

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 14/2026
[2026] NZSC 84

BETWEEN ANTHONY JAMES SCULLY
Applicant

AND MADELINE CAROL HOLLAND
Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: J W Goddard for Applicant
R A B Barnsdale for Respondent

Judgment: 26 June 2026

JUDGMENT OF THE COURT

- A The application for leave to file submissions in reply is dismissed.**
- B The application for leave to appeal is dismissed.**
- C There is no order as to costs.**
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REASONS

Introduction

[1] Mr Scully provided plans, proposals and consultancy services to Ms Holland over the period from 2012 to 2016. The work related to a proposed infrastructure project in Papua New Guinea. Mr Scully was never paid for this work. He issued proceedings in the High Court claiming payment under an oral contract he said was formed in December 2012 or, in the alternative, a written “project manager’s contract” signed in May 2013.

[2] Ms Holland’s defence was that there was no binding agreement. In any event, any written agreement was conditional on her obtaining project funding from Papua New Guinea. No funding was forthcoming. The High Court essentially accepted Ms Holland’s arguments and dismissed Mr Scully’s claim.¹ His appeal to the Court of Appeal was dismissed.² Mr Scully now seeks leave to appeal to this Court. To put that application in context, we need to describe the approach taken by the Court of Appeal.

The Court of Appeal judgment

[3] The Court of Appeal concluded that the High Court was wrong to consider whether an oral contract had been established without considering the parties’ telephone conversations.³ But, the Court of Appeal concluded, after reviewing the telephone conversations and surrounding circumstances, there was no oral contract. The Court relied in particular on the fact that Mr Scully’s subsequent written communications to Ms Holland were seeking “confirmation” and “a formal contract”. That was inconsistent with the conclusion there was an oral contract. The Court also said it was relevant that Mr Scully was an experienced businessperson and that the invoices he sent “included charges for significant items which were not included in the terms of the oral agreement which he had specified”.⁴

[4] The Court then found that the High Court was right to conclude that the written contract was subject to a “special conditions” addendum in the draft contract that was signed and emailed by Ms Holland to Mr Scully in May 2013. The High Court had not erred in finding that Mr Scully had affixed his signature to that addendum.⁵ In any event, as the High Court found, if he had not signed the addendum emailed to him in May 2013, then no contract was formed.⁶

¹ *Scully v Holland* [2024] NZHC 2313 (Tahana J) [HC judgment].

² *Scully v Holland* [2025] NZCA 656 (Mallon, Jagose and Grice JJ) [CA judgment].

³ The High Court had focused on other evidence, particularly text messages.

⁴ CA judgment, above n 2, at [48].

⁵ Mr Scully had claimed that Ms Holland fraudulently affixed his signature to the addendum.

⁶ The Court of Appeal also noted that later communications from Mr Scully to Ms Holland suggested he had accepted that if there was a concluded project management contract it was nonetheless conditional.

[5] Nor was there an error by the High Court in not considering whether there had been a waiver of the special conditions. Mr Scully had argued that Ms Holland had waived the conditions via her ongoing requests for services. The Court of Appeal considered that the available evidence was not, in any event, consistent with a waiver — there was neither evidence of anything amounting to a representation of waiver nor evidence of his reliance on such a waiver.

[6] Nor did the Court consider that the circumstances gave rise to a claim of misrepresentation under s 35 of the Contract and Commercial Law Act 2017. Misrepresentation had not been pleaded and was raised for the first time on appeal. Even if leave was given to raise this new ground on appeal, it would not be successful. There was no representation that the funding would be released and no evidence that Mr Scully was induced by those statements to enter the written contract.

[7] The Court found that there was no error on the part of the High Court in deciding that Ms Holland had made efforts to secure funding. The Court said this:⁷

Ms Holland gave evidence about the complicated and time consuming process involved in securing government projects in PNG. They were different to those in New Zealand and required her to attend many meetings and make a submission. On the evidence, it appears that the steps Ms Holland said she took to seek funding were reasonable in the circumstances. As the Judge noted, she could not determine on the available evidence what was in fact happening in PNG.

[8] The Court of Appeal considered that the Judge's finding that Mr Scully undertook the consultancy work at his own risk was open on the evidence.

[9] The appellant in the Court of Appeal had also challenged the High Court's reference to difficulties around the enforceability of the contract given the express provision in the contract that it was subject to the law of Papua New Guinea. The Court of Appeal considered there was no error in the observation made. The Court continued:⁸

In circumstances where the contract specifically referred to being subject to another jurisdiction's laws, it was appropriate for the Judge to note the issue but to determine the issues on the basis [on which the] parties had proceeded.

⁷ CA judgment, above n 2, at [94] (footnote omitted) citing HC judgment, above n 1, at [80].

⁸ At [98].

[10] Finally, just before the hearing of the appeal, Mr Scully had sought leave to amend his pleading to claim quantum meruit. The Court of Appeal declined to grant leave. The Court considered the claim could not be pursued for three reasons: first, it was contrary to key findings made by the Judge (that there was no oral contract, the written contract was subject to special conditions not fulfilled, and Mr Scully merely had a “hope” that funding would eventuate and he would be paid); second, a further trial would be necessary; and third, it was a fresh claim which would be barred by limitation.⁹

[11] In terms of the limitation argument, the Court rejected Mr Scully’s submission that the late knowledge provisions would apply due to what he said was fraud by Ms Holland. This relates to what he says was her dishonest conduct in affixing his signature to the special conditions page. The Court of Appeal found that, by at least 2017 (when proceedings were issued) — but probably much earlier — Mr Scully was aware of the relevant facts that would lead a reasonable person to begin investigating the possibility of a claim in quantum meruit. In any event, the High Court had found that Mr Scully had affixed his own signature to the special conditions page.

The proposed appeal

[12] Mr Scully says that the appeal would raise the following points of law:¹⁰

- (a) whether Papua New Guinean law should be applied and if it is, whether either contract is enforceable against Ms Holland;
- (b) the requirements of a contracting party to take reasonable steps to ensure fulfilment of a contract, relying on the decision of *Innes v Mars*;¹¹
- (c) the doctrine of waiver; and

⁹ At [127]–[128].

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ *Innes v Mars* [1982] 2 NZLR 68 (HC).

- (d) whether the late knowledge period applied to the equitable causes of action, relying on the Court of Appeal's decision in *Rea v Auckland Council*.¹²

[13] Mr Scully also submits that a substantial miscarriage of justice will arise if leave is not granted.¹³ He emphasises that he worked for Ms Holland between 2012 and 2016 for no remuneration; he says that she was deceptive; and he has been blamed for fraudulent alteration of the contracts leading to reputational damage to him.¹⁴

Assessment

[14] The arguments the applicant wishes to raise about the legal principles face real difficulties. Those difficulties arise from the concurrent findings on the critical facts in the Courts below. Essentially, those findings do not permit the proposed legal arguments to run to the extent necessary to suggest the appearance of a miscarriage of justice as that term is understood in the civil context.¹⁵ No question of general or public importance or of general commercial significance accordingly arises.¹⁶

[15] Ultimately, resolution of the proposed appeal would turn on the particular facts. The Court of Appeal has comprehensively reviewed the factual findings of the High Court. Nothing raised by the applicant persuades us that this is one of those rare cases where this Court, on a second level appeal, would be prepared to undertake a further review of what are concurrent factual findings.¹⁷ We add that, even if the limitation argument on the quantum meruit claim had prospects of success, it too would have faced the considerable factual difficulties pointed out by the Court of Appeal.¹⁸ In these circumstances, it is not in the interests of justice to hear the proposed appeal.¹⁹

¹² *Rea v Auckland Council* [2024] NZCA 313, [2024] 3 NZLR 242.

¹³ Senior Courts Act, s 74(2)(b).

¹⁴ Mr Scully sought leave to provide reply submissions which would have addressed, amongst other matters, his point in relation to reputational damages.

¹⁵ Senior Courts Act, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹⁶ Senior Courts Act, s 74(2)(a) and (c).

¹⁷ *Perkins v Porea* [2010] NZSC 15, (2010) 19 PRNZ 666 at [6]; and *Vispassana Foundation Charitable Trust Board v Auckland Council* [2019] NZSC 73 at [13].

¹⁸ CA judgment, above n 2, at [131] and [138].

¹⁹ Senior Courts Act, s 74(1).

[16] We have not found it necessary to receive reply submissions from the applicant.

Result

[17] The application for leave to file submissions in reply is dismissed.

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

[19] We are advised that the applicant is in receipt of legal aid. Accordingly, there is no order as to costs.

Solicitors:
Jenny Beck Law, Dunedin for Applicant
Foster & Milroy, Hamilton for Respondent