

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

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

**CIV-2025-404-2942  
[2025] NZHC 3287**

BETWEEN	PERFORMANCE SAILCRAFT PTY LIMITED Applicant
AND	LASER CLASS ASSOCIATION INC t/a INTERNATIONAL LASER CLASS ASSOCIATION Respondent

Hearing: 29 October 2025

Appearances: T B Fitzgerald and J Kim for applicant  
D J Chisholm KC for respondent

Date of judgment: 30 October 2025

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**JUDGMENT OF JAGOSE J**

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*This judgment was delivered by me on 30 October 2025 at 5.15pm.  
Pursuant to Rule 11.5 of the High Court Rules.*

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*Registrar/Deputy Registrar*

*Counsel/Solicitors:*  
D J Chisholm KC, Auckland  
Bell Gully, Auckland

[1] As duty judge, I have an Australian company's (Performance Sailcraft) without notice interlocutory application for interim orders to prevent a Texan non-profit corporation (the Laser Class Association) from acting on its purported termination of a sale and purchase agreement dated 9 April 2024 (the sale and purchase agreement) between them and a New Zealand company (Global Sailing, since removed from the companies register) and require the Laser Class Association to reinstate Performance Sailcraft as an approved builder and withdraw its statements to the contrary, pending determination of Performance Sailcraft's claim such termination was invalid.

[2] The sale and purchase agreement is governed by New Zealand law, and the parties submit to New Zealand courts' exclusive jurisdiction over any resulting disputes. Although sought without notice, against a backdrop of related proceedings between the parties in Texas, the Laser Class Association appeared at the hearing on a *Pickwick* basis, meaning it appeared only to assist the Court to the extent it could or wished to do, given the absence of notice.<sup>1</sup>

## Background

[3] Global Sailing had rights to manufacture the Laser sail boat originally designed by Bruce Kirby. Laser sail boats are a "one design" class, meaning each is built of materials and to methodology approved by the Laser Class Association and prescribed in a construction manual (the manual), originally Global Sailing's asset in which Performance Sailcraft also acquired an interest.

[4] Performance Sailcraft is a builder of Laser sail boats. In 2022, in restatement of a July 2006 agreement between Bruce Kirby and Performance Sailcraft, Global Sailing provided Performance Sailcraft with "a non-exclusive, non-transferable licence" to use the manual "for the specific purpose of producing Boats that comply with the Manual" (the licence agreement).<sup>2</sup> "Boat" is there defined as meaning:

... any sailboat built to the design or substantially similar design, of the sailboats pictured in "Exhibit A" including any future variations, models, rigs or sail plans approved in the Manual (for the avoidance of doubt being

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<sup>1</sup> *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] 1 WLR 1213 (Ch) at 1214–1215.

<sup>2</sup> The licence agreement in evidence is signed only on behalf of Performance Sailcraft, but I do not understand it to be disputed Performance Sailcraft was so licenced by Global Sailing.

sailboats currently recognized by World Sailing as the Laser class boat, the Laser Radial class boat and the Laser 4.7 class boat, which are commonly known as “Laser” and “ILCA” sail boats and have been commonly sold under the LASER brand name and are now sold under the ILCA brand name, but may be sold under other brand names or trademarks).

[5] By the sale and purchase agreement, Global Sailing and Performance Sailcraft simultaneously transferred their interests in the manual to the Laser Class Association in consideration of a specified purchase price, the agreement also recording:

## **6 UNDERTAKINGS**

### **6.1 Approved Builder Agreement**

[Performance Sailcraft] agrees that it will enter into a new builder agreement with [the Laser Class Association] in substantially the same form as used for other new builders since 2020, on or before the Completion Date, to be effective from the date that [Performance Sailcraft] begins to operate using the new moulds and tooling provided by [the Laser Class Association] pursuant to clause 6.2(c). The new builder agreement will be in substantially the same form as the Approved Builder Agreements referred to in Background paragraph D, except that it will not include Global Sailing as a party and [the Laser Class Association] will be the Licensor under the new builder agreement.

### **6.2 Moulds, tooling and related**

- (a) [Performance Sailcraft] agrees to upgrade its moulds, jigs and tooling to fully comply with the new builder agreement and all current World Sailing and Manual requirements.
- (b) [the Laser Class Association] agrees that it shall be responsible for all costs (including of [Performance Sailcraft], other than internal costs of [Performance Sailcraft]) associated with the transition to the new builder agreement, and will provide free of charge (including freight costs) two new compliant hull moulds, two new compliant deck moulds, one assembly jig and any other new tooling specifically required to enable [Performance Sailcraft] to meet the requirements of the Manual and new builder agreement.
- (c) [the Laser Class Association] shall use reasonable endeavours to provide the moulds, jigs and tooling to [Performance Sailcraft] no later than three months from the Completion Date and [Performance Sailcraft] shall thereafter have three months to transition to those new moulds, jigs and tools, from when the last of these are received by it.
- (d) Within one month after [Performance Sailcraft] has begun to operate using the new moulds, it shall destroy all moulds for the Boat which it has been using except for the moulds supplied by [the Laser Class Association] under this agreement and shall confirm the fact of their destruction to [the Laser Class Association].

[6] The agreement defined “Manual” as meaning:

... the “Construction Manual” which is also known as the “ILCA Build Manual” ... specifying how the Boat must be constructed, as more particularly described in the form of the Approved Builder Agreement attached to the 2020 Agreement.

The 2020 Agreement was an agreement between the Laser Class Association and Global Sailing relating to, among other things, approvals of builders to build Laser sail boats, under Approved Builder Agreements licencing use of the manual to manufacture and sell boats built in strict compliance with the manual’s standards and specifications.<sup>3</sup>

[7] In April 2025, Performance Sailcraft entered into a new approved builder agreement with the Laser Class Association in terms of the sale and purchase agreement’s cl 6.1, to take effect from the date Performance Sailcraft used new moulds and tooling to be supplied by the Laser Class Association in terms of cl 6.2(c).

[8] By letter dated 25 August 2025 to Performance Sailcraft, the Laser Class Association contended it had met its obligations under the sale and purchase agreement’s cl 6.2(c), but Performance Sailcraft’s refusal to accept delivery of the hull and deck moulds entitled the Laser Class Association to cancel that agreement under ss 36 and 37 of the Contracts and Commercial Law Act 2017. The Laser Class Association sought Performance Sailcraft’s confirmation by midnight GMT on 27 August 2025 it would accept the delivery. When that was not then forthcoming, by letter dated 27 August 2025, the Laser Class Association cancelled the sale and purchase agreement “with immediate effect”.

[9] The Laser Class Association contended for a variety of consequences from its cancellation, beyond Performance Sailcraft’s return of moulds and tooling, including Performance Sailcraft was not entitled to use the manual to build Laser sail boats or to obtain such boats’ identification as such by the Laser Class Association or authorised to obtain materials or components from suppliers or builders approved by the Laser Class Association. It published statements to those effects both on public fora and to approved suppliers.

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<sup>3</sup> I am unclear if the licence agreement between Performance Sailcraft and Global Sailing was derivative of the 2020 Agreement, to mean Performance Sailcraft was an approved builder in terms of the 2020 Agreement, notwithstanding the licence agreement’s ‘restatement’ of Performance Sailcraft’s earlier agreement with Bruce Kirby.

[10] By letter dated 2 September 2025, Performance Sailcraft disputed the moulds complied with the manual as they were “were measurably shorter than hulls from [Performance Sailcraft’s] existing moulds, indicating a departure from the one-design geometry that defines the class”, such dispute contended susceptible to a defect arbitration process in the approved builder agreement. Performance Sailcraft additionally relied on its continuing licence agreement to deny the consequences contended for by the Laser Class Association. It invited the Laser Class Association’s reference to arbitration or other “constructive dialogue”.

[11] When those did not transpire, Performance Sailcraft issued this proceeding, claiming contractual breach by the Laser Class Association of each the licence agreement and sale and purchase agreement.

[12] Subsequently, the World Sailing Equipment Committee Chairman, Glen Stanaway, issued a “Report into ILCA Mould Issues” dated 28 October 2025. The report asserted the manual’s specifications undesirably may accommodate different hull lengths, giving rise to disparity between legacy and new moulds.

[13] In the very limited time available to respond, the Laser Class Association contends the sale and purchase agreement was intended to remedy Performance Sailcraft’s position as “an outlier” in its building of Laser sail boats using legacy moulds. It disputes Mr Stanaway’s report is to be attributed to World Sailing.

## **Relevant law**

[14] Interim injunction applications are determined on the basis if a plaintiff has a serious question for trial and the balance of convenience favours granting the injunction.<sup>4</sup> ‘Overall justice’ then is the ultimate criterion, being “whichever course seems likely to cause the least irremediable prejudice to one party or the other”.<sup>5</sup>

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<sup>4</sup> *Intellihub Ltd v Genesis Energy Ltd* [2020] NZCA 344, [2020] NZCCLR 29 at [23], citing *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 142; *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [30]–[31], citing *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL). See also *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) 13 TCLR 531 at [12], referring to *Roseneath Holdings Ltd v Grieve* [2004] 2 NZLR 168 (CA) at [35]–[37].

<sup>5</sup> *Commerce Commission v Viagogo AG*, above n 4, at [30]–[31], citing *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*, above n 4, at 142, and *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] UKPC 16, [2009] 1 WLR 1405 at [16]–[17].

[15] By ‘serious question for trial’ is meant one not vexatious or frivolous, on which the plaintiff has at least “a tenable basis upon which it might be able to succeed at trial”.<sup>6</sup> If possible to reach a concluded view on the question, that may support a conclusion there is no tenable cause of action and effectively dispose of the substantive proceeding.<sup>7</sup> The merits of the case (insofar as they can be ascertained at the interim injunction stage) otherwise can be relevant to the balance of convenience, and to the overall justice of the case.<sup>8</sup>

[16] As to ‘balance of convenience’, the question is if refusing the injunction would be harder on a plaintiff who was successful at trial, than granting it would be on a successful defendant.<sup>9</sup> This assessment usually is undertaken by reference to the adequacy of damages, preservation of the status quo, the uncompensable disadvantages to either party and the relative strengths of their cases.<sup>10</sup>

[17] But more than inconvenience is required:<sup>11</sup> interlocutory injunctions lie to protect plaintiffs against “irreparable damage” for which they cannot adequately be compensated.<sup>12</sup> The point of interim injunctions generally is to restore the status quo—“the last peaceable state between the parties”<sup>13</sup>—if required to enable determination and any remedy of the parties’ contested rights at trial: “to enable substantial justice to be done between the parties”.<sup>14</sup> (Hence, where damages provide adequate compensation, “no interim injunction should normally be granted”.<sup>15</sup>)

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<sup>6</sup> *Intellihub Ltd v Genesis Energy Ltd*, above n 4, at [24] and [27].

<sup>7</sup> *Bank of New Zealand v Christian Church Community Trust* [2024] NZCA 246 at [10], referring by example to *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd*, above n 5, at [21] and noting, while the grant of an interim injunction involves a discretion, “the issue of whether there is a serious question to be tried ... calls for judicial evaluation rather than the exercise of a discretion: see *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [13]”.

<sup>8</sup> See, for example, *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*, above n 4, at 142, and *Roseneath Holdings Ltd v Grieve*, above n 4, at [41]–[42], noted in *Brooks Homes Ltd v NZ Tax Refunds Ltd* [2013] NZSC 60 at [6].

<sup>9</sup> *Wellington International Airport Ltd v Air New Zealand Ltd* HC Wellington CIV-2007-485-1756, 30 July 2008 at [4], citing *Cayne v Global Natural Resources Plc* [1984] 1 All ER 225 (CA) at 237.

<sup>10</sup> *Intellihub Ltd v Genesis Energy Ltd*, above n 4, at [6]–[14].

<sup>11</sup> *Pollen-Plus Ltd v Znel Ltd* HC Tauranga CIV-2010-470-0848, 20 October 2010 at [40].

<sup>12</sup> *Finnigan v New Zealand Rugby Football Union Inc (No 2)* [1985] 2 NZLR 181 (HC) at 183; and *American Cyanamid Co v Ethicon Ltd*, above n 4, at 406.

<sup>13</sup> *Wellington International Airport Ltd v Air New Zealand Ltd*, above n 9, at [10], citing *R & M Wright Ltd v Ellerslie Gateway Motels Ltd* HC Auckland CP188/90, 11 July 1990 at 8.

<sup>14</sup> *Commerce Commission v Viagogo AG*, above n 4, at [81].

<sup>15</sup> *Wellington International Airport Ltd v Air New Zealand Ltd*, above n 9, at [6].

[18] Thus interim injunctions are to prevent specified actions alleged irretrievably to change the status quo in reliance on one party's contention as to those rights. They are not intended in themselves to require compliance with the other party's contention as to those rights. Neither are they to issue absent tenable dispute of those rights. Arguments about whether injunctions are classified as prohibitive or mandatory are "barren[;] ... what matters is the practical implications of the order for the affected parties. This in turn informs an assessment of the overall interests of justice".<sup>16</sup>

## Discussion

*—do the plaintiffs have a serious question to be tried?*

[19] I am unable to reach a concluded view if the Laser Class Association was entitled to cancel the licence and sale and purchase agreements with Performance Sailboats or, even if so, with the effect contended for by the Laser Class Association.

[20] First, it is not clear to me the sale and purchase agreement is to be construed also to have transferred to the Laser Class Association Performance Sailcraft's interest in its "non-transferable" licence to use the manual. So Performance Sailcraft's licence may continue in force, only Global Sailing's interest in the licence agreement having been sold and assigned to the Laser Class Association under the sale and purchase agreement. Instead, under the sale and purchase agreement, Performance Sailcraft only sold and assigned to the Laser Class Association its relevant assets, defined generally to mean its interests in the manual, which the sale and purchase agreement identify as arising separately from the licence agreement. The sale and purchase agreement's recitals include the parties' acknowledgment Performance Sailcraft is a builder in terms of the manual. Whether the sale and purchase agreement has the effect intended by the Laser Class Association is a matter for this Court's determination on its assessment of what *all* parties objectively are likely to have intended.

[21] Next—if the "undertakings" recorded at clause 6 of the sale and purchase agreement are intended separately to establish obligations susceptible to the sale and purchase agreement's cancellation on non-performance, which the sale and purchase

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<sup>16</sup> *Commerce Commission v Viagogo AG*, above n 5, at [90], citing *National Commercial Bank Jamaica Ltd v Olint Corp'n Ltd*, above n 5, at [20].

agreement's consideration as limited to Performance Sailcraft's specified assets may suggest otherwise—any question of cancellation then turns on if the Laser Class Association has fulfilled its prior obligation to furnish “compliant” moulds, jigs and tooling.

[22] The question then is what cl 6.2(b) means by “new compliant hull ... and ... deck moulds”. The meaning is to be construed from:<sup>17</sup>

... what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean[,] ... aware of the commercial or other context in which the contract was made and of all the facts and circumstances known to and likely to be operating on the parties' minds.

That is, ‘known to and likely to have been operating on *all* parties' minds’;<sup>18</sup> there is a “need to maintain the key distinction between the parties' objectively apparent consensus and subjective individual intentions”.<sup>19</sup>

[23] The starting point is the language of the agreement itself, interpreted in the context of the agreement as a whole.<sup>20</sup>

While context is a necessary element of the interpretive process and the focus is on interpreting the document rather than particular words, the text remains centrally important. If the language at issue, construed in the context of the contract as a whole, has an ordinary and natural meaning, that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one and may also assist in determining the meaning intended in cases of ambiguity or uncertainty.

So far as evidence of the parties' intentions is concerned, it now is accepted “fair to admit evidence tending to objectively prove what parties intended the words to mean to assist with the interpretation of the text of the contract”.<sup>21</sup>

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<sup>17</sup> *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444 at [19].

<sup>18</sup> *Firm PI 1 Ltd v Zurich Australian Insurance* [2014] NZSC 147, [2015] 1 NZLR 432 at [66], and see also [60]–[61] and [63], approved in *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696 at [43] as “settling the general approach to contractual interpretation”.

<sup>19</sup> *New Zealand Air Line Pilots' Association Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948 at [86].

<sup>20</sup> *Firm PI 1 Ltd v Zurich Australian Insurance*, above n 18, at [63] (internal footnotes omitted).

<sup>21</sup> *Bathurst Resources Ltd v L & M Coal Holdings Ltd*, above n 18, at [77] and [232(a)].



[24] Particularly given Mr Stanaway's report the manual may accommodate disparate hull lengths, "compliant" at cl 6.2(b) may be a prefatory assessment, not for extrapolation from but controlling the new builder agreement between Performance Sailcraft and the Laser Class Association. Even if not, on the face of the sale and purchase agreement, there also is a question if cl 6.2(b)'s "compliant" means compliance with one or other or both cl 6.2(a)'s "the new builder agreement and all current World Sailing and Manual requirements" and cl 6.2(b)'s "the Manual and new builder agreement", or with something else. The "one design" philosophy, or the proportion of boat builders ascribing to the new builder agreement, may not itself provide a determinative answer. An answer also may be drawn from the proportion of built hulls compliant with one or other dimension, as to which I have no information.

[25] I also do not know if the addition of "World Sailing ... requirements" is material, if those subclause references otherwise are to be considered identical. Mr Stanaway's report, considering the present dispute to be "a commercial matter" between the parties, is equivocal if any of its requirements are not met by the manual's accommodation of discrepancy in hull lengths. But he also contends for the Laser Class Association's obligation under the relevant Olympic Class Agreement to consult with World Sailing on commercial matters before taking action, which he says had not occurred here.

[26] These are not matters I presently can resolve and their lack of resolution offers Performance Sailcraft a tenable basis upon which it might be able to succeed at trial. It accordingly has a serious case for trial.

*—where does the balance of convenience lie?*

[27] In my assessment, the balance of convenience comprehensively favours Performance Sailcraft. A substantial part of Performance Sailcraft's business appears to be in manufacturing and selling boats known to be acceptable to the Laser Class Association, whether or not Performance Sailcraft has other lines of business.

[28] If the Laser Class Association's cancellation of the sale and purchase agreement is to the effect for which it contends, clearly it will affect Performance Sailcraft's business and reputation. Meanwhile, any benefit the Laser Class

Association may accrue from cancellation is not overwhelming: it may rid itself of the one approved builder on terms distinct from its other nine approved builders, but all the former builder's pre-cancellation product remains within the Laser Class Association's approval.

[29] I am unable to assess if cancellation is to the extent of annihilation forecast by Performance Sailcraft. At least pending this Court's determination of its claim in its favour, Performance Sailcraft may not be able to manufacture or sell boats known to be acceptable to the Laser Class Association (even if forced on it by continuation of the licence agreement). The ripple effects extend at least to Performance Sailcraft's current work in progress, its workers and suppliers and its current and prospective clients. All this is notwithstanding, prior to cancellation, Performance Sailcraft was manufacturing and selling boats acceptable to the Laser Class Association. Cancellation establishes a substantial financial delta.

[30] There also are consequences for other third parties, including sailors and sailing competitions sponsored by Performance Sailcraft in anticipation of and by subsidy from its continued place as an approved builder of Laser sailboats. I do not disregard Mr Stanaway's view World Sailing would prefer a more consultative process in the interests of the sport's governance.

[31] I comprehend the Laser Class Association's cancellation was motivated to secure the sale and purchase agreement's perceived resolution of accepted design differences between legacy and new moulds. That may be laudable if "one design" is to be taken literally, but it plainly is an objective for achievement over time, if hulls from legacy moulds are not simply to be excluded from competition (of which I understand there to be no proposition). The fact of the discrepancy is not a reason to favour achievement of the objective now. I do not accept the Laser Class Association's "legitimacy and reputation" as a sports governing body is undermined by the present existence of the difference.

[32] If the Laser Class Association suffers any loss by being held out of its contractual right to cancel, it has Performance Sailcraft's undertaking to pay as ordered

by the Court. But, as a non-profit corporation, the Laser Class Association may not have the financial wherewithal to meet any damages award to Performance Sailcraft.

*—what is the overall justice?*

[33] From that perspective, the course of least irremediable prejudice here is to restore the status quo ante, to enable substantial justice to be done between the parties at trial. That position is of Performance Sailcraft continuing to be an approved builder of Laser sail boats under the licence agreement, pending this Court's substantive decision on the Laser Class Association's purported cancellation of the sale and purchase agreement.

## **Result**

[34] Pending further order of this Court, I **order** the Laser Class Association:

- (a) not take any steps to implement its purported termination of the sale and purchase agreement; and
- (b) reinstate Performance Sailcraft to its list of approved builders, including at <https://ilcasailing.org/approved-builders/>.

[35] I further **direct** the parties, within 24 hours of receipt of this judgment, to propose an agreed neutral statement for publication in the same media as to recipients of the Laser Class Association's previous communications, failing which I will direct immediate publication in that media of the following statement to those recipients:

### **Approval of Performance Sailcraft Australia reinstated**

Pending a Court's final decision on the International Laser Class Association's (ILCA) 27 August 2025 termination of its 9 April 2024 agreement with Performance Sailcraft Australia (PSA), the Court has prohibited ILCA from taking any steps to implement that termination. Pending that decision, PSA continues as an ILCA-approved Builder under the ILCA Class Rules. ILCA's 28 August 2025 announcement to the contrary is to be disregarded.

## **Costs**

[36] In my preliminary view, given the without notice and urgent circumstances in which the application has been determined in Performance Sailcraft's favour, each

party should bear their own costs arising on the present application. If either party disagrees, and they cannot otherwise agree, costs are reserved for determination on short memoranda each of no more than five pages—annexing a single-page table setting out any contended allowable steps, time allocation and daily recovery rate—to be filed and served by Performance Sailcraft within 10 working days of the date of this judgment, with any response or reply to be filed within five working day intervals after service.

—Jagose J