Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

31 JULY 2026

MEDIA RELEASE

KEA INVESTMENTS LIMITED v KENNETH DAVID WIKELEY

(SC 127/2024) [2026] NZSC 97

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

What this judgment is about

This judgment addresses the circumstances in which a New Zealand court may make orders against persons within their jurisdiction to stop them carrying out a fraud by using the processes and judgments of courts of another jurisdiction. The orders in question are commonly referred to as anti-suit and anti-enforcement injunctions. The judgment therefore concerns the relationship between a domestic court's need to restrain defendants within its jurisdiction from continuing their fraud—which can be done by imposing such injunctions to prevent them bringing or enforcing a claim overseas—and international comity, which requires domestic courts to respect the legitimate exercise of jurisdiction by the courts of a foreign state.

In this case, such injunctions, made by the High Court, had been set aside by the Court of Appeal on the basis they infringed international comity. The Supreme Court unanimously allowed the appeal in November 2025 and reinstated permanent worldwide anti-enforcement and anti-suit injunctions against the respondents. The present judgment sets out the reasons for doing so.

Background

An elaborate worldwide fraud was perpetrated by the respondents against the appellant, Kea Investments Ltd (Kea). Kea is a British Virgin Islands company associated with the New Zealand expatriate businessman Sir Owen Glenn. The first respondent, Mr Wikeley, is a former New Zealand businessman now resident in Australia.

The fraud involved two core elements. The first was the creation of a forged, fictitious "Coal Agreement", supposedly in 2012, between Mr Wikeley as trustee of the Wikeley Family Trust (WF Trust) and Kea. Under the Coal Agreement, Kea was said to be obligated to fund certain coal-mining investments in the United States. The Coal Agreement also contained a jurisdiction clause stating the Agreement "will be governed by the Laws in Lexington, Kentucky and any applicable Federal law".

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 incorporated and registered company controlled by Mr Wikeley, took over as trustee of the WF Trust in 2021.

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 January 2022. That judgment was based on fictitious breach by Kea of the fictitious Coal Agreement.

The complaint in Kentucky 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 in 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. The Fayette Circuit Court dismissed Kea's motion to set aside the default judgment and then denied a motion to "alter, amend or vacate" the dismissal. Kea filed an appeal in the Kentucky Court of Appeals. However, to obtain a stay pending appeal, Kea would have been required to put up a USD 100 million supersedeas bond in Kentucky.

Kea then turned to the New Zealand High Court. As a New Zealand company, WFTL remained subject to the jurisdiction of the New Zealand courts. So, too, was Mr Wikeley.

In November 2022, Kea obtained interim anti-suit and anti-enforcement injunctions against WFTL and Mr Wikeley from the High Court—including that WFTL not take any steps to enforce or otherwise act on the Coal Agreement, default judgment or statutory demand.

On Kea's further application, WFTL was placed in protective interim liquidation by the High Court. This followed an attempt by it to assign the Coal Agreement and default judgment to Wikeley Inc, a Kentucky company incorporated by Mr Wikeley in March 2023. In April 2023, the United States Bankruptcy Court granted a stay of the Kentucky proceedings.

Judgment by formal proof on Kea's substantive claims was then given in the New Zealand High Court in November 2023. It found Kea was the victim of a fraudulent conspiracy and that the Coal Agreement was fraudulent. Gault J made the interim anti-suit and anti-enforcement injunctions permanent. These required the respondents to procure the discharge of the default judgment, "refrain from seeking to enforce or act on the default judgment anywhere in the world", "withdraw, and desist from pursuing any further, any steps to enforce or otherwise rely on, the Coal Agreement", and to "cause their privies and assignees to comply with the[se] orders". Gault J also made declarations that the Coal Agreement and the purported assignments of it and the default judgment were void, and that purported changes to the WF Trust by Mr Wikeley were invalid and of no effect.

In December 2023, Gault J made a further order preventing the respondents 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.

Court of Appeal decision and leave to appeal

The Court of Appeal allowed Mr Wikeley's appeal in part, in November 2024. Each of the now-permanent injunctive orders from the High Court's November and December 2023 decisions was discharged, on the basis 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. 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. The following month it granted Kea a stay of discharge of the High Court's orders, pending application for leave to appeal to this Court.

In July 2025, 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. Mr Wikeley was denied leave to appeal against the Court of Appeal's fraud findings. The question for this Court was "whether the Court of Appeal was correct to discharge the permanent anti-suit and anti-enforcement injunctions".

Supreme Court decision

Following the hearing of this appeal, this Court issued judgment on 10 November 2025 holding the Court of Appeal had erred and reinstated the High Court's orders. This second judgment gives the Court's unanimous reasons for doing so.

In this Court's view, the Court of Appeal overlooked the implications of its prior conclusions as to the fraud effected by the respondents (at [136]). The now-indisputable factual context included three key points: first, the Coal Agreement was a forgery; secondly, the default judgment, based on the forged Coal Agreement, was itself the product of fraud; and 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 (at [101]). New Zealand remained the proper forum to resolve Kea's claim for fraudulent conspiracy (at [136]).

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. For absent 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 (at [136]).

Secondly, that fraud, premised on a foreign judgment obtained by forgery and misrepresentation, reframed the international comity considerations the courts needed to address (at [136]). Comity concerns the need for domestic courts to respect the legitimate exercise of jurisdiction by the courts of a foreign state (at [113]). In the context of cross-border fraud, comity also requires international judicial cooperation to combat that 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 concluded that the making of those orders was consistent with international standards of comity, including those recognised by courts in the United States (at [136]). 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 (at [117]–[130]).

The comity analysis in the Court of Appeal also did not sufficiently account for 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 injunctive orders were essential if they were to perform their duties to both creditors and the Court (at [136]). The permanent injunctions were consistent with protecting the Court's processes and officers, including from perpetuating fraud. Comity does not stand in the way of that course (at [131]–[133]).

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 (at [136]).

The Court awarded Kea increased costs of $250,000 against the respondents (other than the third respondent, Mr Watson), plus usual disbursements, to be payable jointly and severally by them. It also awarded the liquidators of WFTL costs of $30,000 against Mr Wikeley, plus usual disbursements (at [142]–[143]).

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