IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 127/2024
[2026] NZSC 97

BETWEEN	KEA INVESTMENTS LIMITED Appellant
AND	KENNETH DAVID WIKELEY First Respondent
	WIKELEY FAMILY TRUSTEE LIMITED (IN INTERIM LIQUIDATION) Second Respondent
	ERIC JOHN WATSON Third Respondent
	WIKELEY INCORPORATED Fourth Respondent
	USA ASSET HOLDINGS INCORPORATED Fifth Respondent

Hearing:	5–6 November 2025 (further submissions 26 and 29 June 2026 and 9 and 10 July 2026)
Court:	Winkelmann CJ, Glazebrook, Williams, Kós and Miller JJ
Counsel:	J B M Smith KC, M C Harris, J L W Wass and S T Coupe for Appellant First Respondent in person M D Arthur and J Marcetic for interim liquidators of Second Respondent No appearance for Third, Fourth and Fifth Respondents A E Kirk as counsel assisting the Court
Judgment:	10 November 2025
Reasons:	31 July 2026

JUDGMENT OF THE COURT

A The application by the appellant to adduce updating evidence is granted.

B The appeal is allowed.

C The orders made by the High Court in *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 at [156(a)(i)]–[156(a)(iv)], and in *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3532 at [7], are reinstated.

D The first, second, fourth and fifth respondents must pay the appellant costs of $250,000 plus usual disbursements. We allow for second counsel.

E The first respondent must pay the liquidators of the second respondent costs of $30,000 plus usual disbursements. We allow for second counsel.

F The confidential version of the affidavit of Martin Craig Smith filed in support of the appellant's costs application shall not be disclosed to the Respondents or persons searching the Court file.

G The application for stay of enforcement is dismissed.

REASONS

(Given by Kós J)

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Introduction

[1] An elaborate worldwide fraud was perpetrated by the respondents against the appellant. It involved the fraudulent use of foreign legal process to obtain a default judgment for an extremely large sum—over USD 100 million—in the courts of Kentucky. The second respondent, a New Zealand company, obtained that judgment. What steps may be taken by courts here to arrest its fraud?

[2] The fraud involved two core elements. The first was the creation of a forged, fictitious "Coal Agreement", supposedly made in 2012, between the first respondent, Mr Wikeley as trustee of the Wikeley Family Trust (WF Trust), and the appellant, Kea

Investments Ltd (Kea). Under the Coal Agreement, Kea was said to be obligated to fund certain coal-mining investments in the United States.

[3] Kea is a British Virgin Islands company associated with the New Zealand expatriate businessman Sir Owen Glenn. Mr Wikeley is a former New Zealand businessman now resident in Australia. The WF Trust was formed in New Zealand and is governed by New Zealand law. Mr Wikeley and his wife had been its trustees. The second respondent, Wikeley Family Trustee Ltd (WFTL), a New Zealand company controlled by Mr Wikeley, then took over as trustee of the WF Trust.

[4] The second core element of the fraud was WFTL obtaining default judgment against Kea for USD 123.75 million plus interest and costs in the Fayette Circuit Court of Kentucky in 2022. That judgment was based on a fictitious breach by Kea of the fictitious Coal Agreement.

[5] Final judgments finding these actions to be fraudulent have been given by the High Court and Court of Appeal.[1] Leave to challenge those factual findings in this Court was declined.[2] That Mr Wikeley and WFTL perpetrated the elaborate worldwide fraud we describe is now beyond doubt or challenge.

[6] Why was this elaborate fraudulent enterprise embarked upon? The explanation offered by Kea is that Mr Wikeley is a friend and associate of the third respondent, Mr Eric Watson, another former New Zealand businessman now believed by Kea to be resident in Spain. Sir Owen and Kea had obtained judgment against Mr Watson from the Chancery Division of the High Court of England and Wales in July 2018, in a sum yet to be finally quantified, but potentially circa £129 million.[3] It arose from a separate fraud committed by Mr Watson against Kea.[4] Kea says that the Kentucky fraud by the Wikeley interests was likely perpetrated to defeat or deflect enforcement of the English judgment against Mr Watson.

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1 *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 (Gault J) [HC formal proof judgment]; and *Wikeley v Kea Investments Ltd* [2024] NZCA 609, [2024] 3 NZLR 901 (Courtney, Muir and Cull JJ) [CA judgment].

2 *Wikeley v Kea Investments Ltd* [2025] NZSC 76 (Winkelmann CJ, Williams and Miller JJ) [SC Wikeley leave judgment].

3 *Glenn v Watson* [2018] EWHC 2016 (Ch) [Spartan judgment].

4 See below at [14]–[16].

[7] A fundamental flaw in Mr Wikeley's elaborate fraudulent enterprise is that the Kentucky judgment creditor, WFTL, is a New Zealand-incorporated and registered company. As such, it remained subject to the jurisdiction of the New Zealand courts. So, too, was Mr Wikeley. Kea obtained interim and then permanent anti-suit and anti-enforcement injunctions against WFTL and Mr Wikeley from the High Court.[5]

[8] On Kea's further application, WFTL was placed in protective interim liquidation by the High Court.[6] Responsibly, the liquidators of WFTL are willing to take all reasonable and appropriate steps to unwind WFTL's part in the fraud. They have supported Kea's appeal in this Court.

[9] The High Court orders in issue here took the form of a permanent injunction requiring the respondents to:[7]

> (a) consent and otherwise take all steps necessary to procure the discharge of the default judgment;
>
> (b) refrain from seeking to enforce or act on the default judgment anywhere in the world, including by dealing with it by assignment or otherwise, issuing subpoenas, issuing interrogatories, seeking discovery, or otherwise seeking disclosure of information concerning Kea;
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> (c) withdraw, and desist from pursuing any further, any steps to enforce or otherwise rely on, the Coal Agreement; [and]
>
> (d) cause their privies and assignees to comply with the orders [above] …

The High Court subsequently made further orders requiring the respondents, until 28 days after discharge of the default judgment, not to:[8]

> (e) appoint an additional or replacement trustee of the Wikeley Family Trust or otherwise exercise a power of appointment in respect of that Trust; [or]
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> (f) change the proper law of that Trust; …

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5 See below at [9]. The interim injunctions were granted in *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881 (Gault J) [HC interim injunction judgment], and the permanent injunctions were granted in the HC formal proof judgment, above n 1.

6 *Kea Investments Ltd v Wikeley Family Trustee Ltd* HC Auckland CIV-2022-404-2086, 6 April 2023 (Minute of Gault J) [6 April Minute].

7 HC formal proof judgment, above n 1, at [156(a)].

8 *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3532 (Gault J) [HC further relief judgment] at [7(a)].

[10] As we discuss later in these reasons, order (a) above may perhaps be described as a hybrid form of anti-suit injunction—albeit one made after both suit and judgment—but we see it as more akin to an anti-enforcement injunction, controlling the judgment creditor's exploitation of the judgment. Orders (b) and (c) are common-form anti-enforcement injunctions. The remaining orders are ancillary in nature, but essential to ensure maintenance of jurisdiction and compliance. As we also note, orders (b) and (c) are comparable to international freezing orders (or *Mareva* injunctions).[9] Anti-suit, anti-enforcement and international freezing orders all raise concerns about inter-jurisdictional comity—i.e., the need for the courts here to respect the legitimate exercise of jurisdiction by the courts of a foreign state.[10]

[11] Each of these orders was discharged by the Court of Appeal, on the basis that comity prevented the New Zealand courts interfering by anti-suit or anti-enforcement injunction with the application or enforcement of a judgment made in good faith by a foreign court. As already noted, the Court of Appeal did not, however, discharge the findings of fraud described above. Nor did it discharge the order for interim liquidation of WFTL.[11]

[12] The question for this Court was "whether the Court of Appeal was correct to discharge the permanent anti-suit and anti-enforcement injunctions".[12] Following the hearing of this appeal, we issued judgment holding the Court of Appeal had erred and reinstated the High Court's orders.[13] This second judgment gives our reasons for doing so.

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9 See below at [110]–[112].

10 Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, Wellington, 2020) at [1.29].

11 CA judgment, above n 1.

12 *Kea Investments Ltd v Wikeley* [2025] NZSC 75 (Winkelmann CJ, Williams and Miller JJ) [SC Kea leave judgment].

13 *Kea Investments Ltd v Wikeley* [2025] NZSC 156 (Winkelmann CJ, Glazebrook, Williams, Kós and Miller JJ) [SC results judgment].

Chronology of a worldwide fraud

WF Trust is formed

[13] Mr Wikeley settled the WF Trust in New Zealand in May 2005. He and his wife were appointed the trustees to begin with, although WFTL ultimately replaced them. The discretionary beneficiaries include Mr Wikeley and his children. The latter are the final beneficiaries.

Fraudulent Project Spartan investment

[14] In 2012, Sir Owen Glenn's interests sold a United States-based logistics company for approximately USD 350 million. The proceeds were held by an entity called the Corona Trust, based in Nevis. Kea was also owned by the Corona Trust at the time. That trust had a protector (Mr David Miller) and a corporate trustee (Pizarro Co Ltd). A Mr Peter Dickson ran Pizarro and was Kea's sole director.

[15] Sir Owen and Mr Watson were co-owners of the Warriors rugby league franchise. In April 2012, an associate of Mr Watson introduced Sir Owen to an investment opportunity called Project Spartan. Sir Owen instructed Messrs Dickson and Miller to pursue that opportunity. Ultimately, they committed Kea to lend £129 million to Spartan Capital Ltd—a very different investment than that originally promoted to Sir Owen.

[16] In a judgment delivered in July 2018, a Chancery Division Judge, Nugee J, found Mr Watson induced Kea's participation in Project Spartan by fraud.[14] Mr Watson was personally liable for up to £43.5 million and was ordered to make interim payments of approximately £25 million towards the judgment debt and £3.8 million towards Kea's costs. Nugee J had made pre-trial orders requiring Mr Watson to provide to Kea information about assets which Kea sought to trace and post-trial orders requiring Mr Watson to disclose information about his own assets.

[14] See Spartan judgment, above n 3, at [411].

Mr Watson was held in contempt for failing to comply with the latter orders.[15] He was sentenced to four months' imprisonment.[16]

Fraudulent Coal Agreement

[17] The Coal Agreement—described above at [2]—was purportedly entered into and signed on 23 October 2012. It is more likely to have been generated shortly before the proceedings in Kentucky commenced in 2021.[17] The apparent signatories were Mr Wikeley and Kea's director, Mr Dickson. Their signatures were purportedly witnessed by Mr Watson on the same day, although that was not true either.[18] As the legal basis for a very substantial economic commitment, it is a curiously brief document: just two pages—and with strange typographical errors concerning the relevant currency.

[18] The background section describes Mr Wikeley's involvement in the coal and energy sector. It records his interest in a development called "Greenfields", which Kea is supposed to have evaluated and was to reverse list. The operative terms include the following. First, Kea would provide a minimum of "US$75million" over eight years by way of 20-year loans repaid with interest at three per cent per annum. Secondly, the capital would be used "to fund coal/energy investments including but not limited to the purchase of Greenfields, and the upgrade of the property to increase the production rate to 5 million tuns [sic] per annum". Thirdly, Mr Wikeley was to have full authority to invest in ventures he deemed appropriate, Kea being the "exclusive investment partner" with rights to approve other investors, manage an initial public offering or reverse any investments made. Fourthly, Kea was to receive 60 per cent of the profits, and Mr Wikeley 40 per cent. Fifthly, Kea was to pay a "royalty payment of USD $1.5 million per year for the next 20 years from the time of the first investment".

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15 *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch) at [268]. He breached the pre-trial order in a number of ways, but these breaches were not contumacious: at [138].

16 *Kea Investments Ltd v Watson* [2020] EWHC 2796 (Ch).

17 As noted by Gault J: HC formal proof judgment, above n 1, at [110].

18 Mr Wikeley later tendered an affidavit stating that he signed the Coal Agreement in New York on 26 September 2012 in the presence of Mr Watson, who was travelling on to Paris in October, where he allegedly procured Mr Dickson's signature on the 23rd.

[19] Three other provisions are notable. There is an indemnity provision specifying that Kea indemnify Mr Wikeley for any losses and lost profits if Kea failed to provide "a minimum of $75m USD of capital". It elaborates:

> In any case the amount indemnified will be the greater of 25% of £375m [sic] or 25% of the actual profits generated by third parties as determined by the average value of two independent valuers, one chosen by [Mr Wikeley] and one by [Kea.]

[20] There is also a put and call option, exercisable after seven years, enabling Mr Wikeley to "put his shares/this agreement … to [Kea] for £125m USD [sic], anytime during the next 20 years of this agreement".

[21] Finally, it contained the jurisdiction clause at the centre of this dispute:

> **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.

Kentucky: default judgment for USD 123.75 million is obtained against Kea

[22] In July 2021, Mr Wikeley incorporated WFTL in New Zealand. He was the sole director and shareholder. WFTL then assumed responsibility as trustee of the WF Trust in place of Mr Wikeley and his wife.

[23] Soon after, on 19 August, WFTL sued Kea for USD 123.75 million in the Fayette Circuit Court, Kentucky. It alleged Kea had breached the Coal Agreement by failing to provide USD 75 million in funding and more than USD 30 million in royalties, failing to indemnify Mr Wikeley and failing to reimburse Mr Wikeley for his costs.[19] As to the quantum attributable to failure to provide capital, the (amended) complaint alleged:

> Defendant has failed to indemnify Kenneth Wikeley, as Trustee for The Wikeley Family Trust, for either $93.75 million or 25% of the actual profits, in breach of the Agreement.

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19 WFTL amended its complaint in December 2021, which contained substantially similar allegations and sought the same relief.

WFTL contended the Kentucky courts had jurisdiction over Kea under the jurisdiction clause of the Coal Agreement.

[24] On 31 January 2022, the Court issued a default judgment against Kea for the amount sought plus interest and costs.[20] The Court recorded that Kea was served through its agent in the British Virgin Islands but that it had failed to appear or reply. The Court also recorded that it had reviewed the record and was "otherwise sufficiently advised".

British Virgin Islands: statutory demand for USD 136 million is made against Kea

[25] The complaint was not brought to Kea's attention because of an omission by its agent in the British Virgin Islands. Kea first became aware of the Coal Agreement, the complaint and the default judgment on 29 June 2022 after WFTL's British Virgin Island-based lawyers sent a statutory demand to Kea seeking payment of the judgment debt, which at that time totalled some USD 136 million. Kea denied the existence of the agreement and the judgment debt. It did not receive a copy of the Coal Agreement or the default judgment until WFTL's lawyers sent them on 7 July.

[26] On 12 July, Kea's lawyers in the British Virgin Islands applied to the Eastern Caribbean Supreme Court to have the statutory demand set aside.[21]

Kentucky: Kea appears in Fayette Circuit Court

[27] Kea instructed counsel in Kentucky, who on 21 July 2022 filed a motion to set aside the default judgment on the basis the Coal Agreement was a fraud, the Court lacked personal jurisdiction and Kea was not properly served. WFTL responded to the motion on 3 August, claiming Kea was properly served and purposely did not appear.

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20 *Wikeley Family Trustee Ltd v Kea Investments Ltd* No 21-CI-02508 (Ky Cir Ct Fayette 31 January 2022).

21 The hearing of this application was by consent adjourned, and then vacated, in light of the proceedings in this country.

A "Mr Tabet" purports to take over Kea

[28] On 7 August 2022, a "Mr David Tabet" sent letters to Kea's English, British Virgin Islands and Kentucky lawyers advising that he and various annulled Marshall Islands companies had been appointed "protective directors" of Kea and that the protective directors had met the same day in the Marshall Islands.[22] At that meeting, the protective directors resolved to revoke Kea's existing directors' powers, issue additional shares to change Kea's ownership and terminate its retainers of the three firms. Attached were copies of the minutes, in which the board also resolved to settle with the WF Trust through WFTL for no more than USD 100 million.[23]

[29] On 8 August, Mr Tabet requested that Kea's agent in the British Virgin Islands record the changes to Kea's directorship and ownership. The changes to the register were not made.

[30] On 9 August, Mr Tabet wrote to the Fayette Circuit Court, purporting to withdraw Kea's motion to set aside the default judgment, on the basis that Kea had now "settled" with WFTL and advising that, should the hearing on the motion not be vacated, Kea would not appear anyway. WFTL's lawyers filed a notice of settlement agreement. The next day, Kea's Kentucky lawyers responded, stating that Kea's actual directors—Sir Owen and Messrs Daniel Martineau, James Long and David Mackintosh—had not authorised any settlement.

Kentucky: Kea fails to have the default judgment set aside

[31] On 18 October 2022, the Fayette Circuit Court dismissed Kea's motion to set aside the default judgment.[24] It did so on the basis that personal service had been effected properly on Kea's agent in the British Virgin Islands. A further motion by Kea to "alter, amend or vacate" the dismissal was filed on 21 October but denied on

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22 Kea considers that "Mr Tabet" was in fact Mr Rizwan Hussain, a fraudster associated with Mr Watson. An English High Court Judge considered that "Kea have good grounds for thinking that Mr Watson and Mr Hussain in these proceedings were acting in concert": *Kea Investments Ltd v Farrer & Co LLP* [2022] EWHC 2449 (Comm) at [7].

23 However, the letters said the board resolved to settle with "you", the addressees—i.e., Kea's English, British Virgin Islands and Kentucky lawyers.

24 *Wikeley Family Trustee Ltd v Kea Investments Ltd* No 21-CI-02508 (Ky Cir Ct Fayette 18 October 2022).

9 November.[25] Kea filed an appeal on the same date in the Kentucky Court of Appeals.[26]

New Zealand: Kea obtains interim relief

[32] On 31 October 2022, Kea filed proceedings in the New Zealand High Court and applied without notice for urgent interim relief.

[33] On 4 November 2022, Gault J made interim orders restraining WFTL or Mr Wikeley from changing the WF Trust trustees; from taking further steps to enforce the Coal Agreement, default judgment or statutory demand; and, among other related orders, from assigning any interest or rights relating to the Coal Agreement or default judgment.[27] We describe this judgment in more detail below at [61]–[65]. On 10 November, WFTL and Mr Wikeley entered an appearance under protest to jurisdiction and on 23 November applied to dismiss or stay the proceeding on forum grounds.

[34] On 10 March 2023, Gault J dismissed the protest to jurisdiction and the application to dismiss or stay.[28] The Judge held that New Zealand was the appropriate forum for Kea's claims, continued the existing interim orders, and rejected the contention that the New Zealand proceeding should yield to the Kentucky litigation.[29] We describe this judgment in more detail below at [66]–[67].

Mr Wikeley incorporates Wikeley Inc

[35] Mr Wikeley incorporated the fourth respondent, Wikeley Inc, in Kentucky on 28 March 2023. On 30 March, Mr Wikeley executed documents in his capacity as director of WFTL, purporting to assign the default judgment to Wikeley Inc, to assign the Coal Agreement to Wikeley Inc, and to distribute the whole of the assets of the WF Trust to Wikeley Inc. That involved direct breach of the orders Gault J made in

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25 *Wikeley Family Trustee Ltd v Kea Investments Ltd* No 21-CI-02508 (Ky Cir Ct Fayette 9 November 2022).
26 As we note below at [82], to obtain a stay pending appeal, Kea would have been required to put up a USD 100 million supersedeas bond in Kentucky.
27 HC interim injunction judgment, above n 5, at [82].
28 *Kea Investments Ltd* v *Wikeley Family Trustee Ltd* [2023] NZHC 466 [HC forum judgment].
29 At [88]–[92].

November 2022. On 3 April 2023, Wikeley Inc served notices of those purported assignments on Kea.

[36] On 4 April 2023, Wikeley Inc filed a motion in Kentucky seeking substitution as plaintiff in place of WFTL. That motion was accompanied by other applications dealing with discovery and injunctive relief.

New Zealand: WFTL is placed in interim liquidation

[37] Kea then returned to the High Court. On 6 April 2023, it applied without notice for the appointment of interim liquidators to WFTL, for the joinder of Wikeley Inc to its proceedings, and for further orders restraining action on the purported assignments and related Kentucky motions on substitution, discovery and injunction. Gault J granted that relief on the same day.[30] He concluded it was likely that WFTL or Mr Wikeley had "in a serious way failed to comply with duties" under the Companies Act 1993 and had acted in breach of the Court's orders by purporting to assign the Coal Agreement and default judgment.[31] Interim liquidators were appointed to WFTL, and the further interim orders sought by Kea were also made.

[38] During this time, related proceedings were taking place in Queensland, where Mr Wikeley resides. On 12 April 2023, Kea brought an originating application against Mr Wikeley in the Supreme Court of Queensland under ss 25 and 26 of the Trans-Tasman Proceedings Act 2010 (Cth). This sought similar interim orders to those in the New Zealand High Court and that Mr Wikeley be restrained from leaving Australia. This application was granted on 13 April.

Mr Wikeley incorporates USA Asset Holdings Inc

[39] On 11 April 2023, Mr Wikeley incorporated the fifth respondent, USA Asset Holdings Inc, in Kentucky, of which he was director.

[40] By deed and resolution both dated 12 April, Mr Wikeley purported to remove WFTL as trustee of the WF Trust, appoint USA Asset Holdings Inc as the new trustee

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30 6 April Minute, above n 6.
31 At [7].

and change the governing law of the WF Trust from New Zealand law to that of Kentucky. These actions, too, breached Gault J's orders. Mr Wikeley emailed WFTL's interim liquidators the following day, advising them of the purported replacement of WFTL with USA Asset Holdings Inc as trustee, and that WFTL's only assets—the Coal Agreement and default judgment—had already been assigned to Wikeley Inc.

United States: interim liquidators obtain relief from Bankruptcy Court

[41] The interim liquidators then sought relief in the United States. On 20 April 2023, they filed a petition in the United States Bankruptcy Court, a federal jurisdiction, seeking recognition of the New Zealand insolvency proceeding and provisional relief to preserve the current position, support the New Zealand proceeding, and facilitate dissolution and asset distribution. The next day, the Bankruptcy Court granted provisional relief, which included a stay of the Kentucky proceedings pending entry of an order recognising the New Zealand proceeding as a "foreign main proceeding" under the Bankruptcy Code 11 USC § 1517.[32]

[42] On 26 April 2023, Mr Wikeley filed an affidavit in the Supreme Court of Queensland, responding to that Court's orders. It stated that he had contacted Mr Regard, his former United States attorney, following the Court's orders, who told him that the majority shareholders in Wikeley Inc—Mr Wikeley's sons—had removed him as president. He added, "On this basis, I am unable to comply with the Orders of this honourable court made 13 April 2023."

[43] On 25 May 2023, the United States Bankruptcy Court recognised Kea's claim in New Zealand as a foreign main proceeding.[33]

32 *Re Wikeley Family Trustee Ltd* No 23-50420 (Bankr ED Ky 21 April 2023) [US Bankr stay decision].

33 *Re Wikeley Family Trustee Ltd (in liq)* No 23-50420 (Bankr ED Ky 25 May 2023) [US Bankr recognition decision].

New Zealand: Kea obtains permanent relief

[44] Judgment by formal proof on Kea's substantive claims was then given in the New Zealand High Court on 17 November 2023.[34] Shorn of inessentials, it found Kea was the victim of a fraudulent conspiracy and that the Coal Agreement was fraudulent. Gault J granted permanent anti-suit and anti-enforcement injunctions, among other relief, as set out above at [9]. He also made declarations that the Coal Agreement and the purported assignments of it and the default judgment were void, and that the purported changes to the WF Trust—i.e., appointment of USA Asset Holdings as trustee and substitution of governing law—were invalid and of no effect.[35]

[45] Gault J delivered a second judgment on 5 December, granting Kea's application for further orders.[36] We describe these judgments in more detail below at [68]–[70].

Appeals and other subsequent events

[46] Mr Wikeley applied to set aside those judgments on 8 December 2023 and filed a notice of appeal regarding those judgments in the New Zealand Court of Appeal on the same day.[37]

[47] On 15 May 2024, the United States Bankruptcy Court recognised the New Zealand High Court's declarations as to the Coal Agreement, assignments and changes to the WF Trust, noted above at [44].[38] That gave them "full force and effect in the United States".[39]

[48] On 20 May, Gault J dismissed the application to set aside his two earlier judgments from November and December 2023.[40]

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34 HC formal proof judgment, above n 1.
35 At [156(b)(iv)–(v)].
36 HC further relief judgment, above n 8.
37 He sought also to appeal the HC forum judgment, above n 28, out of time, but both the High Court and Court of Appeal dismissed applications to do so: *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 2407 (Gault J); and *Wikeley v Kea Investments Ltd* [2024] NZCA 58 (Gilbert and Thomas JJ).
38 *Re Wikeley Family Trustee Ltd (in liq)* No 23-50420 (Bankr ED Ky 15 May 2024) [US Bankr declarations decision].
39 At 23.
40 *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2024] NZHC 1251 at [40].

[49] On 21 May, Mr Wikeley, on behalf of himself and his sons Oliver and William Wikeley as beneficiaries of the WF Trust, wrote to the interim liquidators demanding that the interim liquidators "collect the Judgement debt to the benefit of the [WF Trust] beneficiaries with urgency". Litigation was threatened if the demand was not met.

[50] The Court of Appeal delivered its judgment on Mr Wikeley's appeal on 21 November 2024.[41] It upheld Gault J's findings of fraud but took a different view of the permanent injunctive relief. Because an appeal in Kentucky against the refusal to set aside the default judgment remained extant, the Court considered that international comity required restraint. It therefore discharged the anti-suit and anti-enforcement injunctions made in the High Court. We discuss this judgment in more detail below at [71]–[80].

New evidence application

[51] We pause the chronology to address Kea's application to adduce fresh evidence in this appeal. This comprised a sworn account of events and supporting correspondence evidencing matters that had occurred after the Court of Appeal's judgment on 21 November 2024, down to 30 October 2025. The evidence is clearly fresh, credible and cogent, being relevant updating material. We admit it under r 40 of the Supreme Court Rules 2004.[42]

Chronology continued

[52] On 2 December 2024, Mr Wikeley threatened the interim liquidators with legal and disciplinary sanctions and "Public Accountability". He wrote "[f]or and on behalf of the beneficiaries" of the WF Trust.

[53] On 19 December, the Court of Appeal stayed its November 2024 orders setting aside the injunctive relief granted in the High Court, pending application for leave to appeal to this Court.[43]

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41 CA judgment, above n 1.

42 See *Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 1)* [2006] NZSC 59, [2007] 2 NZLR 1 at [6], n 1. Contrast *Brougham v Regan* [2020] NZSC 118, [2020] 1 NZLR 315 at [73].

43 *Wikeley v Kea Investments Ltd* [2024] NZCA 686 (Cooke J) [CA stay judgment].

[54] On 28 March 2025, the High Court made interim orders that Mr Wikeley not appoint any trustee to the WF Trust, change the WF Trust's terms, act any further to take the Coal Agreement or default judgment from WFTL's ownership or control, or exercise any powers under the WF Trust's terms.[44]

[55] On 4 July, leave was granted by this Court for Kea to appeal against the Court of Appeal decision discharging the permanent anti-suit and anti-enforcement injunctions made by the High Court.[45] Mr Wikeley was denied leave to appeal against the Court of Appeal's fraud findings.[46]

[56] On 18 July, the High Court heard and determined an application by the interim liquidators for directions. The Court made orders that the interim liquidators could properly refrain from seeking to enforce or act on the default judgment.[47] The Court made further interim orders that the beneficiaries of the WF Trust (including members of the Wikeley family) not take steps to enforce or act on the Coal Agreement, default judgment or statutory demand.

[57] Those orders followed steps taken by Mr Wikeley's children in the Fayette Circuit Court hours earlier to seek and obtain orders appointing a "special fiduciary" to take control of the default judgment and oppose Kea's appeal, allegedly on the basis the interim liquidators were causing WFTL to breach its fiduciary duties as trustee. On 29 July, the United States Bankruptcy Court set aside the Circuit Court's special fiduciary orders, as being in violation of the stay it had earlier imposed.

[58] On 10 November, we allowed Kea's appeal and reinstated Gault J's permanent injunctive orders.[48]

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[44] *Kea Investments Ltd v Wikeley* HC Auckland CIV-2024-404-3182, 28 March 2025 (Minute of Gault J) at [8(a)].
[45] SC Kea leave judgment, above n 12.
[46] SC Wikeley leave judgment, above n 2.
[47] A judgment setting out the reasons for these orders was given on 22 September 2025: *Gibson v Wikeley* [2025] NZHC 2762 (Gault J).
[48] SC results judgment, above n 13.

[59] On 13 March 2026, the Chief Justice of Queensland, Bowskill CJ, convicted Mr Wikeley of contempt for breaching the Supreme Court of Queensland's orders and sentenced him to three months' imprisonment.[49]

High Court judgments

[60] We summarise the three most important High Court judgments: the interim injunction judgment, the forum judgment and the formal proof judgment.[50]

Interim injunction judgment (November 2022)

[61] Gault J's November 2022 judgment granted the interim anti-suit and anti-enforcement injunctions at issue here.[51] He considered the requirements for anti-suit injunctions to be first, that the New Zealand court must have jurisdiction over the defendant, making sure to give weight to comity considerations of whether the local court has sufficient interest or connection with the matter "to justify the indirect interference" the injunction will have on the foreign court; secondly, that the foreign proceedings' commencement or continuation, or the defendant's conduct relating to those proceedings, must be "vexatious, oppressive or otherwise unconscionable"; and thirdly, that the interests of justice must require granting the injunction.[52] In this case, an additional element—requiring "the local court [to be] the 'natural forum' for the proceeding that the defendant is trying to pursue in the foreign court"—did not need to be established because a proceeding based on fraud is "inherently abusive" and must be restrained "regardless of whether the local court could or would hear the claim".[53]

[62] For anti-enforcement injunctions, the requirements were first, that the New Zealand court has personal jurisdiction over the defendant and intervention is consistent with comity considerations; secondly, that the foreign judgment's enforcement "would be oppressive or vexatious"; and thirdly, that "the plaintiff has

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49 *Kea Investments Ltd v Wikeley* [2026] QSC 37. And see [38] above.

50 HC interim injunction judgment, above n 5; HC forum judgment, above n 28; and HC formal proof judgment, above n 1.

51 HC interim injunction judgment, above n 5.

52 At [40] citing *Lu v Industrial and Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [103].

53 At [41] citing *British Airways Board v Laker Airways Ltd* [1985] 1 AC 58 (HL) and *Midland Bank plc v Laker Airways Ltd* [1986] 1 QB 689 (CA).

good reason for not having sought an anti-suit injunction earlier … and it has otherwise acted without undue delay", which includes "where the foreign judgment has been procured by fraud, or without sufficient notice to the plaintiff to allow it to intervene".[54]

[63] Gault J concluded the Court had personal jurisdiction over each of the defendants: WFTL was a New Zealand-incorporated company with its registered office in Auckland; proceedings could be served on Mr Wikeley in Australia as if he was present in New Zealand under s 14 of the Trans-Tasman Proceedings Act 2010; and Kea appeared entitled to serve Mr Watson without leave under r 6.27(2)(a) or (h) of the High Court Rules 2016.[55] New Zealand appeared to be the appropriate forum for Kea's claims.[56] Kea's claim of tortious conspiracy being "arguable if not strong", the Judge considered it would be unconscionable, and therefore oppressive and vexatious, for the respondents to seek to enforce the default judgment.[57] Kea had not delayed.[58] Finally, the balance of convenience and interests of justice supported granting the interim injunctions.[59]

[64] Gault J's reasoning on comity formed part of his consideration of oppression and vexation. He noted that the High Court "is particularly cautious in relation to granting relief that intersects with ongoing Court proceedings in Kentucky or elsewhere" due to comity and the respect that New Zealand courts have for foreign courts, particularly such as those in the United States with similar "traditions and fundamental principles, and which have a high regard for the rule of law".[60] Courts in other countries may legitimately reach different conclusions on legal questions without occasioning breach of customary international law or manifest injustice.[61] In a passage later questioned by the Court of Appeal, he said:[62]

> [68] This is a very unusual case. Without commenting in any way on the proceedings of the Kentucky Court, absent the allegedly fraudulent

54 At [43].
55 At [45]–[46].
56 At [47]–[49].
57 At [64].
58 At [72]–[74].
59 At [75]–[80].
60 At [66].
61 At [67].
62 See in particular CA judgment, above n 1, at [189].

> Coal Agreement Kea would not have been subject to proceedings in Kentucky at all. Kea has no presence or business in Kentucky. It is there only because the allegedly fabricated Coal Agreement states the parties have agreed the jurisdiction shall be the [United States] and the contract will be governed by the laws in Lexington, Kentucky and any applicable Federal law. If the Coal Agreement is a fraud, WFTL is abusing the process of the Kentucky Court. If a New Zealand company, as trustee of a New Zealand trust, is abusing the process of the Kentucky Court to perpetuate a fraud, the New Zealand Court's intervention to restrain that New Zealand company may even be seen as consistent with the requirements of comity.

[65] He also noted that the interim nature of the relief—merely restraining enforcement "for a short period of time"—and the injunctions not being "against assets in Kentucky" weighed in favour of an injunction.[63] Kea's ability to pursue additional recourse in the Kentucky courts was not a reason to decline the limited relief sought.[64]

Forum judgment (March 2023)

[66] The forum judgment—delivered four months after the interim injunction judgment—arose from Kea's application for further orders and from WFTL and Mr Wikeley's application to dismiss or stay the proceeding on jurisdiction and forum grounds.

[67] Gault J found that there was at least a plausible evidential basis to show the Coal Agreement was a forgery, or was liable to be set aside for fraud.[65]The jurisdiction clause therefore formed no basis to decline to exercise jurisdiction on forum grounds.[66] The jurisdiction clause did not in any event cover Kea's fraudulent conspiracy claim.[67] The Judge concluded New Zealand was *forum conveniens*—having regard to personal jurisdiction in relation to the defendants (and WFTL in particular), and the association and location of parties and witnesses. Kentucky was not, lacking jurisdiction over Messrs Wikeley and Watson—and possibly WFTL also.[68]

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63 HC interim injunction judgment, above n 5, at [69].
64 At [70].
65 HC forum judgment, above n 28, at [60]–[63].
66 See at [41]–[44] applying *Brownlie v Four Seasons Holding Inc* [2017] UKSC 80, [2018] 1 WLR 192 at [7] per Lord Sumption and Lord Hughes SCJJ.
67 At [74].
68 At [83]–[88].

Formal proof judgment (November 2023)

[68] The formal proof judgment issued permanent anti-suit and anti-enforcement injunctions. Gault J held that the Coal Agreement was a forgery, the defendants committed the tort of fraudulent conspiracy, and that "WFTL can have no genuine claim against Kea under the Coal Agreement".[69] He found that:

> [114] … Mr Wikeley combined with WFTL and Mr Watson to procure the default judgment, and they also combined with Mr Hussain, and more recently with Wikeley Inc and USA Asset Holdings Inc, to defend the default judgment or otherwise harm Kea. …
>
> …
>
> [116] The use of the fraudulent Coal Agreement, the fraudulent claim under it, the subsequent fraudulent steps taken through Mr Hussain, and Mr Wikeley's breach of the Court's interim orders all amount to unlawful means and must have been intended to injure Kea by obtaining financial advantages at Kea's expense.
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> [117] I accept that Kea has suffered loss, not least the substantial costs associated with exposing the fraud and defending and bringing proceedings in multiple jurisdictions.

[69] A discussion of the relief followed. The Judge considered that the respondents' conduct breached Kea's equitable right not to be sued overseas unconscionably,[70] and that, "normally, the remedy for breach of such equitable rights is an anti-suit injunction as a form of specific performance of the obligation not to sue overseas".[71] The orders outlined above at [9] were made permanent. As noted above at [44], declarations were made that the default judgment was obtained by fraud; that it was not entitled to recognition or enforcement in New Zealand; that the Coal Agreement, and purported assignments of it and the default judgment, were void; and that the purported appointment of USA Asset Holdings as trustee of the WF Trust and the purported change in governing law of that trust were invalid. Damages equivalent today to some NZD 2.4 million were awarded against WFTL, Mr Wikeley, Wikeley Inc and USA Asset Holdings Inc. Slightly less was awarded by way of damages against Mr Watson.[72]

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69 HC formal proof judgment, above n 1, at [110] and [113].

70 At [121] citing *British Airways Board*, above n 53, at 81 and *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, [2023] AC 389 at [153]–[155] per Lord Reed P, Lord Hodge DP and Sir Geoffrey Vos MR.

71 At [121].

72 At [156].

[70] In a judgment delivered on 5 December 2023, Gault J made further orders preventing the defendants from taking steps (or causing or permitting others to take steps) to exercise the power of trustee appointment of the WF Trust, or to change the proper law of that trust.[73] For practical purposes, this may be treated as part of the formal proof judgment.

Court of Appeal judgment

[71] Mr Wikeley appealed to the Court of Appeal. The scope of the appeal encompassed three matters: (1) jurisdiction (including *forum conveniens*); (2) the substantive findings of fraud in the formal proof judgment; and (3) relief—specifically, the now-permanent injunctive orders made in the High Court and quoted above at [9].

[72] The November 2024 judgment of the Court of Appeal upheld the High Court on (1) and (2) but allowed Mr Wikeley's appeal in part on (3)—discharging the injunctive orders.[74] It did so on the basis that they breached international comity, as we go on to discuss. Discharge was stayed by subsequent order of the Court, and the orders—except for the order for the defendants to procure the default judgment's discharge—therefore remained in place.[75] The Court, however, upheld Gault J's decision that the default judgment was obtained by fraud.[76]

[73] Focusing on comity, the Court of Appeal considered this case raised the key issue of "when …a domestic court [is] justified in granting a remedy … which has the effect of interfering with the interests of a foreign legal system in administering justice within its own territory".[77] It rejected what it regarded "as the pretence sometimes used to justify incursions on international comity by way of anti-suit or

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73 HC further relief judgment, above n 8, at [7]. These orders were to last "until 28 days after the date on which the default judgment … is discharged".
74 CA judgment, above n 1, at [134]–[146], [153], [161] and [211].
75 CA stay judgment, above n 43.
76 CA judgment, above n 1, at [146].
77 At [164].

anti-enforcement injunction—that the order is only directed to the parties and not to the foreign court”.[78] This was not now “a realistic view”.[79] It continued:[80]

> As such, we need to confront, head on, the appropriateness, in comity terms, of an order which not only prevents WFTL from seeking what it says is just compensation for breach of a contract subject to the jurisdiction of the United States and choice of law clauses, but which also, in substance, is addressed to United States courts and which could, at least in theory, provoke countermeasures, with the result that no legal system will be able to administer justice.

[74] Its starting point was that courts must be “extremely cautious” before deciding there was “a sufficiently real risk justice will not be done by the foreign court”.[81] It then set out its view of the standard required for such injunctions:[82]

> As a result, before such an injunction is issued, cogent evidence will be required that the foreign court has acted or is likely to act in excess of its jurisdiction under international law, in violation of the requirements of natural justice, otherwise in a manner manifestly incompatible with New Zealand’s fundamental policies, or that its proceedings are likely significantly and irreversibly to interfere with the administration of justice in New Zealand.

[75] That caution required the Court to recognise that when deciding the weight to attach to different factors, “different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice”.[83] In such circumstances, “it is not for a New Zealand court to arrogate to itself the decision how a foreign court should determine the matter”.[84]

[76] Here the evident rationale for the injunction was the “perceived inability or unwillingness of the Kentucky Circuit Court to intervene” in the face of a default judgment entered without notice to Kea.[85] However, Kea still had an extant appeal in

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78 At [167].
79 At [167] quoting Lord Collins and Jonathan Harris (eds) *Dicey, Morris and Collins on the Conflict of Laws* (16th ed, Sweet & Maxwell, London, 2022) vol 1 [*Dicey, Morris and Collins*] at [7-013].
80 At [167] (footnotes omitted).
81 At [176] citing *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [97].
82 At [176] (footnotes omitted).
83 At [177].
84 At [177].
85 At [182].

Kentucky.[86] Anti-suit or anti-enforcement injunctions should be a "measure of last resort" because of their capacity to interfere with the interests of a foreign legal system in administering justice within its own territory.[87] Further:[88]

> We consider that, in this case, comity required that a New Zealand court at least await the outcome of the appeal process before considering whether to issue an anti-suit or anti-enforcement judgment.

[77] The Court was also particularly concerned that a contractual jurisdiction clause was not being enforced, and that the anti-enforcement injunction had worldwide effect.[89] The Court considered that it was an exorbitant exercise of jurisdiction for the High Court to enjoin WFTL and Mr Wikeley from enforcing the Coal Agreement outside New Zealand—enforcement here being entirely moot—although was not saying that "it would *never* be appropriate for a New Zealand court to issue a worldwide anti-enforcement order".[90]

[78] The Court had reservations about Gault J's assessment that acting to restrain a New Zealand company from abusing the process of the Kentucky courts to perpetuate fraud "may even be seen as consistent with the requirements of comity".[91] United States courts were equipped to deal with matters of fraud without involvement from New Zealand courts, and that was the better course.[92]

[79] It also expressed caution as to Kea's submission that "pursuit of the Kentucky proceedings was oppressive and/or vexatious on the basis that 'perpetuating a fraud is inherently unconscionable'".[93] It regarded "unconscionability" in particular as an insufficiently precise organising principle for the grant of anti-suit and anti-enforcement injunctions.[94] Again, the fraud was capable of being dealt with by

86 The Court appeared to consider that there were factors suggesting this may result in overturning the default judgment: at [184].

87 At [185] quoting Andrew Dickinson "Taming Anti-suit Injunctions" in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 77 at 104.

88 At [186] (footnote omitted).

89 At [187]—contrasting the position in *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, [2020] 1 CLC 816.

90 At [187]–[188] (emphasis in original).

91 At [189] quoting HC interim injunction judgment, above n 5, at [68].

92 At [189]. The Court noted that this may not have affected Gault J's decision to grant permanent injunctions, as the statement was made in the context of interim relief.

93 At [190].

94 At [190] citing Dickinson, above n 87, at 98.

United States courts, and suggesting litigation in that forum would be vexatious or oppressive "has the capacity to look patronising from the perspective of the United States—something which in comity terms should be avoided".[95]

[80] While Kea's attempt to seek relief in New Zealand courts was "understandable" given urgency, "absent exhaustion by Kea of its remedies in Kentucky, … comity requires the New Zealand courts to keep their powder dry".[96]

Submissions on appeal

Kea

[81] For Kea, Mr Smith KC submitted that the anti-suit and anti-enforcement injunctions should be reinstated. Kea's presence in Kentucky was based on WFTL's fraud. It should not be litigating in that jurisdiction. The Coal Agreement was a forgery and was being sued upon fraudulently—the jurisdiction clause in that agreement having no validity. Fraud unravels all.[97] No one can claim the benefit of a forged contract, or a judgment obtained by wrongfully seising a foreign court in pursuance of that fraud. Kea had no connection with Kentucky other than one invalidly manufactured by the respondents. The equitable remedies of anti-suit and anti-enforcement injunctions exist precisely to restrain such abuse of litigation.

[82] Kea had no prior connection to Kentucky, and did not take steps to challenge jurisdiction because it was not aware of the claim at all. It did apply to set aside the default judgment on the grounds that the Kentucky Circuit Court lacked jurisdiction and that it had a defence. But the Court dismissed the application, declining to consider whether the default judgment had prima facie been obtained by fraud or, indeed, whether it had jurisdiction. It also dismissed an application for reconsideration. Kea appealed against those decisions, but the difficulty was obtaining stay: expert evidence established that Kea's only effective means to obtain stay was to put up a supersedeas bond of USD 100 million. As Mr Smith put it, this was the appeal the New Zealand Court of Appeal considered Kea must pursue.

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95 At [191].
96 At [194].
97 *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6, [2003] 1 All ER (Comm) 349 at [15] per Lord Bingham and Lord Steyn.

[83] The Court of Appeal had endorsed the High Court's forum analysis and accepted the claims as to fraudulent conspiracy were governed by New Zealand law. Kentucky was not, therefore, an available forum to adjudicate and restrain the broader conspiracy against Kea. New Zealand was the only forum in which the wider conspiracy could be adjudicated, and effective injunctive relief granted against all respondents. The United States Bankruptcy Court had been satisfied that the High Court's approach to jurisdiction was reasonable and just and reflected the due process the United States court would expect. It observed that the global fraud cried out for resolution in one forum—i.e., New Zealand. The Bankruptcy Court had also recognised the New Zealand liquidation as a foreign main proceeding, which triggered a stay of proceedings in the Kentucky State Court. Despite the dismissal of his jurisdiction and forum challenge in New Zealand, Mr Wikeley incorporated new Kentucky companies for the purpose of taking an assignment of the default judgment and replacing the trustee of the WF Trust. He also purported to change the law of the trust from New Zealand law to Kentucky law.

[84] Addressing the relevant conflict of law principles, Mr Wass submitted that anti-suit and anti-enforcement injunctions are an equitable remedy for (1) breach of a legal or equitable right; or (2) vexatious, oppressive or otherwise unconscionable litigation. Unconscionability is the underlying organising principle in equity and was a "foot of the law of anti-suit injunctions".[98] It was unconscionable for the respondents here to pursue a fraudulent claim in breach of adjudicated rights, in a forum with no connection, and which has no genuine purpose or legitimate basis. The fraudulent litigation is inherently unconscionable. It also breaches Kea's right not to be sued in a foreign court with which it has no connection. The Court of Appeal erred in basing its assessment of comity on an assumption that the Kentucky proceedings involved a right to "just compensation for breach of a contract subject to the jurisdiction of the United States and choice of law clauses" when its own fraud findings meant that there was no such contract, choice of jurisdiction, choice of law or claim for just compensation.[99] WFTL had no lawful right to invoke the jurisdiction of the Kentucky courts at all.

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98 Adrian Briggs *The Conflict of Laws* (5th ed, Oxford University Press, Oxford, 2024) at 94.
99 CA judgment, above n 1, at [167].

[85] Comity does not involve blind deference but requires consideration of the extent of the foreign court's genuine connections to the case and the local court's legitimate interest in restraining the respondent. Restraint here was not an affront to the United States courts—as expert witnesses for both sides had recognised. Anti-suit and anti-enforcement injunctions are not categorically different. Fraud is the paradigm case for an anti-enforcement injunction because the act of obtaining the judgment in the first place was wrongful.

[86] The Court of Appeal was also wrong to suggest that anti-enforcement injunctions are confined to cases of contractual jurisdiction clauses. The decision of the English Court of Appeal almost a century ago in *Ellerman Lines Ltd v Read* confirmed that anti-enforcement injunctions can be justified in cases of fraud, without breach of a contractual jurisdiction clause.[100]

[87] The Court of Appeal also erred in suggesting that comity requires limiting the availability of anti-suit or anti-enforcement injunctions to cases where the foreign court is acting or likely to act in excess of jurisdiction, in violation of natural justice, in a manner incompatible with New Zealand public policy or likely to interfere with the administration of justice in New Zealand. That approach would direct the court's attention away from the defendants' conduct and to the quality of justice in the foreign court—a course that has the potential to exacerbate rather than mitigate comity concerns.

[88] The Court also erred in deprecating what it called the "pretence" that relief is directed to the defendants, not the foreign court, as justification for why injunctive relief does not offend comity.[101] That criticism was misplaced. Such relief does have an impact on the foreign court, and that is part of the reason for the court's caution. But, Mr Wass submitted, the personal character of the relief is no fiction: it is the conduct of the defendant and its impact on the plaintiff in the foreign court that is the focus of the inquiry. Stopping fraud requires use of all tools at the courts' disposal and "international co-operation between the courts of different jurisdictions".[102]

[100] *Ellerman Lines Ltd v Read* [1928] 2 KB 144 (CA) at 150–153 per Scrutton LJ.
[101] CA judgment, above n 1, at [167].
[102] Quoting *Bank of Crete SA v Koskotas (No 2)* [1992] 1 WLR 919 (Ch) at 925; and citing *First American Corp v Zayed* [1999] 1 WLR 1154 (CA) at 1165.

Finally, there was no requirement to bring proceedings to a conclusion in the foreign court first. There was no authority for a requirement to exhaust appeals, and exhausting appeals could in any event count against granting relief.[103] The idea that the New Zealand courts should wait and see whether the Kentucky courts do the "correct" thing is "not only invidious but the reverse of comity".[104]

Interim liquidators of WFTL

[89] For the interim liquidators of WFTL, Mr Arthur submitted that the permanent injunctions should be reinstated. The Court of Appeal judgment had created practical difficulties for the liquidators which should have been—but were not—considered by the Court of Appeal. Liquidators are officers of the Court, bound to act consistently with highest principles. The principle in *Re Condon* means they cannot take advantage of strict legal rights if to do so would be to act unjustly, inequitably or unfairly.[105] The findings of fraud were final in the Court of Appeal, but that Court took the view that Kea's appeal in Kentucky should run its course. That seemed to assume that the Kentucky Court would revisit and rule on the consequence of the fraud here, an assumption of concurrent jurisdiction that is incompatible with the Court of Appeal's rejection of Mr Wikeley's protest to jurisdiction.

[90] Further, WFTL was the primary respondent in the Kentucky appeal. If WFTL's liquidators were to oppose Kea's appeal on the basis the default judgment was valid, that would involve a continuation of the fraud by them. If Kea's appeal in Kentucky were successful, for the liquidators to act in support of the substantive claim brought by WFTL on the Coal Agreement—as Mr Wikeley was plainly expecting—would generate the same issue. The liquidators could not do either of these things without risking loss to creditors—inconsistent with the liquidators' duties to them. Nor could they simply hand control over to a third party who would use it to perpetuate fraud.

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103 *Ecobank Transnational Inc v Tanoh* [2015] EWCA Civ 1309, [2016] 1 WLR 2231 at [132]–[137].

104 Quoting *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 (CA) at 95 per Leggatt LJ; and citing *ACE Insurance Ltd v Moose Enterprise Pty Ltd* [2009] NSWSC 724, (2009) 15 ANZ Insurance Cases ¶61-818 at [10].

105 *Re Condon, ex parte James* (1874) LR 9 Ch App 609 (CA)—endorsed by the Court of Appeal in *Strategic Finance Ltd (in rec and in liq) v Bridgman* [2013] NZCA 357, [2013] 3 NZLR 650 at [108]–[120].

[91] At the same time, members of the Wikeley family and associates had threatened to sue the liquidators personally due to their refusal to enforce the default judgment. They had tried to remove the judgment from the liquidators' control. They had taken steps in both Kentucky and the United States bankruptcy jurisdiction challenging the liquidators' actions. Reinstatement of the injunctions was necessary to protect the liquidators personally, and also to protect the processes of the Court that led to their appointment.

[92] What the liquidators wished to do was to discharge the default judgment obtained by fraud. But the Court of Appeal's judgment created uncertainty that precluded that step being taken.

Counsel assisting

[93] Ms Kirk was appointed counsel to assist the Court, to ensure it had a coherent contradictory argument before it. She submitted that the Court of Appeal was correct to discharge the permanent anti-suit and anti-enforcement injunctions. Such injunctions are "extraordinary remedies" and rarely given. Courts in some jurisdictions do not have the power to grant them.[106] When given, they are primarily used to restrain proceedings in breach of an arbitration or exclusive jurisdiction clause. Anti-enforcement injunctions are exceptionally rare and should be granted with great caution and only as a last resort.[107] New Zealand courts do have the power to issue such injunctions, and circumstances of fraud may justify issuing one, but whether to do so depends on the particular facts. Comity is a key consideration here because the Kentucky Courts have not yet considered the implications of the New Zealand courts' findings of fraud on the default judgment.

[94] Ms Kirk submitted that, in this case, the Court of Appeal correctly analysed and applied the core principles, balancing comity and protecting Kea from further fraud. It appropriately weighed factors such as comity, public policy, finality of the judgment, the risk of oppression to Kea and the existence of the underlying fraud.

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106 Gary B Born *International Commercial Arbitration* (3rd ed, Wolters Kluwer, Alphen aan den Rijn, 2020) vol 1 at 1400–1401.

107 *Ecobank*, above n 103, at [118]; *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] SGCA 10 at [97]–[99]; and *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2008] EWCA Civ 625, [2009] QB 503 at [94].

It was correct to find that the injunctions interfere with the process of foreign courts,[108] and so comity principles must be considered carefully, especially where—as here—the injunctions would prevent enforcement of a judgment which is considered valid in its home forum. If Kea is successful in the Kentucky courts, then this achieves the objective without New Zealand courts intruding on a foreign jurisdiction. Furthermore, this Court should be cautious to accept arguments that anti-enforcement injunctions aid or enhance comity.[109] Because the present case does not centre on an arbitration clause or exclusive jurisdiction clause, comity concerns are heightened.

[95] Ms Kirk submitted it was appropriate to require Kea to pursue normal appeal routes in the Kentucky courts to have the default judgment overturned before injunctions are granted. While there is no express requirement to exhaust the foreign jurisdiction's remedies, that course was normally exhausted before an anti-enforcement injunction was granted.[110] It helped to alleviate the concern that anti-enforcement injunctions have the capacity to interfere with foreign courts administering justice in their own territory. Although New Zealand courts may be the natural forum for dealing with the fraud, the Kentucky courts are the proper forum for dealing with the default judgment's validity. Because the default judgment remains valid under Kentucky law, it is appropriate that the Kentucky legal system be allowed to address it. That course cannot be seen as vexatious or oppressive without there clearly being no prospect that it could lead to overturning the default judgment (which is not the case here).

[96] The judgment created a connection between Kea and the Kentucky courts, and it is irrelevant that the procedures for setting aside the default judgment are different to in New Zealand. The authorities relied on by Kea do not support its position that

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108 *British Airways Board*, above n 53, at 95 per Lord Scarman; and *Airbus Industrie GIE v Patel* [1999] 1 AC 199 (HL) at 138–140.

109 Emmanuel Gaillard "Coordination or Chaos: Do the Principles of Comity, *Lis Pendens*, and *Res Judicata* Apply to International Arbitration?" (2018) 29 ARIA 205 at 206.

110 Counsel gave as the example of *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] 1 AC 871 (PC).

comity considerations are less relevant in the context of fraud. The possibility of the Kentucky Court using countermeasures is an appropriate consideration.[111]

Mr Wikeley

[97] Mr Wikeley, appearing on his own behalf, submitted that the Kentucky default judgment was fairly obtained in the United States. He submitted that he was not a fraudster or part of any conspiracy. As we noted above at [5] however, this Court denied Mr Wikeley leave to challenge the concurrent fraud findings in the Courts below.

[98] He submitted the Court of Appeal was correct to discharge the injunctions, which were "unnecessary and wrong". The liquidators are not neutral and had paralysed WFTL's defence. The practical difficulties outlined in the interim liquidators' submissions supporting the injunctions do not meet the threshold for such relief. Kea and the liquidators had wrongfully tried to convert the interim liquidation into full liquidation. Directions from the High Court not to enforce the default judgment pending foreign proceedings would be sufficient. *Re Condon* does not support the injunctions, and the liquidators' integrity was protected within existing supervision. Mr Wikeley submitted Kea's failure to pursue its Kentucky appeal is the true cause of uncertainty. It is for the Kentucky courts to determine the question of fraud and whether to set aside the default judgment—and Kea had manufactured the fraud allegations to avoid the USD 100 million security for costs requirements for a Kentucky appeal. Ultimately, Mr Wikeley submitted the threshold for the injunctions was not met and reinstating them would be overreach.

[99] We gained very limited assistance from these submissions.

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111 *Amchem Products Inc v British Columbia (Worker's Compensation Board)* [1993] 1 SCR 897; and Michael E Schneider "Court Actions in Defence Against Anti-Suit Injunctions" in Emmanuel Gaillard (ed) *Anti-Suit Injunctions in International Arbitration* (Juris Publishing, New York, 2005) 41 at 42.

Was the Court of Appeal correct to rescind the injunctions issued by the High Court?

[100] In our prior (results) judgment we found the Court of Appeal erred in rescinding the injunctions issued by the High Court. We now explain why.

Starting points: the indisputable factual context is one of fraud, and New Zealand is the proper jurisdiction to deal with that fraud

[101] The now-indisputable factual context is worth restating. First, the Coal Agreement was a forgery. Secondly, the default judgment, based on the forged Coal Agreement, is itself the product of fraud. Thirdly, the purported assignments of the default judgment and Coal Agreement to Wikeley Inc in March 2023 were ineffective; they remain "assets" of WFTL, which is now controlled by the liquidators.

[102] Four essential jurisdictional points should also be made now. The jurisdiction clause of the Coal Agreement being as fraudulent as the rest of the document, it follows that Kea had not submitted to the jurisdiction of Kentucky when the default judgment was given. Secondly, it was uncontested on appeal that the courts of New Zealand retain personal jurisdiction over both WFTL and Mr Wikeley. Thirdly, it has been determined already that New Zealand is the proper jurisdiction to deal with Mr Wikeley and WFTL's fraud.[112] Fourthly, New Zealand would not, of course, be the natural jurisdiction to deal with a claim brought under the Coal Agreement for breach, if that agreement were valid rather than fraudulent. But that is entirely beside the point; the Kentucky courts' engagement here is the product of fictitious obligations and a fictitious breach.

[103] The context for this Court is, therefore, slightly different from that in the High Court prior to its formal proof judgment. Until that judgment was delivered, fraud was only a strongly arguable possibility. Once that judgment was delivered, fraud was a fact—a finding undisturbed by the Court of Appeal or by this Court. We do not suggest this undermines the approach taken by Gault J, whose initial instinct was entirely correct. But this Court acts in a factual context in which fraud is a

[112] See the HC forum judgment, above n 28, at [75]–[91]; and CA judgment, above n 1, at [153] and [161].

certainty. That makes our task (and made that of the Court of Appeal) easier than Gault J's was in November 2023.

Anti-suit and anti-enforcement injunctions generally

[104] Both anti-suit and anti-enforcement injunctions have their origin in the common injunction granted from the early 17th century by courts of equity (in Chancery) to restrain proceedings in the common law courts. This involved the assertion of equitable jurisdiction over that of the common law. It was a natural extension of that jurisdiction then, in the early 19th century, to restrain the pursuit of vexatious or oppressive proceedings in foreign courts—that history explaining why the jurisdiction is very much a creature of the Anglo-American common law.[113]

[105] As the authors of *Nygh's Conflict of Laws in Australia* point out, the common injunction, unlike the writ of prohibition, was and is an order *in personam*—restraining the party whose acts were unconscionable, rather than purporting to restrain the court proposing to entertain his or her suit.[114] This distinction was described by the Court of Appeal here as a "pretence".[115] We disagree. Rather, it remains fundamental to anti-suit and anti-enforcement injunctions.[116] While the jurisdictional conflict arising may indirectly impinge on the freedoms of the foreign jurisdiction, in constraining the capacity of a party there to initiate or participate in proceedings, or to comply with an order made by the foreign court, the formal restraint remains personal rather than institutional.

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113 Martin Davies and others *Nygh's Conflict of Laws in Australia* (11th ed, LexisNexis, Sydney, 2026) [*Nygh's Conflict of Laws*] at [9.2]. See *Lord Portarlington v Soulby* (1834) 3 My & K 103, 40 ER 40 (Ch), involving an injunction granted to restrain action in Ireland on an endorsed bill drawn in satisfaction of an illegal gambling debt. Lord Brougham LC said, "the whole question would be free from difficulty but for one peculiarity in the case; the action is brought in Ireland, and the interposition of this Court is sought to stop proceedings there. That this an unusual proceeding must be admitted, but I do not see any ground for questioning the competency of it. … In truth, nothing can be more unfounded than the doubts of the jurisdiction. That is grounded, like all other jurisdiction of the Court, not upon any pretension to the exercise of judicial and administrative rights abroad, but on the circumstance of the person of the party on whom the order is made being within the power of the Court": at 106 and 108.

114 *Nygh's Conflict of Laws*, above n 113, at [9.2]–[9.4]. See also Hook and Wass, above n 10, at [2.423].

115 CA judgment, above n 1, at [167].

116 Hook and Wass, above n 10, at [2.423].

[106] Modern authority suggests that the essential elements for the anti-suit injunction are four.[117] First, the domestic court making the order must have personal jurisdiction over the defendant. Secondly, that court must have a sufficient connection to the dispute to be the natural forum for the proceeding—and in particular for the issue of that order. Thirdly, the defendant's conduct in threatening or bringing proceedings in the foreign court must be wrongful (or the plaintiff has the right not to be sued in that place, or it would interfere with the administration of justice). Fourthly, the interests of justice must require the issue of the injunction. It must, in other words, be necessary that the order be made.

[107] Wrongfulness (whether described as unconscionability, vexatiousness or oppression) was not necessarily a feature of the early equitable judgments; the relative incompetence of the common law courts to deal with particular claims might also justify injunction.[118] But, at least in private and international law in this century, an anti-suit or anti-enforcement injunction tends to depend on there being something wrongful—either unconscionable (or vexatious or oppressive) litigation in a foreign state, or the disregard of a right in contract not to be sued in the foreign state. Fraud of the kind in the present case presents no difficult inquiry as to qualifying unconscionability.

[108] Anti-enforcement injunctions serve a similar function to anti-suit injunctions, and their underlying requirements are essentially the same.[119] There is some authority to the effect that an anti-enforcement injunction should only be granted in "exceptional circumstances".[120] We prefer the approach of Males LJ in *SAS Institute Inc v World Programming Ltd*, where he observed that there is no such distinct jurisdictional requirement, and that while anti-enforcement injunctions are only rarely granted, that

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117 See generally *Société Nationale Industrielle Aerospatiale*, above n 110. See also Briggs, above n 98, at 93–102; *Dicey, Morris and Collins*, above n 79, at [12-125] and [12-132]–[12-135]; Hook and Wass, above n 10, at [2.426]–[2.443]; and Adrian Briggs *Civil Jurisdiction and Judgments* (8th ed, Routledge, Oxford, 2025) at 418–447. The elements have often been described as three, but this omits the usual requirement that the domestic court has personal jurisdiction over the defendant: see, for example *Lu*, above n 52, at [103].

118 Dickinson, above n 87, at 98.

119 See *SAS Institute Inc*, above n 89, at [92]–[99].

120 See, for example, *Sun Travels & Tours*, above n 107, at [99]; *Masri*, above n 107, at [94] per Lawrence Collins LJ; *Kea Investments Ltd v Wikeley (No 2)* [2023] QSC 215, (2023) 381 FLR 372 at [176]; and *Dicey, Morris and Collins*, above n 79, at [12-139].

is because it is only in a rare case that the conditions for their grant will be met.[121] As Professor Adrian Briggs observes:[122]

> If anything, the taking of steps to enforce a judgment which should not have been obtained in the first place aggravates the original wrong. The result is that an English court may order an injunction to restrain a judgment creditor who committed a legal wrong in obtaining a foreign judgment from enforcing that foreign judgment overseas.

[109] Two points of distinction might be noted. The first is that the applicant for an anti-enforcement injunction will have to explain why any delay in applying for such orders ought not to be disqualifying—including why an anti-suit injunction had not been sought earlier.[123] The second is that comity may demand particular restraint where the effect of the anti-enforcement injunction is to restrain enforcement in the country in which the judgment was given.[124] Significantly, neither consideration applies in the present appeal.

Orders made in this case

[110] As a matter of taxonomy, all primary orders made by Gault J in this case—set out above at [9]—are anti-enforcement, rather than anti-suit, injunctions. Order (a) is however nearest the border: "consent and otherwise take all steps necessary to procure the discharge of the default judgment". In substance it recognises WFTL has the judgment, and it tells WFTL—unquestionably subject to the High Court's jurisdiction—what it now must do with it. It does not purport to tell the Kentucky courts to do anything—and of course some peculiarity of foreign civil procedure may prevent WFTL carrying order (a) into effect. But order (a) directs that it must try to do so.

[111] Orders (b) and (c) are common-form anti-enforcement injunctions. They are readily comparable to international freezing orders (or *Mareva* injunctions)—which, as counsel acknowledged, ordinarily give rise to few comity concerns, despite having

121 *SAS Institute Inc*, above n 89, at [93].
122 Briggs, above n 117, at 463 (footnote omitted).
123 *Ecobank*, above n 103, at [120]–[123] and [132]–[135]; *SAS Institute Inc*, above n 89, at [104]; and Tiong Min Yeo "Foreign Judgments and Contracts: The Anti-enforcement Injunction" in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 251 at 255–258.
124 *Masri*, above n 107, at [93]; *SAS Institute Inc*, above n 89, at [106].

been described as "one of the law's two 'nuclear' weapons".[125] That is so despite the fact that such orders not only limit the freedom of action of a defendant (subject to the domestic jurisdiction) in moving assets held in the foreign jurisdiction but also may impinge on the freedom of innocent third parties in that foreign jurisdiction who have some measure of control over those assets.[126] As Foxton J has observed extrajudicially, the latter extension is perhaps more dramatic than the initial expansion of *Mareva* injunctions beyond the domestic jurisdiction.[127] Indirectly, they may also impinge on the freedom of action of a foreign court if it is minded to make orders as to the disposition of assets which are inconsistent with those freezing orders.

[112] Finally, we note orders (d), (e) and (f) are ancillary in nature. However, they have proved essential to ensure maintenance of the High Court's jurisdiction (so that control over the default judgment could not be transferred out of that jurisdiction) and compliance with the Court's orders. The unavailing but persistent attempts by the respondents to change trusteeship of the WF Trust, to remove the WF Trust from the High Court's supervisory jurisdiction and to assign the default judgment demonstrate the need for such orders.[128]

Comity

[113] The decision of the Court of Appeal was driven by the view it took of countervailing considerations of comity in private international law. We turn to comity now. As we noted earlier, comity concerns the need for domestic courts to respect the legitimate exercise of jurisdiction by the courts of a foreign state.

[114] The Court of Appeal saw comity as requiring it to confront orders made by the High Court which prevented WFTL from seeking "what it says is just compensation for breach of a contract subject to the jurisdiction of the United States and choice of

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125 *Bank Mellat v Nikpour* [1985] FSR 87 (CA) at 92 per Donaldson LJ.

126 The effectiveness of such orders as against third parties not otherwise subject to the domestic jurisdiction will normally depend, however, on similar orders being sought in the foreign jurisdiction: *Babanaft International Co SA v Bassatne* [1990] 1 Ch 13 (CA) at 32 per Kerr LJ. That is also the effect of High Court Rules 2016, r 32.6(1) and sch 1 Form G 38 cl 11.

127 David Foxton "'The Big Freeze': The Rise and Rise of the *Mareva* Injunction" (speech to the Manchester Business and Property Courts Forum, 30 October 2024) at [28]–[30].

128 See above at [35]–[36], [39]–[40] and [42].

law clauses, but which also, in substance, is addressed to United States courts".[129] That meant a starting point of extreme caution before deciding there was "a sufficiently real risk justice will not be done by the foreign court", with cogent evidence that the foreign court was likely to act "in excess of its jurisdiction under international law", "in violation of the requirements of natural justice", "otherwise in a manner manifestly incompatible with New Zealand's fundamental policies", or in a way "likely significantly and irreversibly to interfere with the administration of justice in New Zealand".[130]

[115] Ms Kirk referred to Third Circuit authority that "[t]he primary reason for giving effect to the rulings of foreign tribunals is that such recognition factors international cooperation and encourages reciprocity. Thus, comity promotes predictability and stability in legal expectations, two critical components of successful international commercial enterprises".[131] Justice James Edelman and Madeleine Salinger describe comity as "a concept of 'very elastic content'".[132] They contend that comity is based on "the respect for the territorial sovereignty of other states", which in turn is based on the general understanding "that each state consents to respect each other".[133] But it is not a "hard-edged rule", and it gives way to respect for fundamental principles of justice.[134]

[116] We accept that comity is a consideration necessitating caution in making anti-suit or anti-enforcement injunctions that cut across the authority of a foreign court acting within its legitimate jurisdiction. It is one thing to decline to recognise a foreign judgment, for instance because of public policy concerns. It is another entirely to issue an injunction calculated to prevent a foreign court from acting or (it having done so) calculated to render its output void—at least within the foreign court's jurisdiction.

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129 CA judgment, above n 1, at [167] (footnote omitted).
130 At [176].
131 *General Electric Co v Deutz AG* 270 F 3d 144 (3d Cir 2001) at 160. See also Gaillard, above n 109, at 214 citing *URS Corp v The Lebanese Company for the Development and Reconstruction of Beirut Central District SAL* 512 F Supp 2d 199 (D Del 2007) at 210.
132 James Edelman and Madeleine Salinger "Comity in Private International Law and Fundamental Principles of Justice" in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 325 at 327 quoting an earlier edition of *Dicey, Morris and Collins*, above n 79. The most recent edition uses the same expression: at [7-002].
133 At 325.
134 At 355–356.

Because anti-suit and anti-enforcement injunctions interfere with the ability of the foreign court to control its procedure, they must engage comity considerations.[135] But comity has a measure of elasticity. It does not entail blind deference.[136]

Fraud reframes ordinary comity considerations

[117] Fraud reframes ordinary comity considerations in two respects. First, in the form it took in this appeal, fraud represents a paradigm, indeed extreme, example of vexatious and oppressive conduct on which anti-enforcement relief may readily be granted if the issuing court has the fraudster in its jurisdiction. Secondly, the procurement of a foreign judgment by fraud, and efforts thereafter to enforce it, engage a mutual interest in both courts to act quickly and effectively to restrain such conduct. Respect by the foreign court for the domestic court's anti-fraud orders may reasonably be expected. We now enlarge on these two themes.

[118] It has been said (and was said by Kea's counsel) that "fraud unravels all": *fraus omnia vitiat* is a legal maxim of obvious antiquity.[137] In *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank*, Lord Bingham described fraud as a "thing apart".[138] Fraud, for instance, is one of the exceptions to finality of judgment.[139] The policy arguments for that exception, enabling a litigant to seek the setting aside of judgments shown to have been obtained by fraud, have been said to be "overwhelming".[140]

[119] As we have seen, Equity has proved willing to intervene in the interests of justice to issue an anti-suit injunction in cases of party misconduct where the defendant is acting vexatiously and oppressively in initiating foreign proceedings (when the domestic court is the natural forum and has jurisdiction over that defendant).[141]

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135 *British Airways Board*, above n 53, at 95 per Lord Scarman; *Sun Travels & Tours*, above n 107, at [69]; and Briggs, above n 117, at 414–415.

136 Adrian Briggs "The Principle of Comity in Private International Law" in *Recueil des Cours: Collected Courses of the Hague Academy of International Law* (Martinus Nijhoff, Leiden, 2012) at 91.

137 Or *fraus omnia corrumpit*: *HIH*, above n 97, at [15] per Lord Bingham and Lord Steyn.

138 At [15] quoting *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2001] EWCA Civ 1250, [2001] 2 Lloyd's Rep 483 at [160] and [169].

139 *The Ampthill Peerage* [1977] AC 547 (HL) at 569 per Lord Wilberforce.

140 *Takhar v Gracefield Developments Ltd* [2019] UKSC 13, [2020] AC 450 at [53] per Lord Kerr, Lord Hodge, Lord Lloyd-Jones and Lord Kitchin SCJJ.

141 Above at [106]–[107].

Where fraud is involved, considerations of comity adjust. As Professor Briggs notes, "[n]o doubt it is true that the grosser the perceived misconduct of the party to be restrained, the less will a sense of judicial comity constrain the court."[142]

[120] The authors of *Nygh's Conflict of Laws* note Perram J's observation that the foreign proceedings involved in *Morris v McConaghy Australia Pty Ltd (No 3)* had been brought to harass the applicant and go on to state that "[i]t will be a rare case where direct evidence will be available to sustain an anti-suit injunction on this basis".[143] The present appeal is that rare case, however. Fraud is an extreme example of vexatious and oppressive conduct, going well beyond the harassment or bad faith ordinarily considered sufficient in such anti-suit injunction cases. Such cases are still rare, but not at all unknown.[144]

[121] One example of a case based on fraud is found almost a century ago in *Ellerman Lines Ltd v Read*.[145] It has some parallels with the present appeal.[146] A ship had run aground on the Romanian coast near Constanza. The parties entered a Lloyd's salvage agreement. It provided for London arbitration, and the defendant salvors undertook not to arrest the ship if security for their salvage claim had been lodged. Security was lodged, and a payment of £4,000 had been made on account. The defendants nonetheless arrested the vessel at Constantinople, claiming they had not authorised their solicitors to accept the security, and brought a salvage claim in a Turkish court. The master of the vessel appeared to contest the claim, but the defendant Landi—a British subject—gave false evidence on oath that he had not authorised the solicitors in London to accept the security. The master then withdrew, and default judgment for £23,890—at least six times the actual value of the vessel—was given by the court (this in addition to the £4,000 paid on account). The salvors sought to enforce the Turkish award in England, where the owners were based. The owners sought an injunction to prevent enforcement, which was

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142 Briggs, above n 98, at 95.

143 *Nygh's Conflict of Laws*, above n 113, at [9.34] citing *Morris v McConaghy Australia Pty Ltd (No 3)* [2018] FCA 606 at [19]–[20].

144 See, for example, *Smith Kline & French Laboratories Ltd v Bloch* [1983] 1 WLR 730 (CA), in which the defendant was restrained from pursuing a vexatious but non-fraudulent contract claim in United States—conduct which Lord Denning MR described as harassment: at 739.

145 *Ellerman Lines*, above n 100.

146 The facts are set out at 144–148.

granted on an interim basis. MacKinnon J at trial held that the salvors had committed a "deliberate and shameless" breach of contract in arresting the vessel and that Landi lied when he said he had not authorised the solicitors to agree to the security.[147] He held, however, that he lacked the power to grant an injunction restraining the salvors from enforcing the Turkish judgment outside of England, whether in Turkey or elsewhere. The owners appealed.

[122] Scrutton LJ's analysis was characteristically direct as to why an anti-enforcement injunction—a novelty at that point—ought to be made:[148]

> [Counsel for the defendants] took the point that while an injunction can be granted to restrain the institution or continuation of proceedings in a foreign Court there is no power, after the foreign Court has given judgment, to grant an injunction restraining the person who has obtained it from reaping its fruits. If there is no authority for this it is time that we made one, for I cannot conceive that if an English Court finds a British subject taking proceedings in breach of his contract in a foreign Court, supporting those proceedings, and obtaining a judgment, by fraudulent lies, it is powerless to interfere to restrain him from seeking to enforce that judgment. I am quite clear that such an injunction can be and in this case ought to be granted in the terms asked for in the statement of claim.

[123] Atkin LJ reasoned similarly, drawing on the related history of the common injunction in Chancery:[149]

> If the English Court finds that a person subject to its jurisdiction has committed a breach of covenant, or has acted in breach of some fiduciary duty or has in any way violated the principles of equity and conscience, and that it would be inequitable on his part to seek to enforce a judgment obtained in breach of such obligations, it will restrain him, not by issuing an edict to the foreign Court, but by saying that he is in conscience bound not to enforce that judgment. It was every-day procedure at one time for the Court of Chancery to restrain a person from proceeding upon a judgment obtained in a common law Court where it was necessary to do so.

[124] Eve J concurred, making the point that:[150]

> … if ever there was a case calling for [the jurisdiction to grant an anti-enforcement injunction's] exercise, this is the one. The foreign proceedings here were instituted and prosecuted in clear breach of contract, and the judgment was ultimately obtained by a deliberate and flagrant

147 At 147.
148 At 152–153.
149 At 155.
150 At 158.

> misrepresentation. The appellants in those circumstances are entitled to all the protection which this Court can extend to them.

[125] The principle underlying *Ellerman*—that a person subject to domestic jurisdiction who procures a foreign judgment by fraud may be made the subject of an anti-enforcement injunction—must be correct. Ms Kirk was concerned that a more nuanced understanding of comity has developed in the ensuing century. While that may well be so, the point we make here is that fraud—particularly by procurement and attempted enforcement of a fraudulent judgment—necessarily reframes ordinary comity considerations.

[126] *Ellerman* was followed by the England and Wales Court of Appeal in 2014 in *Bank St Petersburg OJSC v Arkhangelsky*, the facts of which need not concern us (although the alleged fraudulent or vexatious nature of the proceedings there—involving the pursuit of "almost 30 parallel proceedings" in Russia, France and Bulgaria—had not yet been proved at trial).[151] *Ellerman* was followed also in *Commercial Bank of Dubai PSC v Al Sari*, a decision of the Commercial Court.[152] In that case—which also has parallels with the present appeal—the plaintiff bank, seeking to enforce a judgment debt exceeding £80 million, was confronted by an attempted set-off of a greater sum under a judgment procured by the defendants' fraud in Sharjah. The bank had appealed in Sharjah but without success. Calver J found the judgment was obtained by fraud, being based on documents that were "inauthentic, backdated and signed without authority … in an attempt to prevent the Bank from enforcing its judgment".[153] The fraudulently procured judgment was of course unenforceable in England. Further, the fraudulent judgment creditor having submitted to English jurisdiction in the pursuit of its fraud, it would be made the subject of an anti-enforcement injunction.[154]

[127] It is worth emphasising again that the fraud in the present appeal has been found, not merely alleged. That finding is now beyond all issue.[155] In a case where

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151 *Bank St Petersburg OJSC v Arkhangelsky* [2014] EWCA Civ 593, [2014] 1 WLR 4360 at [10] and [36]–[38].
152 *Commercial Bank of Dubai PSC v Al Sari* [2025] EWHC 1810 (Comm) at [171]–[183].
153 At [134].
154 At [181]–[183].
155 See above at [5], [55] and [97].

the foreign jurisdiction has been invoked on the basis of a forged instrument, fraudulently representing a contractual consensus that never existed, and a submission by Kea to that jurisdiction never in fact made, Professor Briggs' remark that "the grosser the perceived misconduct of the party to be restrained, the less will a sense of judicial comity constrain the court", must apply.[156] Such fraud sets out to make a fool of both jurisdictions. One court exerts jurisdiction upon a wholly false premise—both as to jurisdiction and obligations; the other—despite being the proper forum to address the fraud—is then counselled to act with restraint out of a need for comity for the first court.

[128] Turning to the second point made at [117], it should be able to be assumed, as a matter of comity, that every jurisdiction here invoked—Kentucky, British Virgin Islands, New Zealand, Queensland and the United States federal bankruptcy jurisdiction—have a mutual interest in stifling cross-border fraud of this kind. And all the more so when the first jurisdiction is invoked not to respond to the fraud, but to effect it through entirely false assertions as to submission to jurisdiction and breach of obligation. Stopping cross-border fraud requires "international co-operation between the courts of different jurisdictions".[157] No other approach would accord with a commitment to the rule of law. Orders of the measured kind made by the High Court here enhance, rather than erode, comity.

[129] In the present appeal, Kea had called unrebutted expert evidence in the High Court from Professor Linda Silberman of the New York University School of Law in which she concluded that:

> … an anti-suit injunction in these circumstances would be consistent with international standards of comity, including as recognized and applied by the courts of the United States, if a court were satisfied that it was appropriate to restrain what would otherwise b[e] a serious risk of the continued perpetration of a fraud.

[130] That opinion is consistent with the 15 May 2024 opinion of the United States Bankruptcy Court—given after the decision of the Court of Appeal. It granted the liquidators' motion "in part to assist the New Zealand High Court with enforcement

[156] See above at [119]; and Briggs, above n 98, at 95.
[157] *Bank of Crete*, above n 102, at 925. See also *First American*, above n 102, at 1165.

of its Orders".[158] In doing so, it granted recognition to the High Court's finding that the attempts to assign the Coal Agreement and default judgment were void; it found that the interim injunction "did not run afoul of any fundamental principle of the law and policies of the United States"; and it observed that the dispute "has cried out from the beginning for resolution in one court"—by necessary inference the High Court of New Zealand, it having been recognised as the foreign main proceeding.[159]

WFTL's liquidation also reframes comity considerations

[131] The liquidation of WFTL also reframes comity considerations in this appeal. The fraudulent judgment creditor has been placed in Court-appointed interim liquidation. It is now managed by independent liquidators who are officers of the Court. The findings of fraud against the liquidated entity are final. The liquidators recognise they cannot take any responsible or lawful action other than to have the default judgment discharged.[160]

[132] The fact of interim liquidation distinguishes this case from others in which a judgment creditor continues to maintain an active interest in enforcing the judgment. It is clear, however, from Mr Arthur's submissions that active steps by Mr Wikeley and other members of his family seeking to wrest back control of the judgment are placing the liquidators in an unenviable position. New Zealand is and was the proper forum to resolve Kea's claim of fraudulent conspiracy against the respondents. WFTL is the judgment creditor, and it is controlled by the liquidators. All are subject to the High Court's personal jurisdiction. An order requiring them to seek discharge of the default judgment, obtained fraudulently by those previously in control of the company, ought to be within the remedies that Court ought to be able to exercise.

[133] Comity does not stand in the way of that course. As Mr Arthur submitted, the permanent injunctions are consistent with protecting the Court's processes and officers, including from perpetuating fraud.

158 US Bankr declarations decision, above n 38, at 1.
159 At 8–9, 14, 19 and 23. See also above at [43].
160 Which is also what Gault J's order (a) above would require: see above at [9].

Exhaustion of local remedies first is not required

[134] The Court of Appeal considered that anti-suit or anti-enforcement injunctions should be a "measure of last resort", and that comity requires that a New Zealand court await the outcome of the appeal process in Kentucky.[161] We disagree. Although there is some support for that idea in Canadian authorities,[162] we do not think it applies as a rule of general limitation. As Messrs Smith and Wass submitted, the idea that the New Zealand courts should wait and see whether the Kentucky courts do the "correct" thing is "not only invidious but the reverse of comity".[163] Professor Briggs firmly repudiates the proposition that local appeal rights must be exhausted first:[164]

> First, the clear requirement that England be shown to be the natural forum makes it unnecessary, and perhaps inappropriate, to seek relief elsewhere. Second, there is something rather distasteful in allowing or encouraging an English court to sit as if on appeal from the decision of a foreign court which has conscientiously refused to grant relief. And if the application is delayed until the issue has been fought in the foreign court, it may mean that the time for an injunction has come and long gone. This well-meaning approach has nothing of value to offer to English law.

[135] Assuming all other prerequisites are met, the remaining question is whether a domestic anti-suit (or anti-enforcement) injunction is necessary. In some cases, it may not be—if, for instance, stay is consented to in the foreign jurisdiction. This is not that case. Rather, the elaborate fraud practised here made this one of those cases where it is "so plain and obvious that the foreign proceedings are vexatious and oppressive that even requiring a party to apply for a stay or dismissal in the foreign court would be unjust".[165] If the interim orders had not been made with commendable despatch, control of WFTL, and with it the default judgment and Coal Agreement, would by now have passed well beyond the New Zealand jurisdiction. Fraud mitigated comity concerns here and made exhaustion of local remedies unnecessary in any case. The engagement of the Kentucky courts, and protraction of proceedings there, was a core operative element of the fraud.

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161 CA judgment, above n 1, at [185]–[186] quoting Dickinson, above n 87, at 104.
162 See, for example, *Amchem Products*, above n 111, at 931.
163 *The Angelic Grace*, above n 104, at 95 per Leggatt LJ.
164 Briggs, above n 98, at 101–102 (footnote omitted).
165 Thomas Raphael *The Anti-Suit Injunction* (2nd ed, Oxford University Press, Oxford, 2019) at [5.45].

Conclusions

[136] In light of this discussion, we can state succinctly why we differ from the Court of Appeal. Fundamentally, it is because that Court overlooked the implications of its prior conclusions as to the fraud effected by the respondents. Those conclusions—leaving the High Court's findings undisturbed—related both to the fact and extent of the fraud, and as to New Zealand being the proper forum to resolve Kea's claim for fraudulent conspiracy. As to the remaining orders at issue on appeal, the respondents' fraud did two things. First, it clearly justified—and necessitated—the making of anti-suit and anti-enforcement orders on the basis of vexatious, unconscionable conduct in issuing and enforcing foreign process. If not in this case, then when? If not by the New Zealand High Court, then by whom? For absent its interim orders freezing control and enforcement of the default judgment, the status quo for both jurisdictions would soon have shifted as part of this swirling, evolving fraudulent enterprise. Secondly, that fraud, premised on a foreign judgment obtained by forgery and misrepresentation, reframed the international comity considerations the courts needed to address. Comity requires international judicial cooperation to combat cross-border fraud, especially where courts become unwitting participants in it. The fraud here mitigated ordinary comity concerns and necessitated the orders made. The unrebutted expert evidence of Professor Silberman concluded that the making of those orders was consistent with international standards of comity, including those recognised by courts in the United States. The comity analysis below did not sufficiently take account of the fact of the liquidation of WFTL, with the unusual consequence that the fraudulent judgment creditor was now controlled by responsible officers of the Court—and for whom the orders were essential if they were to perform their duties to both creditors and the Court. Finally, as a matter of principle, Kea was not required to exhaust its appeal rights in Kentucky before seeking the orders granted by Gault J. The engagement of the Kentucky courts, and protraction of proceedings there, was itself a core, operative element of the fraudulent enterprise.

[137] For those reasons, we allowed the appeal and reinstated the orders.

Costs

[138] This Court's results judgment reserved costs. Kea has sought substantially increased costs given the underlying fraud. Indemnity costs were awarded by the High Court in its judgment of 18 December 2025, following release of our results judgment.[166] Kea's actual costs in the appeal are said to be $400,222, and it seeks an award of $250,000 "as a reasonable contribution towards an award of indemnity costs". It submits all respondents (other than Mr Watson) be jointly and severally liable for costs, all being privies to the impugned transactions.[167] Although WFTL, in the hands of the liquidators, did not oppose the appeal, it was the vehicle for the fraud and actively pursued it until liquidation in April 2023.

[139] The liquidators of WFTL, who in fact supported Kea's appeal and may to that extent also be regarded as a successful party to the appeal, seek standard costs in this Court (but just for a single day) against Mr Wikeley. They submit it was necessary that they participate to achieve reinstatement of the High Court's orders, to protect their interests as well as the processes of the Court by which they were appointed. WFTL abides the Court's decision as to any award of costs against it.

[140] Mr Wikeley (purporting to represent the common position of all respondents other than WFTL) opposes any order for costs (1) above standard in his case; and (2) at all in the case of the remaining respondents other than WFTL. In short, he submits that their defence of the Court of Appeal judgment was not plainly improper, justifying costs above standard levels, and that no costs should be awarded against those parties who did not participate in the appeal. He also seeks a 20-day stay of enforcement to enable "global resolution of the … proceedings and costs".

[141] This Court has a broad discretion under r 44 of the Supreme Court Rules 2004 to make "any orders that seem just" regarding costs on an appeal. That includes the power to order costs on an indemnity basis. Indemnity costs may be appropriate where the unsuccessful party has behaved exceptionally badly

166 *Kea Investments Ltd v Wikeley Family Trustee Ltd (in liq)* [2025] NZHC 4094 (Gault J).
167 HC formal proof judgment, above n 1, at [156(b)(iii)]. Mr Watson is excluded because he was neither found by the High Court to be a privy nor to have participated in the appeal.

or unreasonably.[168] In common with Gault J, we are satisfied that that standard is met in this case by Mr Wikeley and his privies, regardless of whether they participated in the appeal in this Court or those below. Their fraudulent conduct necessitated Kea's proceedings, including this appeal. All were properly before the Court. That a reasonably arguable point arose, or that some did not oppose the appeal, is of very limited significance. Having set the ball rolling, in a game they should not have played, it is no answer to say they then played well.

[142] As to quantum, Kea now seeks substantially increased, rather than indemnity costs. Standard costs payable to Kea would have been of the order of $63,000. The elaborate and protracted fraud perpetrated by Mr Wikeley and his privies would justify an award of indemnity costs. In the circumstances, we consider the reduced sum sought by Kea eminently justifiable. We will therefore order costs in its favour of $250,000, plus usual disbursements, against the respondents (other than the third respondent, Mr Watson). We agree that costs should be payable jointly and severally by those respondents.

[143] We also will order costs of $30,000 (as sought), plus usual disbursements, in favour of the liquidators of the second respondent, WFTL, against the first respondent only.

[144] We will direct under s 69 of the Evidence Act 2006 that the confidential version of the affidavit of Martin Craig Smith filed in support of the appellant's costs application (containing privileged solicitors invoice narrations) not be disclosed to the respondents or persons searching the Court file.

[145] We decline to make the stay sought by the first respondent.

Result

[146] The application by the appellant to adduce updating evidence is granted.

[147] The appeal is allowed.

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168 *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [27]–[28].

[148] The orders made by the High Court in *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 at [156(a)(i)]–[156(a)(iv)], and in *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3532 at [7], are reinstated.

[149] The first, second, fourth and fifth respondents must pay the appellant costs of $250,000 plus usual disbursements. We allow for second counsel.

[150] The first respondent must pay the liquidators of the second respondent costs of $30,000 plus usual disbursements. We allow for second counsel.

[151] The confidential version of the affidavit of Martin Craig Smith filed in support of the appellant's costs application shall not be disclosed to the Respondents or persons searching the Court file.

[152] The application for stay of enforcement is dismissed.

Solicitors:
Gilbert Walker, Auckland for Appellant
Chapman Tripp, Auckland for interim liquidators of Second Respondent