IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 90/2025
[2025] NZSC 171

BETWEEN	PETER ALLAN WORK AND ROBYN MARGARET WORK Applicants
AND	IAG NEW ZEALAND LIMITED Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: G J Jones and J Heatlie for Applicants
C M Stevens, B R D Cuff and K E Weekly for Respondent

Judgment: 21 November 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the respondent one set of costs of $2,500.

REASONS

[1] The Works seek leave to appeal an interlocutory decision of the Court of Appeal in which the Court declined to admit new evidence on appeal.[1] The proceeding in which the decision was made is an appeal from a decision of the High Court in which Isac J declined their claim under an insurance policy with the respondent, IAG New Zealand Ltd (IAG).[2]

---

1 *Work v IAG New Zealand Ltd* [2025] NZCA 323 (Katz, Hinton and Whata JJ) [CA judgment].
2 *Work v IAG New Zealand Ltd* [2023] NZHC 3428 [HC judgment].

[2] This judgment addresses the application for leave to appeal. It also gives reasons for our decision, given on 15 October 2025, to refuse to allow the Works to offer more new evidence in support of the leave application.[3]

[3] The property was a vacant rental property in Wellington. It was damaged by fire. Isac J found that it originated in a standing lamp which Mr Work had wired so that it could be enlivened remotely by sending a print command to a printer in the same room.[4] The mechanism was a Sellotape strip which connected paper in the printer's manual feed tray to connectors in an electrical switch in a home-made powerboard.[5] The Judge found that on 22 November 2013 Mr Work used a computer at his home in Whanganui to send a print command to the printer.[6] He rejected Mr Work's evidence that he set the device up as a prank and did not mean to cause the fire.[7]

[4] The question to which the proposed evidence is addressed, both in the Court of Appeal and in this Court, is whether the enlivening of the lamp caused nearby combustible material to ignite, so damaging the house. There is evidence of an electrical arc caused by live and neutral conductors in the lamp cable making contact.[8] Such events are common in fires. They may result from fire damage to insulation on electrical cords. Or they may cause a fire if an electrical device malfunctions. The Works say the latter is what happened in this case.

[5] The Judge accepted expert evidence to the effect that the arc event was so brief that there was insufficient energy and time to ignite nearby combustible materials if (as the Works contend) the lamp was standing in the room. (Isac J found that the lamp was lying on the floor, a deliberate act which the Works accepted at trial could only be consistent with arson).[9] The arc event failed to trigger a circuit-breaker in the electrical circuit carrying power to the lamp.

---

3 *Work v IAG New Zealand Ltd* [2025] NZSC 138 (Glazebrook, Ellen France and Miller JJ). We also give brief reasons for our decision to refuse the Works' application for leave to file reply submissions on the interlocutory application.

4 See especially HC judgment, above n 2, at [179]–[180], [206] and [217]–[218].

5 At [56].

6 At [57].

7 At [264] and [301].

8 See at [209]–[210].

9 At [292]–[294].

[6] In the Court of Appeal, the Works wanted to show that the circuit-breaker may not have operated correctly, allowing the cable to remain energised in a fault state and generating an arc fault capable of causing the fire, either by ejecting melting copper or causing the highly energised cable to drop onto combustible materials on the floor.[10] The evidence proposed in the Court of Appeal is that of Jordan Statham, a registered electrical inspector who did not give evidence at trial, and Dr Jonathan Smith, a materials scientist with a background in fire investigations who did give evidence there.

[7] IAG offered evidence in opposition from two witnesses at trial, David Ramsay, who is an electrical engineer, and Simon Cox, a metallurgist.[11]

[8] The Works sought leave to offer the new evidence principally on the ground that the Works need only show there was a plausible alternative cause of the fire.[12] They contend that IAG was permitted to advance at trial a defence which was not clearly pleaded and the evidence at trial was not squarely addressed to the arcing issue.[13] They contend that they could not with reasonable diligence have identified the need for evidence as to the duration of arcing or the temperature of the molten material.[14]

[9] The Court of Appeal held that the arcing issue was squarely before the High Court and the Works had a reasonable opportunity to offer the new evidence there.[15] This it saw as the determinative factor. It accepted that the new evidence is credible, but added that there is considerable force in IAG's argument that the evidence lacks cogency.[16] There did not appear to be a clear evidential foundation for the factual premise that the circuit-breaker was defective. The Court also found that the proposed evidence falls well short of having a determinative effect on the appeal; IAG was

---

10 See CA judgment, above n 1, at [16]–[21].
11 See at [23]–[30].
12 At [32] and [38].
13 At [33]–[34] and [36].
14 At [39(a)].
15 At [41]–[44].
16 At [45]–[46].

entitled to decline cover because of the Works' dishonesty and that finding, among others, must be overcome before the appeal might succeed.[17]

[10] As noted, the Works sought to file further evidence in support of the application for leave to appeal. It also took the form of expert evidence from two witnesses. One is Dr Smith, who as noted above gave evidence in the High Court and also swore two of the affidavits in the Court of Appeal that are the subject of the leave application. The other, Dr Andrew Lapthorn, is an electrical power engineer and a new witness.

[11] The gist of Dr Smith's new evidence in this Court is that the Court of Appeal was wrong to find that he had an adequate opportunity to address all aspects of the arcing evidence. He says it was very difficult to understand the manner in which IAG's experts would express that view. He considers, in light of Dr Lapthorn's proposed evidence, that substantial energy may have been involved in an arc without a non-defective circuit-breaker tripping. The conclusion Dr Smith seeks to draw is that an arc or arcs could have generated copper beads or dropped a highly molten cable, either of which was capable of igniting a fire. The opinion of both Dr Smith and Dr Lapthorn, in short, is that the possibility of an arc event causing the fire was not fanciful. On the contrary, an arc capable of doing so could occur without tripping the circuit-breaker and without it being defective. In their view IAG's expert evidence was in error.

[12] We are advised that IAG's experts do not accept these criticisms. Had we allowed the Works to file the new evidence in this Court, IAG would have filed evidence to that effect. We observe also that the new evidence in this Court appears to proceed on a different theory of the case than the new evidence filed in the Court of Appeal, namely that the circuit-breaker was not defective.

[13] For present purposes, we are prepared to accept that there is a dispute between well-qualified experts about the likelihood that arcing may have ignited the fire. We are also prepared to assume, without deciding, that the evidence filed in the Court of Appeal was fresh. We recognise that admissibility of the evidence in the Court of Appeal may be the subject of a future leave application in this Court.

---

[17] At [47] citing HC judgment, above n 2, at [154] and [300].

[14] The difficulty for the Works is that the decision appealed from was interlocutory and s 74(4) of the Senior Courts Act 2016 provides that this Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice to hear the proposed appeal before the appeal in that Court is concluded. In other words, the Court must be satisfied that the interests of justice require that it not wait until the Court of Appeal has decided the substantive appeal.

[15] The Works make what boil down to two points in support of their argument that this Court should decide the issue now. The first is that the new evidence is potentially determinative of the vitally important issue of arson. The second is that the argument before this Court would be relatively minor, compared to the Works having to proceed through a full appeal process.

[16] An interlocutory appeal may be justified if this Court's decision would mean that a proceeding is finally disposed of in the Court of Appeal, ultimately saving time and expense. However, experience teaches that proceedings are rarely so straightforward, and this case is no exception. On the one hand, the Works do not say that the new evidence would determine the appeal in their favour. As the Court of Appeal pointed out, they must also surmount the dishonesty findings, among others. And it is not clear that the new evidence would settle the arson issue; at most, it points to one possible ignition pathway that is consistent with accident and cannot be excluded as a matter of electrical engineering. On the other hand, the Works do not concede that their appeal must fail in the Court of Appeal if the new evidence is not admitted. Either way, the Court of Appeal's decision on the substantive appeal may not resolve the proceeding so far as the Works are concerned.

[17] If it were true that the proposed appeal would be a minor matter in this Court, that would be a relevant consideration. We recognise that the costs of the litigation are a major burden for the Works.

[18] However, the suggestion is optimistic, to say the least. Freshness aside, the question of admissibility turns principally on the cogency of technical expert evidence. An assessment of that issue requires that the Court examine its merits, which are

disputed, in some detail. It would also be necessary to place the evidence in the factual context of other evidence led at trial, meaning that the Court would be surveying some of the ground to be covered in the substantive appeal. It does not follow from the fact that the Court of Appeal excluded the new evidence that its decision on the substantive appeal will not inform this Court's view of the admissibility issue. In addition, an appeal would occasion significant delay in the substantive hearing in the Court of Appeal, which has costs for both parties. Indeed, it has already caused significant and unnecessary delay.

[19] For these reasons, the application for leave to appeal must fail. The same reasons obviously apply to the application for leave to file new evidence in this Court.[18] We add that the latter application faced a significant additional difficulty; the evidence could not possibly be described as fresh, even if it were correct that the evidence that was the subject of the application for leave to appeal was fresh when filed in the Court of Appeal. This is not a trivial consideration which yields routinely whenever new and seemingly cogent evidence is proffered to an appellate court. The freshness requirement exists to guard against the risk that appeals will become new trials on different facts.

[20] The application for leave to appeal is dismissed.

[21] The applicants must pay the respondent one set of costs of $2,500. IAG also seeks an order for costs against Mr Jones, counsel for the Works, personally. However, his conduct in this Court does not cross the high threshold necessary to justify such an award.[19]

Solicitors:
Court One, Auckland for Applicants
Wotton Kearney, Wellington for Respondent

---

[18] Nor did we require reply submissions from the Works on the issue, for the same reasons.
[19] See *Harley v McDonald* [2001] UKPC 18, [2002] 1 NZLR 1.