

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 20/2026
[2026] NZSC 64

BETWEEN HAILING WANG AND LINDA WU
Applicants

AND BODY CORPORATE 406198
First Respondent

THE PARTIES LISTED IN SCHEDULE 1
OF [2025] NZCA 684
Second Respondents

ARGON CONSTRUCTION LIMITED
Third Respondent

AUCKLAND COUNCIL
Fourth Respondent

Court: Ellen France and Miller JJ

Counsel: Applicants in person
D R Bigio KC and H Chung for First Respondent
No appearance for Second Respondents
W A McCartney for Third Respondent
S C Price and M J Ferrier for Fourth Respondent

Judgment: 26 May 2026

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal the High Court judgment is dismissed.**
- B The application for an extension of time to apply for leave to appeal the Court of Appeal judgment is granted.**
- C The application for leave to appeal is dismissed.**
- D The application for leave to adduce further evidence is dismissed.**
- E The application for an oral leave hearing is dismissed.**

F The applicants must pay the first respondent costs of \$2,500.

REASONS

[1] The applicants seek leave to appeal from a judgment of the Court of Appeal.¹ They also seek leave to appeal directly from the substantive High Court judgment in the same proceeding.² In support of these applications they have sought leave to adduce further evidence in this Court.

[2] The applicants applied for leave within 20 working days of the Court of Appeal judgment, but only paid the filing fee after this period had elapsed. In the circumstances, we extend time for seeking leave to appeal from the Court of Appeal judgment.³ However, we do not extend time to apply for leave to appeal from the High Court judgment, having regard to the delay of several hundred working days.⁴

[3] We record that a previous application for leave to appeal from a different Court of Appeal decision was declined.⁵ That was a decision declining an extension of time to appeal a High Court costs decision.⁶

[4] The underlying proceeding was brought by the Body Corporate and individual unit owners against Argon Construction and the Auckland Council. It was a claim for building defects in an apartment complex called Bianco Off Queen.⁷ Ms Wu and Ms Wang own apartments in the complex. Ms Wu was a party to the original proceeding and Ms Wang became a party in the Court of Appeal.⁸

¹ *Body Corporate 406198 v Argon Construction Ltd* [2025] NZCA 684 (Palmer, Woolford and Whata JJ) [CA judgment].

² *Body Corporate 406198 v Argon Construction Ltd* [2023] NZHC 3034 (Andrew J) [HC judgment].
³ Supreme Court Rules 2004, r 11(4).

⁴ See *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38(a)].

⁵ *Wang v Body Corporate 406198* [2026] NZSC 14 (Ellen France and Miller JJ) [SC leave judgment].

⁶ *Wang v Body Corporate 406198* [2025] NZCA 536 (Cooke and Whata JJ) which declined an extension of time to appeal from *Body Corporate 406198 v Argon Construction Ltd* [2024] NZHC 1037 (Andrew J).

⁷ HC judgment, above n 2, at [1]–[5].

⁸ See CA judgment, above n 1, at [221]–[227].

[5] At trial, the Body Corporate established that both Argon and the Auckland Council had been negligent.⁹ However, Andrew J found the Body Corporate's claim overambitious. Specifically, its proposed scope of works was disproportionate and unreasonable.¹⁰ Andrew J adopted the scope of works prepared by Argon's expert building surveyor and awarded remedial damages to the Body Corporate on this basis.¹¹ He also awarded general damages to the individual owners.¹²

[6] The Body Corporate was largely successful in the Court of Appeal, although the issue of costs was referred back to the High Court.¹³

[7] The proposed appeal to this Court concerns the Body Corporate's handling of the dispute with Argon and the Auckland Council, and in particular, the Body Corporate's decision to reject a *Calderbank* offer substantially greater than the amount awarded in the High Court.¹⁴

[8] The applicants want to be paid what they say is their proportionate share of remedial damages payable by the defendants, in lieu of payment to the Body Corporate. They also seek leave to pursue a claim in tort against the Body Corporate and its committee members and legal advisers for unreasonably rejecting the *Calderbank* offer. They make accusations of fraud, oppression and deceptive conduct against these proposed defendants. The affidavits filed in support of the leave applications address these allegations.

[9] The fundamental difficulty with the leave application is that, as we explained in the previous leave decision, this was never a proceeding between the Body Corporate and its members.¹⁵ There is no pleading directed to the allegations

⁹ HC judgment, above n 2, at [169] and [351]–[352].

¹⁰ At [203]–[206].

¹¹ At [240]–[241], [267], [270], [272] and [353].

¹² At [293]–[295], [343]–[344] and [355].

¹³ CA judgment, above n 1, at [231].

¹⁴ The *Calderbank* offer amounted to \$19,230,000: CA judgment, above n 1, at [188]. In total, Andrew J awarded remedial costs of \$5,344,816.55 and general damages of \$779,500: CA judgment, above n 1, at [5] citing *Body Corporate 406198 v Argon Construction Ltd* [2024] NZHC 237 (Andrew J) and *Body Corporate 406198 v Argon Construction Ltd* [2024] NZHC 3791 (Andrew J).

¹⁵ SC leave judgment, above n 5, at [6].

now made against the Body Corporate and its committee members and advisers, no evidence at trial, and no relevant findings of fact in the judgments below.

[10] Nor, we are told, did the applicants seek in the High Court or the Court of Appeal the relief that they now request from this Court. The Court of Appeal allowed Ms Wang to become a party, but its judgment was otherwise confined to issues between the Body Corporate and unit owners on the one hand, and Argon and the Auckland Council on the other. Those issues were the nature and scope of the defendants' duties, the scope of remedial works, liability for certain expenses, and costs.¹⁶

[11] The applicants point out that the Court of Appeal recognised but did not decide an issue about concurrent liability of Argon and the Auckland Council to the Body Corporate and unit owners.¹⁷ They point out that there is a conflict of High Court authority on this issue and argue that it is foundational.¹⁸ We accept that this may be an issue of general or public importance.¹⁹ However, the Court of Appeal reasoned that it was not necessary to decide the issue in this case, principally because the Auckland Council, which advanced the issue on appeal, had been treated fairly in Andrew J's assessment of contributory negligence.²⁰ We observe that the Council has not sought leave to appeal in this proceeding. Rather, the applicants essentially wish to adopt the Council's argument below for their own purposes.

[12] Nor do the applicants need leave of this Court to commence proceedings against the Body Corporate and its committee members and advisers. The corollary of the fact that their allegations were not pleaded or decided is that there is no apparent reason to think a plea of res judicata or issue estoppel would succeed, founded on the judgments below, if they were to bring such a claim. We express no view about the merits of any such claim.

¹⁶ CA judgment, above n 1, at [6].

¹⁷ At [182]–[185].

¹⁸ See *Body Corporate 366567 v Auckland Council* [2024] NZHC 32 at [136]–[137].

¹⁹ Senior Courts Act 2016, s 74(2)(a).

²⁰ CA judgment, above n 1, at [184].

[13] For these reasons, it is not necessary in the interests of justice to hear and determine the proposed appeal.²¹ Nor is it appropriate that the applicants should be permitted to offer new evidence.

[14] The application for leave to appeal is dismissed, as is the application for leave to adduce further evidence, and the application for an oral leave hearing.

[15] The applicants must pay the first respondent costs of \$2,500.²²

Solicitors:

Lane Neave, Auckland for First Respondent

MinterEllisonRuddWatts, Auckland for Fourth Respondent

²¹ Senior Courts Act, s 74(1).

²² Argon and the Auckland Council both abide the Court's decision as to leave.