

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

**CIV 2012-488-202
[2012] NZHC 972**

BETWEEN SOUTH PACIFIC INDUSTRIAL
LIMITED
Plaintiff

AND UNITED TELECOMS LIMITED
Defendant

Hearing: 9 May 2012 (by telephone)

Counsel: P F Dalkie and R Wynne-Griffiths for Plaintiff
D M Hughes and R Brown for Defendant

Judgment: 9 May 2012

(ORAL) JUDGMENT (NO. 5) OF HEATH J

Solicitors:

Hazelton Law, PO Box 5639, Wellington
Kensington Swan, Private Bag 92101, Auckland

Counsel:

P F Dalkie, PO Box 392, Shortland Street, Auckland

Freezing order application

[1] In this proceeding South Pacific Industrial Ltd (SPI) has sought a freezing order to prevent United Telecoms Ltd (UTL) from removing assets from New Zealand. The background is set out in earlier judgments.¹

[2] In a judgment that I gave on 26 April 2012,² I made an interim order preventing UTL from removing assets from New Zealand that comprised the dismantled parts of the former Marsden B power station. I indicated that if the sum of \$1 million (in total) was paid into the trust account of Kensington Swan, as solicitors for UTL, no freezing order would be required.

[3] UTL has lodged the sum of \$1 million into Kensington Swan's trust account. It will be held on interest bearing deposit, pending the outcome of the litigation between UTL and SPI whether by arbitral proceedings or otherwise.

[4] However, UTL has appealed to the Court of Appeal against that part of my judgment of 26 April 2012 in which I increased the amount required to be paid into the trust account to avoid a freezing order from \$350,000 to \$1 million. That being so it is necessary to make an order today on terms that will keep the appeal alive.

[5] I vary the order that currently exists, and order that the sum of \$1 million is held on interest bearing deposit in the trust account of Kensington Swan on the terms indicated. That means the prohibition on UTL removing the assets from New Zealand is lifted, on the basis of a new order requiring it to pay into Kensington Swan's trust account the sum of \$1 million on the terms I have identified, to be held pending resolution by agreement or otherwise of litigation between UTL and SPI.

[6] The order I have made is designed to keep UTL's appeal rights intact. If, in drafting an order based on this judgment, Mr Hughes, for UTL, discerns any

¹ *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 688, *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 697, *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 711, *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 777.

² *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 777.

difficulty with the way in which I have dealt with that aspect, leave is reserved to apply for a further direction before any order is sealed.

Costs

[7] Previous orders for costs have been made.

[8] So far as today's hearing is concerned, it was to deal solely with confirmation of cleared funds being held in Kensington Swan's trust account. On that basis, I make no order as to costs in relation to today's hearing.

Stay of proceedings

[9] The parties are agreed that the substantive proceeding should be stayed as the dispute is likely to be resolved either through arbitration or (at least in part) adjudication under the Construction Contracts Act 2002.

[10] By consent, I make an order staying the substantive proceeding.

Media application

[11] An application has been made by the *Northern Advocate* to obtain access to pleadings and affidavits filed in the proceeding to date. Mr Hughes has raised a concern about the confidentiality of some information, having regard to s 68 of the Construction Contracts Act. SPI has no objection to release of the information.

[12] In light of Mr Hughes' indication and the insufficiency of time today to research the point, I decline the media application. I reserve leave, however, for the application to be renewed on notice to both parties. If a defended hearing of the application were required, a date for that will need to be fixed by the Registrar. A copy of this judgment shall be made available by the Registrar to the *Northern Advocate*.