transactions conducted where funds have been received by each of Tasman FX, HIFX, OFX, Cash Passport and Western Union, from any of the bank account numbers listed below, the transaction details, including the issuance of any instructions, the person from whom the instruction originated, the amount of the transfer, the bank account from which the transfer was made, the bank account to which the transfer was made, the name of the recipient as instructed and the location of the recipient as instructed:
  - (i) [REDACTED];
  - (ii) [REDACTED];
  - (iii) [REDACTED];
  - (iv) [REDACTED];
  - (v) [REDACTED];
  - (vi) [REDACTED];

- (vii) [REDACTED];
- (viii) [REDACTED];
- (ix) [REDACTED];
- (x) [REDACTED];
- (xi) [REDACTED];
- (xii) [REDACTED]; and
- (xiii) [REDACTED].

[24] An order permitting the plaintiffs to use the information disclosed only for the purposes of:

- (a) formulating substantive proceedings and any interim relief, including preservation orders, freezing orders and ancillary orders in respect of the fraud alleged by the plaintiffs as more particularly set out in the draft statement of claim provided to the Court with the application for these orders (the substantive proceedings); and
- (b) making further enquiries relevant to the substantive proceedings.

[25] An order requiring the plaintiffs to pay the financial institutions' reasonable actual costs of:

- (a) complying with these orders; and
- (b) taking any reasonable step in relation to the proceeding or the orders made.

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Palmer J