IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 116/2025
[2025] NZSC 172

BETWEEN	ANDREW ALEXANDER DOUGLAS, IAN STUART PETRY, LEONARD ELLSWORTH KURPUIS AND JOHN FRANCIS MATHER Applicants
AND	BODY CORPORATE 102029 First Respondent
	MAUD JOHNS LIMITED Second Respondent
	JOANNE LEE UNDERDOWN Third Respondent
	VEER CHARAN Fourth Respondent
	LE MANS PROPERTY LIMITED Fifth Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: P J K Spring for Applicants
No appearance for First Respondent
S E Wroe for Second to Fifth Respondents

Judgment: 21 November 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the second to fifth respondents one set of costs of $2,500.

REASONS

Introduction

[1] The applicants seek leave to appeal against a judgment of the Court of Appeal.[1] The proposed appeal concerns a unit title development built in 1984. The applicants, who are resident owners, hold the stratum estate for three of the units. The second to fifth respondents, who hold their units as investments, own the other four. It is common ground that the units are essentially not habitable and are unable to be repaired. The problems have been evident for some 10 years. The options now identified are rebuilding (the applicants favour this option) or cancelling the unit plan and making an order for sale (the respondents favour this option).

[2] A court-appointed administrator, in a March 2024 report, recommended that the better option for the owners was to demolish and rebuild. The respondents did not agree with the recommendation, pointing to the risk and uncertainty associated with a rebuild. They said they were not in a position to raise finance for the rebuild and that they would be forced to sell their units. The respondents commissioned a further report (the Levie report) which concluded a collective sale was the better option. The administrator provided an addendum to his report analysing the Levie report and reiterating his previous recommendation.

[3] The applicants then applied to the High Court for cancellation of the unit plan under s 188 of the Unit Titles Act 2010 and an order for sale under s 339 of the Property Law Act 2007. The respondents applied for an order under s 74 of the Unit Titles Act for the Court to approve a scheme for reinstatement.

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1 *Douglas v Body Corporate 102029* [2025] NZCA 358 (Woolford, Jagose and Powell JJ) [CA judgment].

The High Court decision

[4] In the High Court, in an interim judgment of 6 December 2024, Anderson J made an order under s 188 of the Unit Titles Act cancelling the unit plan and made a sale order under s 339 of the Property Law Act.[2]

[5] In brief, the Judge considered that there was a greater risk of a worse outcome in the rebuild scenario. The Judge was satisfied that the just and equitable course was to cancel the unit plan given that the buildings are no longer fit for purpose, there is significant hostility between the owners and a majority (four out of seven owners) favour a collective sale.[3]

The Court of Appeal decision

[6] The Court of Appeal dismissed the appeal against the interim decision.

[7] The Court said that it was not prepared to address the "minutiae of evidence" in respect of which errors were alleged.[4] It said: "None is, or collectively are, determinative of preference for the rebuild scenarios; at best they may mitigate (but not exclude) that scenario's inevitable uncertainties."[5]

[8] The Court went on:

> [34] Rather, standing back, all parties are affected by the probability of further lengthy delays before the scope, viability and practicality of any comprehensive rebuild could be confirmed and, even at their most optimistic realisation, any rebuild's presently indeterminate marginal benefit over sale. Those matters fundamentally have undermined the intended "socially and economically sustainable" foundation for ownership and management of the land and associated buildings and facilities in the present unit title development by the community of the parties.[6] In that context, the desired integrity of this development no longer can be protected. Thus the [Unit Titles Act]'s express legislative purpose cannot be maintained in this development. It therefore is just and equitable the body corporate be dissolved and the unit title plan be cancelled. The Judge did not err.

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2 *Douglas v Body Corporate 102029* [2024] NZHC 3695, [2025] 2 NZLR 438 (Anderson J) [HC interim judgment]. This judgment has since been made final: *Douglas v Body Corporate 102029* [2025] NZHC 983 (Anderson J).

3 HC interim judgment, above n 2, at [82].

4 CA judgment, above n 1, at [33].

5 At [33].

6 Unit Titles Act 2010, s 3.

[9] The Court said that it saw no reason to differ from the High Court's conclusion that a sale is "the most just and practical way through the impasse before the court".[7]

Application for leave to appeal

[10] Four errors are alleged by the applicants:

(a) not applying the correct standard of proof;

(b) misapplying the Unit Titles Act by prioritising the cancellation of the unit plan over the mandatory duties to repair and reinstate;

(c) failure to address the alleged errors in the High Court's analysis; and

(d) misapplying the statutory purpose of the Unit Titles Act.

Our assessment

[11] There is no issue of general or public importance.[8] The decision relates to the particular facts and it has not been demonstrated by the applicants that any of the alleged errors of law may have changed the outcome. Further, nothing raised by the applicants suggests a miscarriage of justice (in the civil sense).[9]

Result

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

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7 CA judgment, above n 1, at [36] citing *Lo v Lo* [2021] NZCA 693, (2021) 22 NZCPR 721 at [26], in turn citing *Bayly v Hicks* [2012] NZCA 589, [2013] 2 NZLR 401 at [32].

8 Senior Courts Act 2016, s 74(2)(a).

9 Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

[13] The applicants must pay the second to fifth respondents one set of costs of $2,500.

Solicitors:
Glaister Keegan Lawyers, Auckland for Applicants
AlexanderDorrington Ltd, Auckland for Second to Fifth Respondents