

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 162/2025  
[2026] NZSC 17

BETWEEN FCL CL LIMITED  
Applicant

AND MONIQUE HUNE LYNCH AND LUKE  
ALEXANDER SANSOM  
First Respondents

MARTA YATES  
Second Respondent

Court: Ellen France and Miller JJ

Counsel: J G Miles KC and S A Grant for Applicant  
D G Chesterman for First and Second Respondents

Judgment: 13 March 2026

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JUDGMENT OF THE COURT

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**A The application for leave to appeal is dismissed.**

**B The applicant must pay the respondents one set of costs of \$2,500.**

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REASONS

[1] The applicant, FCL CL Ltd, seeks leave to appeal from a judgment of the Court of Appeal<sup>1</sup> upholding the High Court's grant of summary judgment<sup>2</sup> and order that caveats shall not lapse.<sup>3</sup>

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<sup>1</sup> *FCL CL Ltd as trustee of the FCL CL Trust v Lynch* [2025] NZCA 501 (Palmer, Brewer and Gault JJ) [CA judgment].

<sup>2</sup> *Lynch v FCL CL Ltd, as trustee of the FCL CL Trust* [2024] NZHC 2117 (Associate Judge Lester) [HC summary judgment decision].

<sup>3</sup> *Lynch v FCL CL Ltd as trustee of the FCL CL Trust* [2024] NZHC 700 (Associate Judge Paulsen) [HC caveat decision].

[2] The central question in the proceeding is whether FCL, a developer, could rely on the consequences of the COVID-19 pandemic to invoke a force majeure clause to cancel agreements for sale and purchase of units in a Queenstown development. FCL incurred delays and additional expense and invited the purchasers to agree to an increase in the price of the units. When the purchasers demurred, FCL gave notice of cancellation. The agreements contained a no-caveats clause, which the purchasers breached by lodging caveats in response to the purported cancellation. FCL also relied on that breach to justify cancellation.

[3] The judgments below rested on factual findings that the grounds for invoking the force majeure clause were not made out. These findings, in general terms, related to whether the pandemic prevented FCL from continuing the development or made it impractical to do so.<sup>4</sup> The Court of Appeal agreed with the High Court that the evidence, even when taken at its highest for FCL, did not indicate that the project funder had made ongoing funding unequivocally conditional on cancellation of the purchasers' agreements.<sup>5</sup> The Court also reasoned that the development did not become impractical merely because the pandemic made it more expensive for FCL; to decide otherwise would be to allow FCL to make its own decisions about profitability.<sup>6</sup> Cancellation was premature. Nor could FCL cancel the agreements for breach of the no-caveat clause because it was not ready and willing to perform its own obligations.<sup>7</sup>

[4] FCL says the Court of Appeal was wrong in its factual findings, that it applied the wrong test for summary judgment, and that it erred in law by holding that the no-caveat clause did not justify cancellation.

[5] The Court of Appeal did not misdirect itself in law with respect to the test for summary judgment<sup>8</sup> or the rule that a cancelling party must be ready and willing to perform its side of the bargain.<sup>9</sup>

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<sup>4</sup> HC summary judgment decision, above n 2, at [40]–[66]; and HC caveat decision, above n 3, at [37]–[39] and [48].

<sup>5</sup> CA judgment, above n 1, at [40].

<sup>6</sup> At [21]–[22].

<sup>7</sup> At [46]–[48].

<sup>8</sup> *Pemberton v Chappell* [1987] 1 NZLR 1 (CA); *MacLean v Stewart* (1997) 11 PRNZ 66 (CA); and *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, [2010] NZAR 307 at [26] citing *Bilbie Dymock Corp Ltd v Patel* (1987) 1 PRNZ 84 (CA).

<sup>9</sup> *Ingram v Patcroft Properties Ltd* [2011] NZSC 49, [2011] 3 NZLR 433 at [40].

[6] With respect to the application of these principles to the facts, we are not persuaded that the proposed appeal presents an issue of general or public importance, commercial significance, or the appearance of a substantial miscarriage of justice.<sup>10</sup>

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

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

Solicitors:  
D M A Burgess, Auckland for Applicant  
Mactodd Lawyers, Queenstown for First Respondents  
AWS Legal, Queenstown for Second Respondent

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<sup>10</sup> Senior Courts Act 2016, s 74(2).