

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 173/2025
[2026] NZSC 31**

BETWEEN

UV LIMITED
First Applicant

WX
Second Applicant

AND

AB LIMITED AS TRUSTEE OF THE
CD TRUST AND THE EF TRUST
First Respondent

GH, IJ AND KL AS TRUSTEES OF THE
MN TRUST
Second Respondents

GH AND KL AS TRUSTEES OF THE
OP TRUST
Third Respondents

GH AND QR AS TRUSTEES OF THE
ST TRUST
Fourth Respondents

A LIMITED
Fifth Respondent

B, C AND D
Sixth Respondents

E AND F
Seventh Respondents

Court: Ellen France, Williams and Kós JJ

Counsel: W Akel and S T Coupe for Applicants
J W S Baigent and L B Harrison for First to Fourth Respondents
C T Walker KC for Fifth and Sixth Respondents
No appearance for Seventh Respondents

Judgment: 15 April 2026

JUDGMENT OF THE COURT

- A** **The application for leave to appeal is dismissed.**
- B** **The applicants must pay the first to sixth respondents one set of costs of \$2,500.**
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REASONS

Introduction

[1] The applicants, UV Ltd and WX, have applied for leave to appeal from a judgment of the Court of Appeal dismissing their appeal.¹ In general terms, the appeal concerned whether steps needed to be taken in civil proceedings to prevent the publication of identifying material about the applicants. The applicants maintain the steps they sought were necessary to avoid breaching a suppression order made in criminal proceedings in the District Court.

Background

[2] In brief, the background is that in sentencing Kelly Tonkin on fraud charges following the collapse of Penrich Global Macro Fund (Penrich Fund) (operated by Mr Tonkin as a Ponzi scheme), the District Court made a suppression order under s 202(1)(b) of the Criminal Procedure Act 2011.² The order was for permanent suppression of the name and identifying details of any victim of Mr Tonkin's offending. That included investors who lost money and the present applicants, UV Ltd and WX. WX is the sole director of UV Ltd, a financial services company through which the majority of investors were introduced to the Penrich Fund.

[3] Following the collapse of the Penrich Fund, WX made public comments in several media reports about the collapse. Both WX and UV Ltd were named in media reports.

¹ *UV Ltd v AB Ltd as Trustee of the CD Trust and the EF Trust* [2025] NZCA 580 (Courtney, Campbell and Collins JJ) [CA judgment].

² *Serious Fraud Office v Tonkin* [2021] NZDC 25223 (Judge Couch).

[4] The present respondents are plaintiffs in subsequent civil proceedings brought against UV Ltd and WX to recover lost investments in the Penrich Fund. In the current proceedings UV Ltd and WX argued that the District Court suppression order required their identities be suppressed in relation to the civil proceedings. They said disclosure of the civil pleadings, including their identities, to third parties would breach the District Court suppression order. It followed, they claimed, that the parties should be anonymised in the civil proceedings. The applicants also applied for non-publication orders in the civil proceedings that would have replicated the effect of the District Court's suppression order. In this context, the applicants sought suppression of an affidavit filed by WX on the grounds it included private and sensitive confidential information about the applicants and related persons.

[5] The applicants were unsuccessful in that application in the High Court and, as we have said, their appeal to the Court of Appeal was dismissed.³

[6] The first question of whether any publication in the pleadings would breach the District Court suppression order turned on the effect of s 195 of the Criminal Procedure Act. Under that provision an offending publication means a publication "in the context of any report or account relating to the" criminal proceedings. The Court of Appeal concluded that disclosing the pleadings did not come within that wording. Accordingly, the Court concluded that the High Court was correct in determining that disclosing the civil pleadings to third persons, including the identities of the parties, was not "a report or account relating to" the District Court criminal proceeding.

[7] The Court then addressed the second question which was whether the High Court was correct in not making a civil suppression order. The Court concluded, applying this Court's judgment in *Erceg v Erceg*, that the threshold for a civil suppression order was not met.⁴ Finally, the Court of Appeal upheld the High Court's decision not to suppress the whole of WX's affidavit.

³ *AB Ltd v UV Ltd* [2024] NZHC 1324 (Anderson J).

⁴ *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310.

The proposed appeal

[8] Leave to appeal to this Court is sought on the basis the proposed appeal would involve consideration of two principal questions. The first of these concerns what constitutes “publication” within the meaning of s 195 of the Criminal Procedure Act. In particular, it would require the Court to address what connecting factors or references to the criminal proceedings of an admitted publication would comprise a breach of s 195. The second question concerns whether a non-publication order should have been made in the civil proceedings. The applicants say the Court will be asked to revisit its decision in *Erceg v Erceg* and “provide further guidance on the approach to civil suppression orders in light of the greater emphasis given to reputation and privacy since that decision”. The applicants also submit there is a related question about the limits on open justice in respect of the scope of disclosure of an affidavit from WX.

[9] The proposed appeal would essentially reprise the arguments made in the Court of Appeal.

[10] In reaching the view that publication in the pleadings would not be in breach of s 195, the Court of Appeal examined the text, purpose and context of s 195. In terms of the text, the Court gave three reasons as to why a narrower approach should be taken to the words “relating to” in s 195. The first of these was that a suppression order places limits upon the principle of open justice. Secondly, such an order also limits the right to freedom of expression protected in s 14 of the New Zealand Bill of Rights Act 1990. Finally, it is an offence to “knowingly or recklessly” breach a suppression order with a penalty of up to six months’ imprisonment.⁵ The Court of Appeal considered that it was necessary to “remain cautious” about interpreting penal provisions too broadly.⁶

⁵ Criminal Procedure Act 2011, s 211(4)(a).

⁶ CA judgment, above n 1, at [33] referring to Ross Carter *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 302 citing *Chen v R* [2019] NZCA 299, (2019) 29 CRNZ 113 at [44].

[11] The Court then carefully examined the pleadings noting that the references to Mr Tonkin in the pleadings were “very limited” and did not refer to or invoke either expressly or implicitly the criminal proceedings.⁷

[12] In terms of the purpose and context, the Court considered that the legislative history of s 195 supported the Court’s interpretation of the text and concluded that the value placed upon the principle of open justice reinforced the views the Court had reached of the text. Applying the decision of this Court in *ASG v Hayne* the Court of Appeal also agreed with the High Court that disclosure to third persons with a legitimate interest in receiving those documents would not breach the suppression order.⁸ It followed that the High Court did not err in not anonymising the parties in the pleadings.

[13] In its application of the approach in *Erceg v Erceg* to the facts, the Court of Appeal considered the various concerns identified by the applicants were “commonplace”⁹ and the Court was not persuaded the concerns they expressed about the financial impact on UV Ltd of publicity about the civil proceedings met the *Erceg* threshold. The Court relied in part on the fact WX’s comments in articles which identified WX and UV Ltd by name as investors in the Penrich Fund were “still readily available online”.¹⁰

[14] Finally, in upholding the decision of the High Court not to order suppression of all of the affidavit, the Court said it had “carefully reviewed” the question but was “satisfied that the principle of open justice and the antiquated nature” of the evidence supported the approach of the High Court.¹¹

Assessment

[15] The proposed appeal would not raise questions of general or public importance but, rather, would turn on the application of settled principles to this specific set

⁷ CA judgment, above n 1, at [38].

⁸ *ASG v Hayne* [2017] NZSC 59, [2017] 1 NZLR 777 at [70].

⁹ CA judgment, above n 1, at [70].

¹⁰ At [71].

¹¹ At [75].

of facts.¹² In terms of the approach to s 195, “relating to” envisages a link of some sort. Whether the references in the pleadings here comprised the necessary link required an assessment of the pleadings. Nothing raised by the applicants suggests the Court of Appeal erred in that assessment. As to the proposed appeal in relation to *Erceg v Erceg*, nothing advanced by the applicants suggests a need for the Court at this point to revisit that approach. Again, this part of the proposed appeal would also turn on an evaluation of the facts. We see no reason to intervene in the approach adopted in that evaluation, including that in relation to the affidavit, by the Court of Appeal. In the circumstances, we see no appearance of a miscarriage of justice as that term is used in the civil context.¹³

Result

[16] The application for leave to appeal is dismissed.¹⁴

[17] The applicants must pay the first to sixth respondents one set of costs of \$2,500.

Solicitors:

Gilbert Walker, Auckland for Applicants

Simpson Grierson, Auckland for First to Fourth Respondents

Hamilton Locke, Auckland for Fifth and Sixth Respondents

Henderson Reeves, Whangārei for Seventh Respondents

¹² Senior Courts Act 2016, s 74(2)(a).

¹³ Section 74(2)(b); and see *Junior Farms v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹⁴ The interim orders made by this Court prohibiting publication of various material pending determination of the application for leave by this Court accordingly lapse.