

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 137/2024
[2025] NZSC 76

BETWEEN	KENNETH DAVID WIKELEY Applicant
AND	KEA INVESTMENTS LIMITED First Respondent
	WIKELEY FAMILY TRUSTEE LIMITED (IN INTERIM LIQUIDATION) Second Respondent
Court:	Winkelmann CJ, Williams and Miller JJ
Counsel:	Applicant in person J B M Smith KC, M C Harris and J L W Wass for First Respondent M D Arthur and J Marcetic for Second Respondent
Judgment:	4 July 2025

JUDGMENT OF THE COURT

- A The applications to adduce further evidence are dismissed.**
- B Mr Wikeley’s application for leave to appeal is dismissed.**
- C The applicant must pay the respondents one set of costs of \$2,500.**
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REASONS

[1] On 21 November 2024, the Court of Appeal issued judgment in *Wikeley v Kea Investments Ltd*.¹ Both Mr Wikeley and Kea Investments Ltd (Kea)² applied for leave

¹ *Wikeley v Kea Investments Ltd* [2024] NZCA 609, [2024] 3 NZLR 901 (Courtney, Muir and Cull JJ) [CA judgment].

² Kea Investments Ltd (Kea) is a British Virgin Islands company connected to Sir Owen Glenn.

to appeal that judgment to this Court. This judgment concerns Mr Wikeley's application. We have granted Kea's application in a separate judgment.³

Background

[2] The background to this dispute is extensive. We set out only the points most relevant to Mr Wikeley's leave application below.

[3] On 31 October 2022, Kea filed an ex parte application for interim worldwide anti-suit and anti-enforcement injunctions in the New Zealand High Court on the basis it had been subject to a conspiracy by lawful or unlawful means.⁴ The injunctions concerned a default judgment against Kea obtained in Kentucky by the second respondent, Wikeley Family Trustee Ltd (WFTL),⁵ and other entities associated with Mr Wikeley. We shall refer to this judgment as the Kentucky default judgment.

[4] The Kentucky default judgment was obtained on the basis that Kea allegedly breached a purported contract, which the parties call "the Coal Agreement". The Coal Agreement purports to be a contract between Mr Wikeley as trustee for the "Wikeley Family Trust New Zealand" and Kea "represented by Mr Peter Dickson"; it is dated 23 October 2012, signed by Mr Wikeley and Mr Dickson, and witnessed by Mr Eric Watson.⁶ WFTL's claim in Kentucky was that Kea had breached the Coal Agreement by failing, inter alia, to provide WFTL with USD 75 million in funding and USD 30 million in royalties as required by the agreement.⁷ Proceedings were commenced in Kentucky because the Coal Agreement contained the following clause:

JURISDICTION

The parties have agreed that the jurisdiction shall be the USA. The contract will be governed by the laws in Lexington, Kentucky and any applicable Federal law.

³ *Kea Investments Ltd v Wikeley* [2025] NZSC 75.

⁴ Kea's statement of claim also contained other causes of action but these are, for present purposes, immaterial. See CA judgment, above n 1, at [39] and [39], n 25.

⁵ Wikeley Family Trustee Ltd (WFTL) is a New Zealand incorporated company of which Mr Wikeley is the sole director and shareholder.

⁶ CA judgment, above n 1, at [9].

⁷ At [25].

[5] WFTL served these proceedings on Kea’s registered agent in the British Virgin Islands, but the agent failed to notify Kea of WFTL’s claim. Kea only became aware of the Kentucky default judgment on 29 June 2022 after receiving a statutory demand for the judgment debt, with interest and costs.⁸ Kea applied to set aside the Kentucky default judgment on the basis that the claim was fraudulent.⁹ That application was dismissed because Kea had been “properly served”. Kea applied unsuccessfully to amend, alter or vary this dismissal. On 9 November 2022, Kea commenced appeals against these judgments to the Kentucky Court of Appeals. These appeals are currently stayed with a rolling 90-day return date.¹⁰

[6] Kea also filed the proceedings in the New Zealand High Court described above. Gault J granted the ex parte application on 4 November 2022.¹¹ WFTL and Mr Wikeley then challenged the New Zealand courts’ jurisdiction. Gault J set aside their protests to jurisdiction and dismissed their application to stay proceedings.¹² This decision was not appealed in time,¹³ nor was any statement of defence filed by the relevant date in relation to the substantive application for permanent injunctions, so the proceeding went to a formal proof hearing on 17 May 2023. It is the judgment of Gault J following this hearing that is the origin of the intended appeal.

[7] Before we address that judgment, we note that after Mr Wikeley’s jurisdictional challenge failed, he took a number of steps. Most significantly, Mr Wikeley sought to assign the benefit of the Kentucky default judgment to a new United States entity, Wikeley Inc, and replace the trustee of the Wikeley Family Trust with USA Asset Holdings Inc. These steps breached Gault J’s interim orders.¹⁴ As a result, Kea successfully applied to appoint interim liquidators to WFTL. The interim liquidators then filed an application in the United States Bankruptcy Court, which declared void the steps taken by Mr Wikeley.¹⁵ Kea also successfully applied in Queensland, on an

⁸ At that point, the total was USD 136,240,994: CA judgment, above n 1, at [28].

⁹ Note that while this application was pending, Kea says a number of steps were taken to further the conspiracy against it, including by a third party associated with Mr Watson: see at [30]–[35].

¹⁰ This stay automatically followed from the United States Bankruptcy Court granting an order recognising the interim liquidation of WFTL in New Zealand: see at [44].

¹¹ *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881.

¹² *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2023] NZHC 466.

¹³ See CA judgment, above n 1, at [42], n 29.

¹⁴ At [43].

¹⁵ At [44(h)–(i)].

ex parte basis, for interim orders requiring Mr Wikeley: to refrain from taking (or causing entities he controlled to take) steps to enforce the default judgment; to cause Wikeley Inc to withdraw or seek to adjourn the Kentucky proceeding; not to leave Australia; and to deliver up his passports.¹⁶

Courts below

High Court

[8] After the formal proof hearing, Gault J found the Coal Agreement to be “void because it is a forgery” and, as such, “null and void ab initio”.¹⁷ The Judge granted Kea permanent worldwide anti-suit and anti-enforcement injunctions in respect of the Kentucky default judgment, among other orders.¹⁸

[9] In a second judgment, Gault J made further orders restraining the defendants from taking steps in relation to the Wikeley Family Trust, given concerns that Mr Wikeley would cause steps to be taken in violation of the previous injunctions.¹⁹

Court of Appeal

[10] Mr Wikeley appealed, primarily on the basis that the Coal Agreement was authentic though he also brought other challenges.²⁰ Mr Wikeley said that provided the Kentucky default judgment can be sustained, his interests are entitled to enforce it, and the permanent worldwide anti-suit and anti-enforcement injunctions represent an unprecedented breach of international comity.

¹⁶ *Kea Investments Ltd v Wikeley (No 1)* [2023] QSC 79, (2023) 14 QR 75. Mr Wikeley applied, largely unsuccessfully, to set aside those orders: *Kea Investments Ltd v Wikeley (No 2)* [2023] QSC 215, (2023) 381 FLR 372. Mr Wikeley’s appeal against this decision was dismissed: *Wikeley v Kea Investments Ltd* [2024] QCA 201. Kea advised this Court that the High Court of Australia also recently declined Mr Wikeley’s application for special leave, citing *Wikeley v Kea Investments Ltd* [2025] HCADisp 33.

¹⁷ *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 [First HC judgment] at [143]. See CA judgment, above n 1, at [46]–[56] for a summary of his reasons for finding the Coal Agreement was fraudulent.

¹⁸ First HC judgment, above n 18, at [156]. See CA judgment, above n 1, at [57]–[58] for a summary of his reasoning on relief.

¹⁹ *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq) (No 2)* [2023] NZHC 3532.

²⁰ Note that he also applied in the High Court to set aside the two judgments. Gault J declined the application, partly because the grounds raised were to be advanced on appeal: *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2024] NZHC 1251 at [35]. Mr Wikeley’s attempt to appeal that decision to the Court of Appeal was struck out for want of jurisdiction: *Wikeley v Kea Investments Ltd* [2024] NZCA 574.

[11] The Court of Appeal upheld the High Court’s finding of fraud. Though some of Mr Wikeley’s evidential challenges succeeded, the Court of Appeal held it was open to Gault J to find there had been a conspiracy by unlawful means on the basis of the admissible evidence.²¹ Nevertheless, the Court of Appeal discharged all the extant injunctions leaving only the orders effecting WFTL’s interim liquidation.²² The Court considered the injunctions breached the principle of comity between the United States and New Zealand courts.²³

Submissions

Mr Wikeley’s submissions

[12] Mr Wikeley’s intended appeal focuses on challenging the fraud and conspiracy findings, and raises issues relating to procedural fairness. He submits that the fraud and conspiracy findings are untenable and lists a series of procedural issues he says the Courts below did not recognise, largely relating to his self-representation (and issues with his former lawyers), Kea’s litigation strategy and his personal circumstances. Mr Wikeley says further that the Court of Appeal erred in not admitting important evidence (namely, affidavits from various individuals including Mr Wikeley himself²⁴), in overemphasising the relevance of other evidence and in “rel[ying] heavily on evidence derived from the now-invalidated injunctions obtained ex parte in breach of procedural fairness”. Additionally, Mr Wikeley submits the Court “failed to address the failure of the Interim Liquidators (WFTL) to act in the interests of the Wikeley Family Trust beneficiaries at the 17 May [formal proof] hearing”.

[13] As to the criteria for leave, Mr Wikeley says the appeal raises questions of general and public importance relating to procedural fairness and access to justice, the admission of new evidence and integrity of court findings, and the role of interim liquidators. He also says the interests of justice require his appeal to be heard as the

²¹ See CA judgment, above n 1, at [134]–[146].

²² See the Court’s reasons on the interim liquidation-related orders at [196]–[201].

²³ At [186] and [194]–[195].

²⁴ Mr Wikeley has sought to re-file most of these in this Court, though he did not seek leave to do so.

findings of fraud and conspiracy against him are “are profoundly damaging, and were made without proper consideration of new evidence”.

[14] In terms of relief, Mr Wikeley seeks an order that the fraud and conspiracy findings of the High Court and Court of Appeal be set aside, an order that the High Court formal proof hearing be reopened to allow the presentation of all relevant evidence (including the affidavits mentioned above), and costs in Mr Wikeley’s favour.

Kea’s submissions

[15] Kea submits that Mr Wikeley seeks to challenge concurrent factual findings in the Courts below which were based on the application of settled principles. Mr Wikeley does not suggest the Courts below stated the legal test incorrectly; rather, he challenges matters of factual application. Likewise, he does not identify any error in the Court of Appeal’s findings as to the admission of further evidence. As to any procedural fairness concerns, Kea says these could only arise by application to the High Court to set aside the formal proof judgments—an application that Mr Wikeley made unsuccessfully. Kea also says that but for Mr Wikeley deliberately breaching the High Court’s orders and seeking to evade the New Zealand courts’ jurisdiction, the case would have proceeded to trial; it would be “unconscionable” for Kea now to be subjected to significant delay and costs if the case were remitted to the High Court. Regarding Mr Wikeley’s submissions concerning the interim liquidators’ role, this issue did not arise on appeal and the Court of Appeal made this clear.²⁵ Kea says Mr Wikeley does not raise any matters of general or public importance, nor any matters that are seriously arguable.

Interim liquidators’ submissions

[16] The interim liquidators abide by the Court’s decision on Mr Wikeley’s leave application, but filed submissions with a view to correcting how Mr Wikeley characterised their submissions in Kea’s leave application, and resisting Mr Wikeley’s submission that the interim liquidators should have assisted him (on the basis that

²⁵ In its submissions, Kea said that, alongside its substantive judgment, the Court issued a minute referring to a memorandum filed by Mr Wikeley. The Court advised that any challenge to the interim liquidators’ independence or performance would need to be brought in the High Court.

interim liquidators are required to act with independence and the interim liquidators in this case took a neutral position on the fraud question). The interim liquidators reject Mr Wikeley's other criticisms of their actions but do not address them further on the basis that they are not relevant to his leave application.

Analysis

[17] Mr Wikeley's submissions largely seek to relitigate concurrent findings of fact in the Courts below. His proposed appeal does not raise any matters of general or public importance, or commercial significance, nor is there a risk of a substantial miscarriage of justice that would justify granting leave.²⁶

Applications to adduce further evidence

[18] Mr Wikeley also filed a number of additional documents. He applied to adduce these, or some of them, as further evidence. Kea opposes his applications primarily on the basis that the Supreme Court Rules 2004 do not allow for further evidence to be filed on applications for leave. We need not decide that jurisdictional point as we consider the documents lack cogency and would not be admitted in any case.

Result

[19] The applications to adduce further evidence are dismissed.

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

[21] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:
Gilbert Walker, Auckland for First Respondent
Chapman Tripp, Auckland for Second Respondent

²⁶ Senior Courts Act 2016, s 74(2); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].