In the Supreme Court of New Zealand SC 127/2024

I Te Kōti Mana Nui o Aotearoa

Between	**Kea Investments Ltd** Appellant
And	**Kenneth David Wikeley** First respondent
And	**Wikeley Family Trustee Ltd (in interim liquidation)** Second respondent
And	**Eric John Watson** Third respondent
And	**Wikeley Inc** Fourth respondent
And	**USA Asset Holdings Inc** Fifth respondent

SUBMISSIONS FOR APPELLANT

Dated 10 September 2025

GILBERT WALKER

PO Box 1595
Shortland Street
Auckland 1140
New Zealand
P +64 9 374 1100
E service@gilbertwalker.com
Solicitor acting: M C Smith

Counsel acting:
J B M Smith KC / M C Harris / J L W Wass
P +64 21 332 512 (Smith)
P +64 21 034 2262 (Wass)
E justin.smith@stoutstreet.co.nz
E mharris@shortlandchambers.co.nz
E jack.wass@stoutstreet.co.nz

TABLE OF CONTENTS

TABLE OF CONTENTS 1

Summary of argument **1**

The fraud perpetrated on Kea **2**
The High Court is the only forum with jurisdiction over the whole conspiracy 4
Defendants' first attempt to undermine the jurisdiction of the New Zealand courts 6
The findings of fraud 7
The final orders of the High Court and Court of Appeal 8
The Wikeleys' subsequent attempts to pursue the fraud and undermine the jurisdiction of the New Zealand courts 9

The criteria for granting anti-suit and anti-enforcement injunctions are met **10**
The criteria for granting an anti-suit injunction 10
The starting point: final determinations on jurisdiction and fraud 12
Forcing Kea to litigate further in Kentucky is a breach of Kea's equitable rights and is unconscionable 13
Anti-enforcement relief is appropriate and necessary 15
The alternative test proposed by the Court of Appeal 18

The interests of justice, including the requirements of comity, favour injunctive relief **20**
Comity requires robust measures to combat cross-border fraud 22
There is no requirement to exhaust remedies in the overseas jurisdiction chosen to perpetrate the fraud 24
The Court of Appeal's decision to withhold relief causes injustice 26

Relief **28**
The permanent injunctions should be restored 28
Supplementary orders 29
Costs 30

Conclusion **30**

SUBMISSIONS FOR THE APPELLANT

May it please the Court:

Summary of argument

1. The High Court and Court of Appeal determined that the respondents conspired to defraud the appellant through a multi-faceted scheme centred around a fraudulently obtained default judgment of a Kentucky court for US$123 million. The default judgment was based on claims for breach of a "Coal Agreement" that the courts below have determined was a forgery or, to the respondents' knowledge, gave rise to no legitimate claims so that pursuing any claims under it was fraudulent.

2. The central issue now is whether the New Zealand courts should grant injunctions immediately to restrain the respondents' continued pursuit of the fraud and vexatious invocation of the Kentucky courts, or whether the victim of the fraud must first exhaust its rights in the foreign court that was wrongfully seised as an instrument of the fraud itself.

3. Fraud is a thing apart that unravels all. No one can claim the benefit of a forged contract or a judgment obtained by fraud; nor of wrongfully seising a foreign court in pursuit of that fraud. Kea has no connection with Kentucky other than those invalidly manufactured by the respondent fraudsters. The equitable remedies of anti-suit and anti-enforcement injunctions exist precisely to restrain such abusive litigation.

4. In discharging the injunctions and requiring the appellant to exhaust its rights in Kentucky, the Court of Appeal erroneously treated the Kentucky proceedings as legitimate, asking whether comity permitted the Court to grant relief that prevents the first respondent "from seeking what it says is just compensation for breach of a contract subject to the jurisdiction of the United States".[1] But there is no contract, there are no legitimate claims under it and there is no possibility of "just compensation". Where fraud has been established, there should be immediate and effective relief, not deference to the fraudster's wrongful invocation of that forum.

5. The Court of Appeal's approach—of withholding relief in the name of comity against the prospect of intervening later if the Kentucky courts do not set aside the default judgment—is the inverse of comity: it would potentially supplant the ruling of a foreign court at the end of that court's proceedings when it is an aim of comity to avoid such outcomes.

---

[1] *Wikeley v Kea Investments Ltd* [2024] NZCA 609 (**CA Judgment**) at [167] **[[05.0058]]**

6. The appellant is the victim of two closely related but distinct wrongs: it is the victim of a fraudulent conspiracy; and it has suffered the wrongful commencement of litigation against it in a forum with which it has no connection other than that which the fraudsters have sought to manufacture. Forcing the appellant to litigate in the forum wrongfully seised by the fraudsters compounds both of those wrongs.

7. At stake in this appeal is whether New Zealand courts can act effectively to protect their own processes and prevent New Zealand companies and trusts from being used as instruments of international fraud. The respondents' selection of a New Zealand corporate trustee as their vehicle and their ongoing efforts to perpetuate the fraud and enforce the default judgment undermine the administration of justice in New Zealand.

8. The appellant has filed an application for leave to adduce evidence of steps taken recently by Mr Wikeley and others, including his adult children, to perpetuate the fraud, undermine the New Zealand proceedings and inflict further damage on the appellant.

9. The appellant should be entitled to immediate final relief from the New Zealand court. The New Zealand court alone has jurisdiction over the claim against all respondents for conspiracy perpetrated through a New Zealand company and trustee. The claim has now been finally determined. The High Court's injunctions were the natural consequence of the findings that the Court of Appeal upheld. The appellant submits they should be reinstated.

The fraud perpetrated on Kea

10. The facts are complex and extensively traversed in the judgments below. The chronology includes links to the documents and particular aspects will be highlighted in oral argument. Only a brief summary is provided here.

11. This case has its origins in an earlier fraud of some £129m perpetrated on the appellant (**Kea**) and Sir Owen Glenn by Eric Watson. This fraud, known as the "Spartan" fraud, led to litigation in England in which it was determined, following a lengthy trial, that Mr Watson had procured Kea's investment by deceit. Confounding and preoccupying Kea, to deflect it from enforcing its judgment, and causing loss to Kea as revenge, most likely explain Mr Watson's motivation for joining the present conspiracy.

12. The most conspicuous actor in the present conspiracy is Kenneth Wikeley, a businessman with New Zealand and British passports who is currently resident in Australia.[2] He has admitted to a "chequered career"[3] and was

[2] Affidavit of Kenneth Wikeley dated 26 April 2023 **[[307.3257]]**.

[3] *Jacomb v Wikeley* [2013] NZHC 707 at [5].

bankrupted in 2018 following proceedings brought by a former friend.[4] Mr Wikeley and Mr Watson have a long history of business dealings together.[5]

13. Mr Wikeley incorporated the first respondent, Wikeley Family Trustee Limited (in interim liquidation) (**WFTL**), in 2021. WFTL is the corporate trustee of the Wikeley Family Trust (**WFT**). WFT is a New Zealand trust of which Mr Wikeley is the settlor and appointor and a beneficiary. Other beneficiaries include Mr Wikeley's children and other relatives.

14. Mr Wikeley caused WFTL as trustee of the WFT to obtain a default judgment against Kea in the Fayette Circuit Court of Kentucky in the sum of US$123m plus interest (**Default Judgment**).[6] The Default Judgment is based on the alleged breach of a "Coal Funding and JV Investment Agreement" (**Coal Agreement**)[7] by which Kea allegedly agreed with Mr Wikeley to fund coal investments in the United States.

15. The courts below were satisfied that the Coal Agreement was faked or was known by Mr Wikeley to give rise to no genuine claims.[8] It bore signatures apparently lifted from another document and its page numbers were inconsistent. Mr Wikeley gave contradictory accounts of its execution and never produced the original. Kea had no records of any negotiations or payments under it. The agreement's terms were commercially absurd,[9] requiring Kea to pay US$1.5m annually to Mr Wikeley whether he did anything or not. Despite the agreement ostensibly being made in 2012, no request for funding under it let alone any demand for payment was ever made before WFTL filed proceedings in Kentucky in 2021.

16. Kea had no prior connection to Kentucky.[10] It did not take steps to challenge the jurisdiction of the Kentucky courts because it was not aware of WFTL's claim.[11] The complaint had been delivered to Kea's registered agent in the BVI but the agent failed to pass it on to Kea.[12]

17. The Default Judgment was entered without any hearing or examination by the Kentucky court of the merits of WFTL's claim or the quantum of loss

---

[4] Ibid at [13].

[5] *Kea Investments Ltd v Wikeley Family Trustee* Ltd [2023] NZHC 3260 (**Formal Proof Judgment**) at [21] [[05.0178]]. See also CA Judgment from [116] **[[05.0042]]**.

[6] Order for Default Judgment dated 31 January 20222. **[[301.0439]]**

[7] **[[301.0014]]**.

[8] Formal Proof Judgment at [110]-[117] **[[05.0209]]**, CA Judgment at [134]-[146] **[[05.0047]]**.

[9] CA Judgment at [144] **[[05.0049]]**.

[10] See for example the affidavit of Sir Owen Glenn at [45] **[[201.0092]]**.

[11] Formal Proof Judgment at [24] **[[05.0180]]**.

[12] CA Judgment at [3] **[[05.0004]]**.

and damage.[13] Kea first learned of WFTL's claim against it after WFTL served a statutory demand in the BVI for US$136 million.

18. Kea applied to set aside the Default Judgment on the grounds that the Kentucky court lacked jurisdiction and that it had a defence. 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.[14] It also dismissed an application for reconsideration.

19. Kea filed an appeal against those decisions but it could not apply to stay the Default Judgment unless it put up a bond of US$100 million.[15] This is the appeal that the Court of Appeal considered that Kea must pursue.

20. Kea commenced proceedings in New Zealand promptly after its motions to set aside the Default Judgment were dismissed. The preceding events are described in the judgments below and in the chronology.[16]

21. Gault J granted interim orders (initially without notice), including an anti-enforcement injunction and other orders including that the defendants not assign any rights under the Coal Agreement or Default Judgment.[17]

22. WFTL and Mr Wikeley instructed solicitors to file an appearance under protest to jurisdiction and an application to stay or dismiss the proceeding on the basis that New Zealand was not the appropriate forum.[18]

The High Court is the only forum with jurisdiction over the whole conspiracy

23. The High Court dismissed the protest to jurisdiction and forum application. It has personal jurisdiction as of right over WFTL and Mr Wikeley: WFTL is a New Zealand company acting as trustee of a New Zealand trust; and Mr Wikeley was served in Australia, which has the same effect as service in New Zealand.[19] The dispute is closely connected with New Zealand, and the High Court has an interest in regulating the conduct of the defendants.

---

[13] Formal Proof Judgment at [24] **[[05.0180]]** and CA Judgment at [27] **[[05.0013]].**

[14] See first affidavit of Toby Graham at [115]-[127] **[[201.0022]] – [[201.0024]]**.

[15] Formal Proof Judgment at [49] **[[05.0187]]** and Expert Report of Donald Kelly (**Kelly Report**) at [41]-[48] **[[305.2029]]**.

[16] Formal Proof Judgment from [9] **[[05.0167]]** and CA Judgment from [9] **[[05.0007]].**

[17] *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881 **[[05.0080]]**.

[18] See *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2023] NZHC 466 (**Jurisdiction Judgment**) at [1] **[[05.0113]]**.

[19] CA Judgment at [148] **[[05.0051]]**.

24. The Judge found that the New Zealand court was the appropriate forum for the trial.[20] The dispute about whether the Coal Agreement was a forgery was only one element of the broader conspiracy.[21] The High Court had jurisdiction over all of the parties, whereas the Kentucky Court did not have jurisdiction over Kea, Mr Wikeley[22] or Mr Watson.

25. The expert evidence was that the Kentucky court did not have jurisdiction under its own law.[23] But even if the Kentucky court was an available forum, it was not the appropriate forum: the New Zealand Court has a greater interest in regulating the conduct of WFTL and the natural parties both had longstanding associations with New Zealand.

26. The Court of Appeal endorsed the High Court's forum analysis:[24]

> The New Zealand proceedings alleged a worldwide conspiracy involving at least two parties, Mr Wikeley and Mr Watson, who are not parties to the Kentucky proceedings and over whom jurisdiction could not, on the evidence, be asserted. The claim under the purported contract in Kentucky, although undoubtedly a part of the conspiracy which was alleged, did not define its limits. The alleged conspiracy included the attempts of Mr Watson and alleged associates to take control of Kea and to then purportedly abandon its challenge to the Kentucky Default Judgment. As the Judge found, it is too narrow a characterisation of Kea's claims to say that the "only" (or even central, in the relevant sense) issue in dispute is whether the Coal Agreement is a forgery.

27. Further, the claims were governed by New Zealand law.[25] The jurisdiction clause in the Coal Agreement did not affect the analysis as it was part of a forged or fraudulent document and did not in any event cover Kea's claims.

28. Kentucky is therefore not an available forum to adjudicate and restrain the broader conspiracy against Kea. Even if Kea suffered the cost and delay of pursuing its appeal in Kentucky, only part of its claim would be determined there against one of the respondents. New Zealand is the only forum

---

[20] Jurisdiction Judgment at [74]-[87] **[[05.0137]]**. Mr Wikeley's attempts to challenge these findings failed: High Court Leave to Appeal Judgment (*Kea Investments Ltd v Wikeley Family Trustee Ltd* [2023] NZHC 2407) **[[05.0146]]**; Court of Appeal Leave to Appeal Judgment (*Wikeley v Kea Investments Ltd* [2024] NZCA 58) **[[05.0246]]**.

[21] Setting aside the Default Judgment would not suffice, as the Kentucky proceeding does not extend to the fraudulent conspiracy and WFTL's co-conspirators.

[22] Mr Wikeley has never undertaken to submit to the courts of Kentucky; yet asserts that Kea should exhaust its remedies in that forum.

[23] Kelly Report at [15] **[[305.2018]]**; see also expert report Prof. Silberman (**Silberman Report**) at [20] **[[311.5292]]**. The Circuit Court has never assessed the question.

[24] CA Judgment at [156], quoting Jurisdiction Judgment at [82] **[[05.0054]]**.

[25] CA Judgment at [157]-[158] **[[05.0055]]**. Despite this, the CA Judgment states (n 158) that: "… the Coal Agreement features a United States jurisdiction (and choice of law) clause." This cannot be a relevant factor as to whether Kea should be compelled to exhaust its remedies on appeal in Kentucky, given that the Coal Agreement containing those clauses is a forgery.

where the wider conspiracy can be adjudicated and effective injunctive relief granted against all the respondents.

29. The United States Bankruptcy Court was satisfied that the High Court's approach to jurisdiction was reasonable and just and reflected the due process that a United States court would expect. It stated that the global fraud cried out for resolution in one forum (i.e., New Zealand).[26]

Defendants' first attempt to undermine the jurisdiction of the New Zealand courts

30. Following the dismissal of his jurisdiction and forum challenge,[27] Mr Wikeley incorporated new Kentucky companies for the purpose of taking an assignment of the Default Judgment and replacing the trustee of WFT.[28] He also purported to change the law of the trust from New Zealand law to Kentucky law. Mr Wikeley knew these were breaches of specific parts of the interim orders. He boasted to confidants that it was a "contempt", saying the New Zealand court could "go to hell".[29]

31. In response, Kea obtained further interim orders and the appointment of interim liquidators to WFTL and joined Wikeley Inc and USA Asset Holdings Inc as defendants. Kea also obtained orders against Mr Wikeley from the Supreme Court of Queensland, within whose jurisdiction he resides, including interim anti-suit and anti-enforcement injunctions and an order that Mr Wikeley deliver up his passports.[30] Kea has brought proceedings against Mr Wikeley in Queensland for contempt of those orders.

32. The interim liquidators, meanwhile, obtained orders from the United States Bankruptcy Court recognising the New Zealand liquidation proceeding as a "foreign main proceeding" under the provisions of the US Code implementing the UNCITRAL Model Law on Cross-Border Insolvency.[31] The recognition order triggered a stay of proceedings in the Kentucky state courts. The stay remains in force.

33. At this point, stymied in Kentucky and facing possible committal for contempt in Australia, Mr Wikeley instructed solicitors and a King's Counsel in Brisbane to apply for the interim orders against him to be set

---

[26] Bankruptcy Court's opinion dated 15 May 2024 at 19 **[[311.5136]]**.

[27] And seeking a timetabling indulgence to instruct new counsel and seek leave to appeal: Formal Proof Judgment at [52]. **[[05.0187]]**

[28] Formal Proof Judgment at [51]-[60]. **[[05.0187]]**

[29] Kea subsequently obtained and adduced in the Court of Appeal a series of WhatsApp messages between Mr Wikeley, his Kentucky attorney and others in which Mr Wikeley laid out the scheme, acknowledged it was a contempt, and commented as quoted, at **[[311.4892]]**.

[30] See orders of the Queensland Supreme Court dated 13 April 2023 **[[305.2425]]** and 21 April 2023 **[[307.3148]]**.

[31] The recognition has the effect of triggering an automatic bankruptcy stay. **[[311.5123]]**

aside. The application was dismissed,[32] as was an appeal to the Queensland Court of Appeal and an application to the High Court of Australia for special leave to appeal.[33] The Queensland Court of Appeal considered that injunctive relief was a proper and necessary response to the ongoing perpetration of the fraud and wrongful invocation of the Kentucky courts and that comity did not necessitate any contrary conclusion. It upheld the finding that it was arguable that the substantive claims against Mr Wikeley could justify permanent anti-suit and anti-enforcement relief.[34]

34. None of the defendants to the New Zealand proceeding took steps to defend, so the claims were heard by way of formal proof for a full day.[35] Kea supplied the evidence, submissions, and bundle to Mr Wikeley and his Australian solicitors in advance,[36] but Mr Wikeley took no steps and rebuffed the interim liquidators' attempts to obtain information from him.

The findings of fraud

35. The courts below accepted that the Coal Agreement was a forgery and that the claims made under it were fraudulent. The primary finding was that the document was a forgery.[37] Alternatively, it was non-binding or so contrary to Kea's interests that Mr Wikeley must have known that it was signed by Kea's director in breach of duty.[38] Any claim made under the Coal Agreement was fraudulent. The defendants had conspired to defraud.[39]

36. There is no space to summarise here the strong evidence supporting these findings,[40] but it is important not to lose sight of the nature and magnitude of the respondents' fraud when considering injunctive relief. As the accompanying application for leave to adduce further evidence attests, the fraudsters continue to pursue the fraud and their efforts to undermine the

---

[32] Affidavit of Mathew Deighton at [24]. **[[201.0084]]**

[33] *Wikeley v Kea Investments Ltd* [2024] QCA 201 and *Wikeley v Kea Investments Ltd* [2025] HCADisp 33.

[34] *Wikeley v Kea Investments Ltd* [2024] QCA 201 at [39]-[40].

[35] Mr Wikeley has subsequently litigated the merits of Kea's claims, which would constitute a submission to the jurisdiction if he were not already subject to the jurisdiction as of right.

[36] The solicitors acknowledged receipt. **[[308.3596]]** See affidavit of David Dowd dated 22 June 2023 at [57] **[[201.0286]]**.

[37] Formal Proof Judgment at [110] **[[05.0209]]**; CA Judgment at [134]-[146]. **[[05.0047]]**.

[38] Formal Proof Judgment at [111] **[[05.0210]]**; CA Judgment at [97]-[99] **[[05.0036]]**, [134]-[146]. **[[05.0047]]**.

[39] Formal Proof Judgment at [114] **[[05.0210]]**; CA Judgment at [211(d)] **[[05.0074]]**.

[40] The key evidence on the Coal Agreement is summarised in the Formal Proof Judgment from [87] **[[05.0199]]** and the CA Judgment from [136] **[[05.0047]]**. See also, e.g., the affidavits of Toby Graham from [50] **[[201.0009]]**, Kelly Report from [1] **[[305.2013]]**, Sir Owen's affidavit from [41] **[[201.0092]]**, and two of Kea's directors at **[[201.0074]]** and **[[302.0962]]**.

findings of the New Zealand courts openly both here and in Kentucky, while continuing to take steps in proceedings in New Zealand.

37. Mr Wikeley sought to introduce evidence in the Court of Appeal showing that the agreement was genuine and spoke to it extensively at the hearing. This would plainly have been a submission to the jurisdiction of the New Zealand court if he was not already subject to it. The Court refused to admit the evidence and observed that it only "fortifies the conclusion that, whether signed by [Kea's director] Mr Dickson or not, the pursuit of claims under the agreement is appropriately described as fraudulent".[41]

38. One consequence of the fraud determinations is that the Default Judgment was not entitled to recognition. The Kentucky court did not have jurisdiction as a matter of private international law (Kea not having submitted to the jurisdiction) and the Default Judgment was obtained by fraud. WFTL used the Kentucky Court as an instrument of its fraud and misled that Court in order to obtain the Default Judgment.[42]

39. Kea has no connections to Kentucky. The only reason it has been forced to litigate there is because the fraudsters chose that jurisdiction in which to perpetrate their fraud. As submitted below, it was wrong in principle for the Court of Appeal to require Kea to continue litigating in Kentucky when it had determined that the Kentucky courts had no jurisdiction over the conspiracy claim against all of the respondents.

The final orders of the High Court and Court of Appeal

40. The relief granted by the High Court followed naturally from the findings of fraud and conspiracy: damages (none of which have been paid), declarations, and injunctions restraining continued perpetration of fraud.

41. The declarations were that: the Coal Agreement was void and cannot lawfully be performed; the Default Judgment was obtained by fraud and is not entitled to recognition or enforcement in New Zealand; Mr Wikeley and his companies, including WFTL, are privies of each other in relation to the impugned transactions; and the purported transactions involving Wikeley Inc and USA Asset Holdings Inc were invalid and of no effect.

42. The Court ordered the defendants: (a) to consent and take all steps necessary to procure the discharge of the Default Judgment; (b) to refrain from taking any steps on it anywhere in the world; (c) to refrain from taking

[41] CA Judgment at [97] **[[05.0036]]** (Mr Dickson was Kea's director at the time the Coal Agreement was supposedly signed.)

[42] Including by presenting the Coal Agreement as a valid agreement.

steps to enforce or rely on the Coal Agreement; and (d) to cause their privies and assignees to comply.[43]

43. The US Bankruptcy Court subsequently gave recognition to the High Court's determinations that the assignments and the purported change of the governing law of the WFT were invalid. It described the High Court's other findings as "hard to ignore" and stated that no "United States court, federal or state, would agree to perpetuate a global fraud of the nature described by the New Zealand High Court in the Final Judgment."[44]

44. The Court of Appeal upheld all of the High Court's findings of fact[45] and all of its final orders save for the permanent injunctions. The appointment of interim liquidators was specifically upheld on the basis that this "served valid domestic interests".[46] The Court of Appeal's order discharging the (negative) injunctions has been stayed.[47]

The Wikeleys' subsequent attempts to pursue the fraud and undermine the jurisdiction of the New Zealand courts

45. Despite the determinations of fraud, and that the discharged injunctions remain in force under the stay, Mr Wikeley has taken the Court of Appeal's judgment as licence to continue trying to enforce the Default Judgment.

46. The day after the Court of Appeal hearing, Mr Wikeley and his sons, Oliver and William, threatened the interim liquidators with civil and disciplinary consequences if they did not seek "with urgency" to recover the amount of the Default Judgment as a debt due. The Court of Appeal held this was a breach of the injunctions,[48] and yet Mr Wikeley made another demand in similar terms soon after the Court of Appeal gave judgment.[49]

47. In response to these threats, Kea filed a new proceeding in New Zealand in December 2024 together with an application for interim relief. The interim liquidators filed an originating application seeking directions. Mr Wikeley opposed the applications in both proceedings. WFTL's former

---

[43] Formal Proof Judgment at [156](a) **[[05.0224]]**.

[44] Memorandum opinion and order of the Bankruptcy Court dated 15 May 2024 **[[311.5138]].**

[45] It upheld a challenge to the admissibility of some evidence produced in the High Court, but this did not change the result: CA Judgment at [134] **[[05.0047]]**.

[46] CA Judgment at [196]. **[[05.0070]]**.

[47] *Kea Investments Ltd v Wikeley* [2025] NZSC 75 (**Leave Judgment**) at [6] **[[05.0079]]**.

[48] CA Judgment at [198] **[[05.0070]]**. The judgment refers to the letter as a breach of the "interim" injunctions in place at the time. This was a slip, as the injunctions in place at the time were permanent.

[49] Affidavit of Sean Coupe dated 10 September 2025.

Kentucky and BVI lawyers opposed the liquidators' application on the basis that the liquidators were obliged to enforce the Default Judgment.[50]

48. Mr Wikeley's children (Oliver, William and Gemma) chose not to oppose the liquidators' application. They instead applied without notice to the Kentucky Court, in the hours before the liquidators' application was to be heard, for the appointment of a "Special Fiduciary" to take control of the Default Judgment and oppose Kea's appeal to set it aside. Mr Wikeley and his children are privies of each other, and the High Court had prohibited Mr Wikeley from taking that very step.[51]

The criteria for granting anti-suit and anti-enforcement injunctions are met

The criteria for granting an anti-suit injunction

49. Where defendants have been held liable for conspiracy, an injunction protects against continued infringement of the plaintiff's rights:[52]

> The grant of a civil injunction, it is always said, is discretionary. But if a clear violation of legal rights is shown, and there is a clear risk of repetition injuries to the victim for which damages will not compensate, and there is no undertaking by the lawbreaker to desist, the trial judge ordinarily has no choice. His discretion can only, usually, be exercised one way.

50. The anti-suit injunction has its origins in the "common injunction" granted since the early 1600s by the Court of Chancery to restrain proceedings at common law. By the first part of the nineteenth century the courts were exercising that power to restrain the pursuit of vexatious or oppressive proceedings in foreign courts.[53]

51. There is an established three-step analysis, which ensures the court exercises caution and pays due regard to comity considerations:[54]

---

[50] See affidavit of Sean Coupe dated 10 September 2025.

[51] Pursuant to the stay of the Court of Appeal's rescission of the injunctions granted by this Court (Leave Judgment at [6] [[05.0079]]). See also the orders of Gault J dated 18 July 2025, 5 August 2025, 25 August 2025 and *Kea Investments Ltd v Wikeley* [2025] NZHC 2387.

[52] Bill Atkin "Remedies" in Stephen Todd et al (eds) *Todd on Torts* (9th ed, Thomson Reuters, 2023) 1313 at 1354, quoting Lord Bingham "The Rule of Law" (2007) 66 CLJ 67 at 72.

[53] Originally in other United Kingdom courts (*Wharton v May* (1799) 3 Ves Jun 27; 31 ER 454) and then foreign courts (*Portalington v Soulby* (1834) 3 My & K 104; 40 ER 40).

[54] *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [102]-[103] **[[A0032]]**; *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 781 (PC) at 892-895 **[[A0692]]**; *Laker British Airways Board v Laker Airways Ltd* [1985] AC 58 (HL) at 95; *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345 at 433-434 **[[A0326]]**; *Turner v Grovit* [2001] UKHL 65, [2002] 1 WLR 107 at [24] **[[A0826]]**; *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2013] 1 WLR 1889 at [20]; *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41, [2015] AC 616 at [17]-[18] **[[A0718]]**; Adrian Briggs, *Civil Jurisdiction and Judgments* (7th ed, Rutledge, 2021) at [28.05] **[[A0841]]**.

a. First, the local court must have jurisdiction over the defendant. Ordinarily, the court must also be satisfied it is the natural forum for the proceeding.[55] As noted above this has now been finally determined.

b. Second, the commencement or continuation of the foreign proceeding, or the conduct of the respondent party in the context of the proceeding, must be wrongful (vexatious, oppressive or otherwise unconscionable), or the applicant must have a legal or equitable right not to be sued. Examples of unconscionable conduct include breaches of natural justice, a foreign forum being misled, proceedings brought in bad faith, or where the foreign proceedings are brought without good reason and to frustrate due process.[56] As submitted below, Kea also has a right not to be sued in a forum with which it has no connection on the basis of a fraudulent document.

c. Third, the ultimate question is whether the interests of justice require the equitable remedy of an injunction to be granted.

52. The Court of Appeal expressed dissatisfaction with a test based on unconscionability, suggesting that "more precision should be possible".[57] But unconscionability is well-established as an organising principle in equity generally, so this "foot of the law of anti-suit injunctions…stands on deep and principled foundations".[58] There is no indication in the cases that the test of unconscionability has proved problematic in other jurisdictions. On any view, unconscionability must include perpetrating a fraud in a foreign court with which the applicant for relief has no connection.

53. In weighing the interests of justice in light of regard for comity, the court will assess whether it has a sufficient interest in, or connection with, the dispute. The greater the connection between the subject matter and the

---

[55] *Aerospatiale* above n 54 at 895 **[[A0695]]**. The courts have recognised that in so-called "single forum cases" the pursuit of foreign proceedings may be restrained because they breach an equitable right not to be sued, regardless of whether the local court could or would hear the claim: *British Airways Board v Lakers Airways Ltd* [1985] AC 58 (HL) **[[A0218]]**; *Midland Bank plc v Laker Airways Ltd* [1986] QB 689 (CA) **[[A0555]]**. In Kea's case, WFTL cannot legitimately pursue its fraud it in any forum.

[56] *Lu* above n 54 at [104] **[[A0033]]**; see also Lord Collins (ed) *Dicey, Morris & Collins on the Conflict of Laws* (16th ed., online) at [12–132]. **[[A0941]]**

[57] CA Judgment at [190] **[[05.0067]]**.

[58] Adrian Briggs *The Conflict of Laws* (5th ed, OUP, 2024) at 94 **[[A0887]]**; see also at 100 noting that the concept of vexation and oppressive "retains an element of flexibility, essential to allow it to respond to newly invented forms of deviousness." **[[A0890]]**.

parties to New Zealand (and, correspondingly, the weaker the connection to the foreign jurisdiction), the stronger the case for injunctive relief.[59]

The starting point: final determinations on jurisdiction and fraud

54. The final determinations below establish three fundamental premises:

    a. The High Court is the only court shown to have jurisdiction to deal with the fraudulent conspiracy as a whole, and has a legitimate role in regulating the conduct of the defendants – in particular WFTL, a New Zealand company acting as trustee of a New Zealand trust. By contrast, the Kentucky court has no jurisdiction given the only purported connections to that jurisdiction are those manufactured by the fraudsters in the forged Coal Agreement.

    b. There can no longer be any dispute that the respondents' assertion of rights under the Coal Agreement and attempts to uphold and enforce the Default Judgment are illegitimate.

    c. Kea should never have had to litigate in Kentucky as it has no connections with Kentucky and the fraudsters' attempts to manufacture them cannot carry any weight. Forcing Kea to continue litigating there perpetuates part of the fraudulent scheme and is causing Kea continuing irrecoverable loss (in the form of the legal costs that it must expend trying to undo the respondents' fraud).

55. The case for anti-suit (and, it will be seen, anti-enforcement) relief is stronger where final judgment on the merits has been given by the local court, because the wrongful nature of the foreign proceedings has been established as a matter of fact (in contrast to interlocutory applications where the court must make a preliminary assessment that might later prove to have been wrong).[60] The early use of the anti-suit injunction was primarily in cases where an English judgment had already been rendered.[61]

56. Instead of assessing the appropriateness of injunctions on these bases, the Court of Appeal grounded its analysis in assessing:[62]

---

[59] *Airbus Industrie v Patel* [1999] 1 AC 119 at 138 **[[A0076]]**; *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725, [2010] 1 WLR 1023 at [50(5)] **[[A0351]]**; *Dicey* at [12–127]. **[[A0940]]**

[60] *Bank St Petersburg PJSC v Arkhangelsky* [2014] EWCA Civ 593, [2014] 1 WLR 4360 at [38] **[[A0148]]**.

[61] Campbell McLachlan *Lis Pendens* in International Litigation (Hague Academy of International Law, Martinus Nijhoff Publishers, Leiden/Boston, 2009) at 157, citing *Booth v Leycester* (1837) 1 Keen 579; 48 ER 430.

[62] CA Judgment at [167] **[[05.0058]]**.

> 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.

57. This approach cannot stand against the fraud determinations. No one can assert a right to "just compensation" for breach of a "contract" that was either a forgery or gave rise to no legitimate claims. The assertion of claims based on the Coal Agreement was itself fraudulent. Mr Wikeley and WFTL have no lawful right to invoke the jurisdiction of the Kentucky courts on the basis of the Coal Agreement or to assert any right to compensation under it.

58. Since Kea has no other connection to Kentucky (and in circumstances where the High Court has declared that the Default Judgment is not enforceable in New Zealand), the pursuit of proceedings in Kentucky inflicts a related but distinct and continuing wrong on Kea. That wrong continues to inflict significant and likely unrecoverable financial loss on Kea. The Court of Appeal's insistence that Kea must continue suffering that wrong and the losses it will inevitably suffer as a result produces injustice.

59. Once the enquiry is properly formulated, it is clear that an injunction is required to restrain the pursuit of proceedings which have no legitimate purpose. Since WFTL had no basis to seise the Kentucky courts, Kea should not first have to exhaust its remedies in the forum wrongfully invoked by WFTL (as explained below); and the fraudsters should not be able to continue inflicting that wrong on Kea or enjoy any benefits from it.

Forcing Kea to litigate further in Kentucky is a breach of Kea's equitable rights and is unconscionable

60. The courts have the power to grant injunctions to restrain a defendant from pursuing proceedings in foreign courts where necessary to protect legal or equitable rights or where the proceedings are otherwise unconscionable. The injunctions granted by the High Court were the necessary consequence of finding that the defendants were perpetrating a cross-border fraud, including through the vehicle of foreign proceedings, and forcing Kea to litigate in a forum with which it had no connection.

61. The courts have long recognised a jurisdiction to grant anti-suit injunctions in the case of fraud.[63] An injunction is justified in such cases because the

[63] See Robert Henley Eden *A Treatise on the Law of Injunctions* (Butterworth & Son, London, 1821) at 11: "the subject which most frequently calls for the interference of a court of equity is comprehended under the extensive head of *fraud*" (emphasis in original).

pursuit of the foreign proceedings breaches the plaintiff's legal and equitable right not to be defrauded and is unconscionable.

62. Fraud is "a thing apart [that] unravels all".[64] The law does not expect people to arrange their affairs on the basis that others may commit fraud on them,[65] and will not "allow a person to keep an advantage which he has obtained by fraud".[66] For the same reasons, anti-suit relief may be granted where foreign proceedings have been brought in bad faith, have no legitimate purpose, or are bound to fail.[67]

63. The wrongful commencement of proceedings against Kea in a forum with which it had no genuine connection is unconscionable and a violation of Kea's right not to be sued in a foreign court with which it has no connection. Such litigation is inherently wrongful and liable to be restrained,[68] no less than litigation in violation of an exclusive jurisdiction or arbitration clause. As Professor Dickinson observed in the article cited by the Court of Appeal, the essence of vexation is "the use of judicial process in the absence of a genuine purpose of securing a just determination of one's legal entitlement" or where the wrongdoer "sues in a forum lacking any significant connection with the parties or the subject matter of the claim".[69]

64. This is not a case where the foreign court has been legitimately invoked for its procedural or substantive advantages but is a classic case of vexation. Perpetuating a fraud is inherently unconscionable.[70] Doing so in a forum with which the applicant has no connection exacerbates this. Such unconscionability is a "sufficient legal reason for the injunction".[71]

65. The justification for anti-suit relief is particularly strong when the foreign proceedings not only infringe the plaintiff's rights but also interfere with

---

[64] *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* [2003] 1 CLC 358 (HL) at 368 **[[A0441]]**.

[65] *Takhar v Gracefield Developments Ltd* [2009] UKSC 13, [2020] AC 450 at [44] **[[A0787]]**.

[66] *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 (CA) at 712 **[[A0465]]**.

[67] See [51.b] above.

[68] See Adrian Briggs *Civil Jurisdiction* above n 54 at chapter 28 **[[A0834]]**.

[69] Andrew Dickinson "Taming Anti-Suit Injunctions" in Andrew Dickinson & Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (OUP, Oxford, 2021) 100 **[[A0920]]**, citing *inter alia Midland Bank plc v Laker Airways Ltd* [1986] QB 689 (CA); see *The Atlantic Star* [1974] AC 436 (HL) at 477; cf e.g. *Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14, [2012] 1 Lloyd's Rep 376 at [36].

[70] Andrew Dickinson "Taming Anti-Suit Injunctions" above n 69. **[[A0920]]**

[71] At 82. **[[A0902]].**

the jurisdiction of the New Zealand court.[72] The New Zealand proceedings were necessarily commenced second, given the obtaining of the Default Judgment was a central step in the conspiracy. Since the dismissal of his protest to jurisdiction (and confirmation of the New Zealand court's jurisdiction), Mr Wikeley has treated the New Zealand courts with disdain, repeatedly seeking to undermine them while at the same time continuing to pursue relief from them. The need for injunctive relief must therefore be assessed against both the respondents' past conduct and the ongoing efforts of Mr Wikeley and his family to perpetuate the fraud.

66. As the High Court recently noted in continuing interim orders against Mr Wikeley's children, in response to their foray into Kentucky, the perpetration of international fraud that is intended to undermine the jurisdiction of the New Zealand courts calls for a robust response:[73]

> This Court should stand against efforts by beneficiaries of the WFT to undermine the administration of justice by seeking to render ineffective the orders of the New Zealand Courts against a New Zealand company as trustee of a New Zealand trust.

67. The litigation against Kea in Kentucky is inherently unconscionable. Kea should not have been required to defend itself there at all. Injunctions restrain the wrongdoers from perpetuating their fraud and infringing Kea's rights. The High Court's injunctions fall squarely within the recognised category of anti-suit injunctions granted to protect legal and equitable rights and respond to unconscionable conduct, and are consistent with the principles governing injunctions to restrain ongoing tortious conduct.

Anti-enforcement relief is appropriate and necessary

68. Most anti-suit injunctions seek to restrain the commencement or continuation of proceedings, but in appropriate cases the court may also grant an injunction to restrain the respondent from acting on, or enforcing, a judgment they have already obtained in a foreign court.

69. Fraud has long been considered the paradigm case for an anti-enforcement injunction. The leading authority is *Ellerman Lines Ltd v Read*, where the respondent salvor had obtained a salvage judgment in Constantinople by misrepresentation to the court and in breach of his contractual obligation not to cause the salvaged property to be arrested

---

[72] In Australia this is characterised as the exercise of an inherent jurisdiction to protect the court's own processes rather than the equitable restraint of unconscionable conduct, but the effect is the same. See *CSR Ltd* above n 54 at 433-435 **[[A0326]]**, see also Andrew Barker "Permanent Injunctions" in Peter Blanchard (ed) *Civil Remedies in New Zealand* (2nd ed, Thomson Reuters, 2011) 227 at 270-271.

[73] *Kea Investments Ltd v Wikeley* [2025] NZHC 2387 at [57].

before security had been provided.[74] The English Court of Appeal granted an injunction restraining the salvor, who was a British citizen, from taking steps to enforce the Turkish judgment anywhere in the world.

70. *Ellerman Lines* confirmed that an anti-enforcement injunction can be justified in cases of fraud and is not limited to cases involving breach of a contractual jurisdiction clause.[75] This principle was accepted by the Queensland Court of Appeal.[76] If the power to grant anti-enforcement injunctions were confined to cases where the respondent has brought proceedings in breach of a contractual jurisdiction or arbitration clause, a person who was defrauded by a stranger would have less protection than one wrongly sued by a contractual counterparty.[77]

71. Anti-suit and anti-enforcement injunctions both restrict a defendant from taking advantage of proceedings in the foreign courts, but the difference is of degree not kind.[78] It will generally be less appropriate to intervene if the foreign court has investigated the underlying merits and made findings on them. Comity may assume particular importance in such cases because there is a greater risk that the time and resource expended in hearing the case would make injunctive relief inappropriate.[79] But even then an injunction may be justified. The English High Court recently granted an anti-enforcement injunction because the foreign judgments were

---

[74] *Ellerman Lines Ltd v Read* [1928] 2 KB 144 (CA), in particular at 150-153. **[[A0410]]**

[75] See *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2008] EWCA Civ 625; [2009] QB 503 at [94] **[[A0553]]**; *Ecobank Transnational Inc v Tanoh* [2015] EWCA Civ 1309 at [118]-[119] **[[A0397]]**; *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] SGCA 10 at [113] **[[A0753]]**; *Bank St Petersburg PJSC* above n 60 at [38] **[[A0148]]**; *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 at [118] **[[A0666]]**; Thomas Raphael *The Anti-Suit Injunction* (2 ed, OUP, 2019) at [5.67] and [5.70] **[[A0972]]**; TM Yeo "Foreign Judgments and Contracts: the Anti-enforcement Injunction" in Andrew Dickinson & Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (OUP, Oxford, 2021) 251, 263 **[[A0986]]**, suggesting that it was fraud and not the breach of contract that justified the injunction and rendered comity considerations subordinate. See also *Google LLC v NAO Tsargrad Media* [2025] EWHC 94 (Comm) observing that the principle underlying the judgment was not limited to fraud but included proceedings "contrary to equity and good conscience".

[76] At [45]-[46]. See also Andrew Dickinson "Taming Anti-Suit Injunctions" above n 69 at 101, n 213 **[[A0921]]**. In *Nigeria v Williams* [2025] EWHC 2217 (Comm) anti-enforcement relief was granted in relation to an English default judgment that was being impugned on the basis of fraud (citing *Ellerman* and Raphael, above).

[77] Cf CA Judgment at [187] **[[05.0066]]**.

[78] TM Yeo above n 75 at 257. **[[A0980]]**

[79] *SAS Institute* above n 75 at [104]-[105] **[[A0661]]**, citing *Ecobank*above n 75 at [132]-[137] **[[A0401]]**; *Dicey* at [12–139] **[[A0944]]**. This explains why an injunction was refused in a case like E-*Star Shipping and Trading Co Ltd v Delta Corp Shipping Ltd* [2022] EWHC 3165 (Comm) at [47]-[51].

obtained by fraud, even though, unlike in the present case, the claims had been litigated on the merits.[80] Such is the imperative to restrain fraud.

72. Anti-enforcement relief will thus be available where the applicant can show that the foreign judgment was obtained by fraud, and where the judgment was obtained too secretly or quickly to enable an anti-suit injunction to be obtained. In those cases, the interests of justice require intervention.[81]

73. In the present case: (a) the respondents acted fraudulently (both in seeking judgment on a forged agreement and misrepresenting the position to the Kentucky court); and (b) the judgment was obtained without any consideration of the court's own jurisdiction or the merits. The obtaining of a judgment on fraudulent premises is a distinct wrong, which calls for equitable intervention to prevent the fraudster benefiting from the fruits of that wrongfully obtained judgment.

74. If it would be appropriate to restrain the defendants from pursuing their fraudulent conspiracy prior to judgment by anti-suit injunction, it cannot be right for them to be permitted to enforce any judgment that relies on the same fraud. Anti-enforcement relief is necessary to restrain the fraudulent conspiracy, and the use of the Default Judgment to further that conspiracy in a way that is oppressive and vexatious, and violates Kea's right not to have proceedings (including enforcement proceedings relying upon the Default Judgment) brought against it, or otherwise be forced to litigate, in a jurisdiction with which it has no connection.

75. As explained below, the anti-enforcement relief in the present case must extend to all actions of the respondents both in Kentucky and worldwide. The respondents (and other associates of Mr Wikeley) have demonstrated their determination to further their fraud in any jurisdiction and by any means. Apart from Kentucky—where the obtaining of the Default Judgment was a central aspect of the fraud and the respondents are continuing to use the Kentucky courts to further perpetrate the fraud—this includes the other states of the United States, where the defendants have attempted to use the judgment to obtain discovery, and the BVI.

76. In Queensland, Mr Wikeley relied on authority said to support the proposition that anti-suit or anti-enforcement relief operating within the jurisdiction of the foreign judgment court, rather than third countries, was

---

[80] *Commercial Bank of Dubai PSC v Al Sari* [2025] EWHC 1810 (Comm). **[[A0257]]**

[81] It follows that the present case is distinguishable from the cases cited by the Court of Appeal where anti-enforcement injunctions were refused: Court of Appeal Judgment at [180]-[181] **[[05.0063]]**, citing *ED & F Man (Sugar) Ltd v Haryanto (No 2)* [1991] 1 Lloyd's Rep 429 (CA) and *Mamidoil-Jetoil Greek Petroleum Co SA v Okta Crude Oil Refinery AD* [2002] EWHC 2210 (Comm), [2004] 1 Lloyd's Rep 1. **[[05.0063]]**

"exorbitant". The case cited, however, involved an injunction restraining enforcement against assets in a commercial dispute.[82] As the Queensland Court of Appeal made clear, it was not authority for the proposition that such relief can never be granted, particularly where fraud is involved.[83] All anti-suit injunctions, including anti-enforcement injunctions, have effect in the territory of the foreign court. Comity does not prevent their issue where the interests of justice require it, particularly where the foreign court is being used as a vehicle for fraud.

The alternative test proposed by the Court of Appeal

77. The Court of Appeal considered that comity requires narrowing the availability of an anti-suit or anti-enforcement injunction to cases where the foreign court is acting or likely to act: in excess of its jurisdiction under international law; in violation of the requirements of natural justice; otherwise in a manner manifestly in compatible with New Zealand's fundamental public policies; or in proceedings likely significantly and irreversibly to interfere with the administration of justice in New Zealand.[84]

78. Applying the Court of Appeal's criteria would tend to direct the Court's attention away from the defendants' conduct and towards assessing the quality of justice in the foreign court. That has the potential to exacerbate rather than mitigate comity concerns.

79. The Court of Appeal's apparent concerns about the use of anti-suit injunctions in cases where there are genuine jurisdictional disputes (particularly on an interim basis)[85] do not arise in this case because it has been established that no legitimate claim can be brought in Kentucky or elsewhere on the Coal Agreement. Nor is there any basis for the Court's speculation that granting relief could in theory provoke countermeasures: the Bankruptcy Court's decisions have demonstrated the opposite.

80. While Kea submits that the Court of Appeal was wrong in principle to set up these criteria, each of them is in fact satisfied:

    a. It follows from the finding that the Coal Agreement is a forgery that there are no genuine connections between Kentucky and New

---

[82] *SAS Institute Inc* above n 75 at [120]. **[[A0667]]**

[83] *Wikeley v Kea Investments Ltd* [2024] QCA 201 at [40].

[84] CA Judgment at [176] **[[05.0061]]**.

[85] CA Judgment at [164] **[[05.0057]]**, [179] **[[05.0063]]**, citing *British Airways Board v Laker Airways Ltd* [1984] QB 142 (CA) **[[A0150]]**; *Laker Airways Ltd v Sabena Belgian World Airlines* 731 F 2d 909 (DC Cir 1984); *British Airways Board v Laker Airways Ltd* [1985] AC 58 (HL) **[[A0218]]**. That was a case where a party to commercial litigation sought an unfair advantage by seeking pre-emptive relief in its home courts based on a political difference between the legal systems.

Zealand that could justify the defendants invoking that jurisdiction—under international or United States domestic law[86] (as the Court of Appeal accepted).[87]

b. Refusing an injunction would allow the defendants to take advantage of their own fraud. The granting and enforcement of the Default Judgment in these circumstances is manifestly incompatible with New Zealand's fundamental public policies against fraud.

c. The respondents have done everything they can to prevent the underlying merits of their claims being tested in the Kentucky courts, including by commencing proceedings without pre-action correspondence and seeking default judgment, refusing to comply with the High Court's orders to unwind the fraud, and taking steps to undermine the jurisdiction of the New Zealand courts. [88]

d. Mr Wikeley and his family have sought to interfere with the administration of justice in New Zealand through their attempts to undermine the courts' orders (and as reflected in the Court of Appeal's finding that the appointment of interim liquidators was necessary to serve valid domestic interests). They can be expected to exploit a decision not to restore the injunctions to justify continued pursuit of the fraud overseas in a way that is intended to undermine the final determinations of the New Zealand courts.[89]

81. The case for Kea does not depend on criticising the law of Kentucky or its application in the Kentucky courts. The Bankruptcy Court has taken some steps to restrain the fraud at the behest of the interim liquidators, but Kea should not have to rely on that Court any more than it should have to litigate in the Kentucky state courts. The Bankruptcy Court has no power to discharge the Default Judgment and Kea is not a party to those proceedings. The Bankruptcy Court is deferring to the New Zealand court having observed that the fraud cries out for resolution within one forum.

---

[86] Or New Zealand private international law, since it has been finally determined that the judgment is not entitled to recognition or enforcement in New Zealand.

[87] See Kelly Report at [15] **[[305.2018]]**; see also Silberman Report at [20] **[[311.5292]]**.

[88] In an affidavit dated 6 May 2024 (which the Court of Appeal declined to admit into evidence on Mr Wikeley's application), Andre Regard, Mr Wikeley's Kentucky lawyer, explained that he considered sending pre-action correspondence and decided against it as his experience is that demand letters "are either ineffective or backfire" (at [30]).

[89] The Bankruptcy Court has taken some steps to restrain such attempts, but these are necessarily reactive and it has deferred to the exercise of jurisdiction over the parties by the New Zealand court. Still less can that court restrain the pursuit of the wider conspiracy by all the respondents. Moreover, Kea should not be forced to have recourse to whatever remedies are available in Kentucky: see above.

82. The critical point is that every step Kea must take in Kentucky is a step it has been forced to take by the fraudsters. It is wrong in principle, and unjust, for the New Zealand court to withhold relief unless and until Kea continues litigating in a forum with which it has no connection, while the perpetrators of the conspiracy—who are subject to the jurisdiction of the New Zealand Court alone—persist in prosecuting their fraud vexatiously, oppressively and unconscionably overseas.

The interests of justice, including the requirements of comity, favour injunctive relief

83. The third element of the test for both anti-suit and anti-enforcement relief is the interests of justice. Where there is a sufficient legal reason—in the form of vexation, oppression, or violation of an equitable right—then the interests of justice will ordinarily require the grant of an injunction unless there are special circumstances that make it unjust.[90]

84. Comity places trust and confidence in the operation of foreign courts but does not call for blind deference. The court must balance the need for comity with due regard "to the rights of its own citizens or of other persons who are under the protection of its laws"[91] taking into account the relative strength of the connections between the two legal systems to the subject matter of the dispute and the parties.

85. The "significance of the claims of comity will vary according to the facts of each case and also by reference to the reason why injunctive relief is being sought".[92] Equally, "the grosser the perceived misconduct of the party to be restrained, the less will a sense of judicial comity constrain the court."[93]

86. In this case, the injunctions give effect to the final findings of fraud made by a court with jurisdiction as of right over WFTL and far more legitimate factual connections to the dispute than Kentucky, whose only involvement arose from the respondents' fraud. It is difficult to see how personal orders requiring the respondents to unwind the conspiracy could offend comity towards the Kentucky Court.

87. The Court of Appeal deprecated what it called the "pretence" that relief is directed to the defendants, not the foreign court, as a justification for why injunctive relief does not offend comity.[94] This criticism is misplaced. It has

---

[90] Andrew Dickinson "Taming Anti-Suit Injunctions" above n 69 at 83. **[[A0903]]**

[91] *Morguard Investments Ltd v De Savoye* [1990] 3 SCR 1077 at 1096. **[[A0601]]**

[92] Andrew Bell *Forum Shopping and Venue in Transnational Litigation* (OUP, Sydney, 2003) at [4.226]. **[[A0895]]**

[93] Adrian Briggs *The Conflict of Laws* above n 58 at 95. **[[A0887]]**

[94] CA Judgment at [167] **[[05.0058]]**.

long been recognised that such relief has an impact on the foreign court: this is part of the reason for the court's caution in granting such relief. But the personal character of the relief is no fiction: it is the conduct of the defendant and its impact on the plaintiff and the forum court that is the focus of the enquiry.[95] This was the focus of the High Court's assessment, and it remains the proper focus when considering the conduct in Kentucky that the injunctions seek to restrain.

88. Further, as explained above, the commencement of proceedings in a forum with which Kea has no connection is itself wrongful. Equity demands that the victim of fraud in a forum wrongfully invoked against it should not suffer the further wrong of having to exhaust its remedies there.

89. While comity requires careful consideration where anti-suit or anti-enforcement relief is sought, the weight to be accorded to it will vary.[96]

90. Thus, comity may play a significant role where proceedings have been legitimately brought in a foreign court with genuine connections to the case. Comity must carry less weight where, as here, fraudsters are using the foreign proceedings to implement their fraud in a forum with which the wronged party has no connection.

91. As noted above, the nature and extent of the New Zealand court's jurisdiction (and, correspondingly, the extent of the foreign court's connection to the dispute) informs the assessment of whether the New Zealand court should appropriately grant relief: the stronger the connection of the New Zealand court with the parties and the subject matter of the dispute, the stronger the argument for relief (and vice versa).[97] Here, the effect of the judgments below is that:

    a. The New Zealand court has jurisdiction over the defendants and a strong interest in regulating the conduct of a New Zealand company as trustee of a New Zealand trust being used to implement a multinational fraud; and

    b. Kentucky has no genuine connection to the parties or the dispute.

92. Similarly, comity considerations have less weight where the pursuit of the foreign proceedings threatens the integrity of New Zealand proceedings

---

[95] Bell above n 92 at [4.227].

[96] *Dicey* at [7–013] **[[A0874]]**, citing *Deutsche Bank AG* above n 51 at [50] (emphasis added). **[[A0351]]**

[97] *Airbus* above n 59 at 138 **[[A0076]]**; Kea does not suggest that anti-suit injunction should "automatically follow" if the New Zealand court has jurisdiction: cf CA Judgment at [174] **[[05.0060]]**.

or is calculated to undermine the administration of justice in our courts.[98] The respondents have demonstrated an intention to undermine both.

Comity requires robust measures to combat cross-border fraud

93. The Court of Appeal's concerns for comity overlook the shared international interest in combatting cross-border fraud through providing robust and effective means of redress to the victim.

94. Stopping fraud requires the use of all tools at the courts' disposal and "international co-operation between the courts of different jurisdictions".[99] The policy against fraud is embedded in the fabric of private international law: it is an exception to the rule that New Zealand courts will not impeach a foreign judgment on its merits,[100] and can justify the use of worldwide freezing orders in support of foreign proceedings.[101] The Court of Appeal was wrong to assume that comity could only operate as a *limit* on the courts' powers.

95. At the outset of the proceedings, Gault J recognised that comity may be promoted by the grant of injunctive relief, where the granting court has a legitimate role in restraining the pursuit of a fraudulent conspiracy by parties under the control of the New Zealand courts:[102]

> 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.

96. The High Court recently echoed that sentiment in its decision to grant further interim relief in response to the attempt by Mr Wikeley's children to have a Special Fiduciary appointed by the Kentucky courts, observing that "comity with the US Bankruptcy Court may weigh in favour of interim relief. There is a need for international co-operation between the courts of different jurisdictions in order to deal with multi-national frauds."[103]

97. Moreover, as the Court of Appeal noted, the Queensland Supreme Court (when granting interim relief in support of the New Zealand proceedings) considered that Kea's claims of tortious conspiracy could support a

---

[98] Bell above n 92 at [4.230] **[[A0895]]**, citing *CSR Ltd* above n 54 at 398.

[99] *Bank of Crete SA v Koskotas (No 2)* [1992] 1 WLR 919 (Ch) at 925 **[[A0131]]**; *First American Corp v Zayed* [1999] 1 WLR 1154 (CA) at 1165.

[100] *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 (CA) **[[A0043]]**.

[101] *Republic of Haiti v Duvalier* [1990] 1 QB 202 (CA). **[[A0617]]**

[102] *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881 at [68] **[[05.0104]]**.

[103] *Kea Investments Ltd v Wikeley* [2025] NZHC 2387 at [56], citing *Bank of Crete* above n 99 at 925 **[[A0131]]** and *First American Corpn v Zayed* [1999] 1 WLR 1154 (EWCA) at 1165.

permanent anti-enforcement injunction without offending comity.[104] The Queensland Court of Appeal upheld that decision and the High Court of Australia refused leave on the basis there was "no reason to doubt the correctness of the decision of the [Queensland] Court of Appeal."[105]

98. That underlying theme is also seen in the decisions of the Bankruptcy Court in the present case. The Bankruptcy Court has expressed no concern that the High Court's approach is offensive from the point of view of United States law. The Bankruptcy Court has:[106]

    a. granted recognition to both the appointment of the interim liquidators and the High Court's finding that the attempts to assign the Default Judgment were void (in the legitimate exercise of the High Court's jurisdiction to control the conduct of the defendants before it and regulate its own processes);

    b. found that the interim injunction "did not run afoul of any fundamental principle of the law and policies of the United States";

    c. observed that the dispute "has cried out from the beginning for resolution in one court", by which it means the New Zealand court;

    d. voided the order appointing a Special Fiduciary motivated in part by the need to protect the integrity of the New Zealand Court orders.[107]

99. Although the Bankruptcy Court has not yet been asked to grant comity to the permanent injunctions themselves (since their continuation depends on this appeal), its actions to date show that the intervention of the New Zealand Court represents the kind of international co-operation that is necessary to combat cross-border fraud and is consistent with comity.

---

[104] CA Judgment at [192] **[[05.0068]]**, citing Queensland SC second interim orders judgment at [159]-[203] **[[310.4543]]**.

[105] *Wikeley v Kea Investments Ltd* [2025] HCADisp 33 at [2]. The New Zealand Court of Appeal sought to distinguish those decisions on the basis that they were made at the interim relief stage and "we have had the benefit of more extensive consideration of the comity issue: CA Judgment at [193] **[[05.0069]]**. But the Australian courts were looking ahead (as comity decisions necessarily must) to the question of whether Kea's claim could support a permanent injunction, and conducted that assessment on the basis of full argument. The decisions of the Australian courts are persuasive.

[106] See [32] and [43] above, and Supplemental Order (4 August 2025) at 11. See **[[311.5118]]**.

[107] The High Court made without notice orders against Mr Wikeley's children restraining them from taking further steps on the appointment of the Special Fiduciary, and the Bankruptcy Court was aware of these orders when it voided the Circuit Court's order. Kea is applying for leave to adduce evidence of these matters.

100. Kea called unrebutted evidence from Professor Silberman[108] that granting anti-suit relief in these circumstances would not be seen as contrary to comity as understood by United States courts.[109] The Court of Appeal did not have a proper basis for its concern that anti-suit relief could be seen as contrary to the principle of comity, including as that concept is recognised under United States law.

There is no requirement to exhaust remedies in the overseas jurisdiction chosen to perpetrate the fraud

101. The Court of Appeal erred in finding that comity required Kea to exhaust its remedies on appeal in Kentucky rather than being able to seek prompt redress in the New Zealand courts against international fraud perpetrated by or through a New Zealand entity. The pursuit of proceedings in a forum with which the defendant has no connection is itself a form of wrongdoing (closely related to but independent of the fraud). It is wrong in principle to require a victim of wrongdoing to be subjected further to that wrong by pursuing proceedings in the fraudsters' chosen forum. This is especially so in circumstances where Kea has already tried in vain[110] to set aside the Default Judgment at first instance.

102. There is no requirement to exhaust remedies overseas as a pre-condition to obtaining injunctive relief; any such requirement would only run a greater risk of conflict with a foreign court. The victim of the fraud, and of proceedings wrongfully commenced in a forum with which the applicant has no connection, should not be compelled to incur time and unrecoverable cost taking further steps in that forum—that is, further suffer the very damage the conspiracy is intended to inflict—and run the risk of being held by that court to have submitted to the jurisdiction.

103. As noted above, the principal reason for the courts' care in granting anti-enforcement injunctions is a concern about wasting judicial resources and allowing relief in the face of culpable delay. However, the approach

---

[108] Silberman Report at [29] **[[311.5295]]**. The Court of Appeal dismissed that evidence in n 144 on the basis that it "assumes an inability on the part of United States courts to restrain fraud which is inappropriate in comity terms." **[[05.0059]]** Kea does not accept that characterization: the point is that the US courts would not be offended by the New Zealand court granting injunctive relief forthwith; which also tends to indicate that they would *not* expect or require Kea first to exhaust its remedies in Kentucky.

[109] Likewise, Kea can comfortably meet the requirements of the "narrow" view of when United States courts would grant injunctions, according to the defendants' expert: where the foreign proceedings (a) amount to a breach of an established legal obligation or (b) violate the fundamental public policy of the court (including the need to protect the forum court's jurisdiction): Affidavit of Prof. Bermann at [49] **[[201.0237]]**. The gloss in parentheses is not mentioned by Professor Bermann but is an established part of the "narrow" view of anti-suit injunctions under United States law: see Campbell McLachlan *Lis Pendens* in International Litigation (Hague Academy of International Law, Martinus Nijhoff, Leiden/Boston, 2009) at 168.

[110] And whilst making clear that it does not submit to the jurisdiction of the Kentucky courts.

favoured by the Court of Appeal would exacerbate those concerns, because it is likely to lead to wasted (and unrecoverable) effort on the part of the litigants and the courts, in circumstances where the New Zealand court can grant effective relief immediately.

104. The need for injunctive relief does not depend on the applicant's prospects of successfully challenging the fraud in the foreign court on appeal. The relevant issues (such as the validity of the Coal Agreement) have been finally determined by the High Court, which is the only court with jurisdiction over the claim. It is neither principled nor just to require Kea to relitigate those questions when the Court of Appeal has already determined that there can be only one answer, and where being forced to continue litigating in Kentucky itself inflicts a continuing wrong and substantial additional inconvenience and losses on Kea.

105. There is no general requirement that an applicant should apply first to the foreign court before seeking an anti-suit injunction, in keeping with the tendency of the modern case law to require expedition in seeking relief.[111] And even if such a requirement were appropriate in some cases,[112] in others 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."[113] This is such a case.

106. There is no principle that the courts are permitted, let alone required, to "keep their powder dry". Nor has any cognate court recognised a doctrine akin to "prudential exhaustion" which the Court of Appeal derived from cases concerning public international law claims and which have nothing to do with anti-suit injunctions.[114]

107. The idea that the New Zealand courts should wait and see whether the Kentucky appellate courts do the "correct" thing is "not only invidious but the reverse of comity".[115] Having made up its mind on what the outcome should be, the Court of Appeal could not then refuse to grant the relief

---

[111] *Dicey* at [12-141] **[[A0944]]**. *Glencore International AG v Exeter Shipping Ltd* [2002] EWCA Civ 528 at [42] **[[A0429]]**; Thomas Raphael, *The Anti-Suit Injunction* above n 75 at [5.44] **[[A0969]]**; Adrian Briggs above n 58 at 101. **[[A0890]]**.

[112] In *Amchem Products Inc v Workers Compensation Board* [1993] 1 SCR 897, the Supreme Court of Canada favoured such an approach but in the context of interlocutory disputes about jurisdiction (unlike this case where there has been final determinations of fraud).

[113] Raphael above n 75 at [5.45]. **[[A0970]]**.

[114] See CA Judgment at n 186 **[[05.0069]]**, citing *Sarei v Rio Tinto plc* 550 F 3d 822 (9th Cir 2008) at 831 (which concerned claims under the Alien Tort Statute for violation of international law) and *Fischer v Magyar Államvasutak Zrt* 777 F 3d 847 (7th Cir 2015) (which concerned sovereign immunity). No party had sought to rely on such a principle in the Court of Appeal.

[115] *The Angelic Grace* [1995] 1 Lloyd's Rep 87 (CA) at 95 **[[A0813]]**. The position is the same in Australia: *Ace Insurance Ltd v Moose Enterprise Pty Ltd* [2009] NSWSC 724 at [10].

that followed. It follows that the Court misdirected itself when it asked whether there was a real risk that justice would not be done in Kentucky: Kea should not have been required to litigate there in the first place.[116]

The Court of Appeal's decision to withhold relief causes injustice

108. Nor is it right to assume (as the Court of Appeal appears to have done) that if the local court defers, a quick and convenient resolution will be possible in the foreign court. Uncertainty, delays, irrecoverable cost, the continued manoeuvring by Mr Wikeley's children, a requirement to post a bond of USD$100m[117] and the risk of (being accused of) submitting to the jurisdiction are all practical reasons why this course of action is unrealistic and unjust as well as unprincipled. All of these risks have manifested themselves in the present case and show why Kea cannot be expected to litigate the case further in Kentucky than it has done.[118]

109. The Court of Appeal discharged the injunctions because it was confident the Kentucky courts would fix the problem. That, with respect, misses the point: the question is whether the victim of a fraud should be required to exhaust its remedies in a foreign court wrongfully invoked by a fraudster and continue to suffer the harm that is an object of the tortious conspiracy; or if the victim is instead entitled to immediate injunctive relief against the wrongful actions of a New Zealand company as trustee of a New Zealand trust which is subject to the jurisdiction of the New Zealand courts.

110. But even if it were right to say that the foreign court should be given a chance at first instance to regulate its own processes, the Circuit Court has declined to consider the limits of its jurisdiction over the claim (when the Default Judgment was sought and obtained or on Kea's set-aside motion), or the reality of the fraud (even to a *prima facie* standard). Moreover, since the New Zealand Court confirmed its jurisdiction, the defendants and their associates have continued to use litigation overseas as an instrument to undermine the jurisdiction of the New Zealand courts.[119] Kea's prospects on appeal are uncertain.[120] None of this is to criticise the Kentucky courts;

---

[116] CA Judgment at [178] **[[05.0061]]**.

[117] Kelly Report at 19 **[[305.2030]]**.

[118] Andrew Bell *Forum Shopping and Venue in Transnational Litigation* (OUP, Sydney, 2003) at [4.244]-[4.247] **[[A0896]]**

[119] Neither the Order for Default Judgment nor the Order Denying Motion to Alter, Amend, Vacate (which was drafted by the parties) address jurisdiction and the Court issued no reasons.

[120] Kea's uncontested expert evidence was that there was a real risk of its appeal against the refusal to set aside the Default Judgment failing because of appellate deference on review: Kelly Report at [28] **[[305.2023]]**. The Court of Appeal discounted this evidence on the basis that Mr Kelly had not suggested the Circuit Court's decision was *correct:* CA Judgment at [184] **[[05.0065]]**. But that puts the question around the wrong way. The point is that there is no guarantee that the Kentucky courts will put the matter right. Indeed, Mr Wikeley has sought

it is to make clear that Kea has already taken steps in Kentucky at first instance to set aside the Default Judgment without avail;[121] and the New Zealand court should now provide prompt redress to the victim of a fraud and wrongful proceedings overseas, without requiring Kea further to engage with the Kentucky appellate court process.[122]

111. The Court of Appeal asked whether it was vexatious or oppressive for questions such as whether the Coal Agreement was genuine to be litigated in Kentucky.[123] It is undoubtedly vexatious and oppressive for Kea to be required to litigate those issues in Kentucky when they have been finally determined, there is no legitimate room for argument, and there can only be one proper outcome. All that can be achieved by withholding relief is to put Kea to the inconvenience, risk and unrecoverable cost of litigating the point in Kentucky, the fraudsters' wrongfully chosen forum, with the real risk that if the problem is still not resolved there. Kea faces continued efforts by the respondents (and their privies) to perpetuate the fraud. The conduct of the Wikeley family has thoroughly borne that out.

112. The Court of Appeal recognised that if the Kentucky courts failed to do so, the New Zealand courts could (and probably would) have to intervene.[124] At that point, however, its approach would produce a real clash between legal systems, leaving the New Zealand courts with a choice between (a) granting an injunction in a manner that risks being seen as a criticism of the Kentucky legal system as a whole, or (b) declining relief and abdicating responsibility for restraining New Zealand defendants from perpetrating a massive fraud. That is an untenable position.

113. Kea did as much as could be expected of it: it promptly applied to the Circuit Court to set aside the Default Judgment on the grounds of both lack of personal jurisdiction and *prima facie* fraud. It only turned to the New Zealand courts—who alone had supervisory jurisdiction over all the conspirators—when the Circuit Court declined to consider its jurisdiction

---

to rely on expert evidence from Kentucky that Kea's appeal is likely to fail in the affidavit of Craig McCloud dated 24 June 2025, which Mr Wikeley sought to rely on at the leave to appeal stage (memorandum for Mr Wikeley dated 25 June 2025). The application to adduce further evidence was declined ([2025] NZSC 75 at [5], **[[05.0079]]**). In any event, the key question is whether a victim of fraud wrongfully sued overseas is entitled to look to the New Zealand courts for prompt relief.

[121] Thus even taking the approach advocated by in Professor Dickinson's article and favoured by the Court of Appeal, the requirements for an injunction are satisfied: see Andrew Dickinson "Taming Anti-Suit Injunctions" above n 69 at 102. **[[A0922]]**.

[122] See also *Amchem Products Inc v Workers Compensation Board* [1993] 1 SCR 897, where the Supreme Court of Canada held that the local court would be entitled to intervene if and when the foreign court asserted a jurisdiction inconsistent with principles of *forum non conveniens*.

[123] CA Judgment at [191] **[[05.0068]]**.

[124] CA Judgment at [195] **[[05.0069]]**.

or the allegations of fraud. If Kea had applied earlier in New Zealand, then the defendants would no doubt have accused Kea of acting prematurely, yet they have alleged that by taking steps in New Zealand Kea is trying to have "two bites at the cherry".[125] In those circumstances, the court cannot abdicate responsibility for granting effective relief.

114. The Court of Appeal's decision cannot be reconciled with its decisions that: (a) the New Zealand court was the appropriate forum; (b) the Kentucky proceedings were fraudulent, leaving Kea with no connection to Kentucky; and (c) the appointment of interim liquidators served New Zealand's "valid domestic interests" and should be upheld, so that WFTL—and therefore the Default Judgment—remained under the supervision of the New Zealand courts. If the Court of Appeal expected the interim liquidators to cooperate in discharging the Kentucky Judgment—as must now be their obligation given that the Default Judgment has been held to have been fraudulently obtained—then it should also have upheld the injunctions that gave effect to that obligation.

115. The Court of Appeal's discharge of the injunctions, while said to reflect deference to the Kentucky courts, is unsound in principle and in substance is the antithesis of comity. By indicating that the injunctions could be reinstated only if the Kentucky courts fail to set aside the Default Judgment, the Court of Appeal has ensured that any later intervention would be more, not less, offensive to comity.

Relief

The permanent injunctions should be restored

116. The permanent injunctions in the primary judgment required the defendants to (a) facilitate the discharging of the Default Judgment, (b) refrain from acting on the Default Judgment anywhere in the world, (c) withdraw from pursuing any steps in reliance on the Coal Agreement, and (d) cause their privies and assignees to comply with those orders.[126]

117. Even if comity concerns had the weight that the Court of Appeal placed on them, they could not justify discharging the High Court's injunctions to the extent that they applied outside Kentucky (or the United States) or restrained reliance on the Coal Agreement more generally, which is an instrument of fraud independent of the Default Judgment.

---

[125] As Mr Wikeley submitted in his submissions in support of his application to set aside the default judgment dated 23 January 2024 at [25](b). That is wrong because Kea never sought to litigate the merits of the fraud in Kentucky: it only sought to have the Default Judgment set aside to restore the *status quo ante* and thus give it the opportunity to protest jurisdiction.

[126] Formal Proof Judgment at [156(a)] **[[05.0224]]**.

118. However, for the anti-suit and anti-enforcement relief to be effective, it is necessary that it extend to the discharge of the Default Judgment. Otherwise the platform for the defendants' continued pursuit of the fraudulent conspiracy using the Circuit Court as an instrument will remain (and the respondents will in all probability continue to pursue it).

119. Where a prohibitory injunction is not enough to ensure the injunction is practically effect (including where "the foreign action has a life of its own"), the court has the power to grant a mandatory injunction requiring the defendant to take active steps in relation to the foreign proceedings.[127]

120. In the present case, the Court of Appeal upheld the appointment of the interim liquidators and the Bankruptcy Court has confirmed that they remain in control of the Default Judgment. The interim liquidators can be expected to comply with any injunction requiring WFTL to discharge the Default Judgment; by contrast, the decision to discharge the injunctions despite the fraud findings has created "serious, practical difficulties".[128]

Supplementary orders

121. As a consequence of its decision to discharge the permanent injunctions, the Court of Appeal also discharged the orders in the supplementary judgment which prevented appointment of new trustees of WFT or changing its proper law.[129] It follows that if the primary injunction is restored, the supplementary order should also be restored. Those orders are necessary to restrain the defendants from their concerted efforts to undermine the jurisdiction of the New Zealand courts.

122. The Court of Appeal also expressed doubt whether the reservation of leave in relation to the primary injunction "was ever able to be accessed" for the purpose of making the supplementary orders in circumstances where the supplementary orders were not sought in the statement of claim. That reflects an overly narrow reading of the Court's original decision, which recognised that further orders might be necessary to ensure that the primary relief was effective. Subsequent events have proven this concern was well founded, including the recent attempts to circumvent the interim liquidators and New Zealand law by the appointing of a Kentucky-based Special Fiduciary in the courts of Kentucky pursuant to Kentucky law. That was an attempt to wrest control from the interim liquidators without

---

[127] *Dicey* at [12–122] (addressing anti-suit injunctions). **[[A0939]]**

[128] Interim liquidators' submissions in support of Kea's application for leave to appeal (21 February 2025) at [3].

[129] CA Judgment at [205] **[[05.0072]]**.

reference to New Zealand law, and in pursuit of the same conspiracy that had been subject to final determinations of the New Zealand courts.

Costs

123. Kea seeks costs against the respondents. Kea has sought indemnity costs in the High Court in circumstances where Kea's costs were incurred as a result of a fraudulent conspiracy.[130] Kea seeks costs on the appeal on an indemnity basis in accordance with rule 44(2) of the Supreme Court Rules.

Conclusion

124. The appeal should be allowed. Whatever the precise limits on anti-suit and anti-enforcement relief in other cases, this is almost as compelling a case as one can imagine for granting the relief that Kea seeks.

125. A victim of fraud is entitled to obtain prompt and effective relief from the New Zealand courts in support of New Zealand proceedings governed by New Zealand law, where the existence of the fraudulent conspiracy has been finally established, in order to prevent the continued perpetration of that very conspiracy. Kea should not be compelled to continue suffering the effects of the fraud by having to exhaust its remedies on appeal in Kentucky prior to (potentially) obtaining injunctive relief, when it has no connection with that jurisdiction and should not have been faced with litigation there in the first place. This is especially so where New Zealand alone has jurisdiction over the conspiracy and its actors as well.

Dated 10 September 2025

J B M Smith KC / M C Harris / J L W Wass / S T Coupe
Counsel for appellant

Certification under Supreme Court Submissions Practice Note, 5 July 2023:

Counsel for the appellant certifies that, having made appropriate inquiries to ascertain whether these submissions and accompanying chronology contain any suppressed information, to the best of their knowledge, the submission and chronology is suitable for publication.

[130] Kea's application for indemnity costs following the formal proof judgments is still to be determined by Gault J.