

Employment Law Services

Proactive Action Protects Employer

This year has seen the infamous “credit crunch”. While it has spelled disaster for some employers, others have seen it as an opportunity; an opportunity to restructure, to improve processes, to trim costs and to make the most of the uncertain market. Successful employers will be motivating their teams, ensuring they retain their best and most loyal employees, and pushing onwards and upwards as a team. At times like these, it is an employer’s worst nightmare to receive allegations that one of their most dependable employees is actually not working in the best interests of the business at all. Fortunately, there are actions an employer can take to protect themselves and their business.

In a recent case involving a senior and longstanding employee, alleged backhanders and large amounts of money, Brookfields successfully applied for and obtained a Mareva Injunction in the Employment Relations Authority freezing a number of the employee’s assets to protect the employer’s position.

Brookfields represented a company in its application to the Authority for an investigation and determination of claims against a former employee. The employee held a senior position and had been with the company for 34 years. This long-standing relationship came to a crashing halt in April 2008 when the company summarily dismissed the employee for allegedly receiving secret commissions.

The company claimed the employee had (for some time) been receiving secret commission payments from suppliers, located in China and Thailand in particular. If true, these actions would have been a clear breach of the employee’s contractual and statutory duties of good faith to the company. The company also alleged the employee had distributed confidential documents and information, in breach of his duty of fidelity and confidentiality.

The company sought damages for the loss and/or harm suffered by it as a result of the employee’s alleged unlawful conduct and a penalty for a breach of his employment agreement. Without notice to the employee, Brookfields applied to the Authority for a Mareva Injunction to freeze their substantial assets in New Zealand. These assets included his bank account (\$283,273) and his superannuation fund (\$451,707). This application was in itself an intriguing matter of law as there was some uncertainty about whether the Authority had jurisdiction to order a Mareva Injunction. In a case heard in 2002, the Authority found it did have the requisite jurisdiction, and awarded a Mareva Injunction. However, a few years later the Employment Court did not take the same view. In two cases in 2005 and 2006, the Court held the Authority did not have the jurisdiction to make such an order. A further Employment Court decision in 2007 disagreed once more, and ruled the Authority did have the jurisdiction to award injunctive relief. In the event, Brookfields successfully argued the company’s case before the Authority and the Mareva injunction was granted.

As a result of this swift action to protect the company’s initial position, the employee’s assets were frozen pending the outcome of the determination. Following negotiations between the parties, the



company agreed to settle its claims against the employee for \$450,000. The \$450,000 was paid from the employee's (previously frozen) superannuation fund, when the Mareva Injunction was released.

This case demonstrates how an employer should consider the full range of options available to it when faced with a potentially expensive and explosive breach of duty by an employee. Taking fast, efficient and proactive action can often secure a successful outcome well before the matter is eventually determined.

Our Employment Law Contacts are:

Erin Davies <i>Partner</i>	direct dial email	(09) 979 2177 davies@brookfields.co.nz
David Neutze <i>Partner</i>	direct dial email	(09) 979 2169 neutze@brookfields.co.nz
Paul Wallace <i>Senior Associate</i>	direct dial email	(09) 979 2238 wallacep@brookfields.co.nz
Stephen Corlett <i>Senior Associate</i>	direct dial email	(09) 979 2141 corlett@brookfields.co.nz
Ben Atkins <i>Solicitor</i>	direct dial email	(09) 979 2130 atkins@brookfields.co.nz

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Auckland **Manukau** **Wellington**
p 09 379 9350 09 262 2145 04 499 9824
f 09 379 3224 09 262 3875 04 499 9822
www.brookfields.co.nz



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