

Between: **Kea Investments Ltd**
Appellant

and: **Kenneth David Wikeley**
First Respondent

and: **Wikeley Family Trustee Limited (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 the Interim Liquidators of the second respondent

Dated: 1 October 2025

Reference: M D Arthur (michael.arthur@chapmantripp.com)
J Marcetic (janko.marcetic@chapmantripp.com)

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SUBMISSIONS FOR THE INTERIM LIQUIDATORS OF THE SECOND RESPONDENT

May it please the Court:

A. SUMMARY

- 1 These submissions are filed on behalf of the second respondent (**WFTL**) and its interim liquidators.
- 2 The New Zealand High Court appointed interim liquidators over WFTL to control a default judgment obtained by WFTL against Kea Investments Ltd (**Kea**) in Kentucky (**Default Judgment**). The New Zealand courts' determination that the Default Judgment was obtained by fraud is now final.
- 3 WFTL's interim liquidators support Kea's appeal of the part of the Court of Appeal's judgment (**CA Judgment**)¹ discharging the permanent injunctions preventing, among other things, enforcement outside of New Zealand of the Default Judgment and change of WFTL's trustee.
- 4 Practically, the CA Judgment forces Kea to pursue its appeal in the Kentucky Court of Appeals against WFTL, which remains in interim liquidation. The CA Judgment presents WFTL and the interim liquidators with a choice of either:
 - 4.1 opposing Kea's appeal—despite concurrent and final findings in New Zealand courts that the Default Judgment is fraudulent and made pursuant to a conspiracy—in breach of their obligations as officers of the Court; or
 - 4.2 not opposing Kea's appeal (either by relinquishing control of WFTL and the Default Judgment, or abiding the decision). Doing so may allow another party to perpetuate fraud—and risk substantial damages and costs claims against WFTL, to the detriment of its creditors, and breach of the interim liquidators' obligations.

¹ [*Wikeley v Kea Investments Ltd*](#) [2024] NZCA 609 (**CA Judgment**).

- 5 The discharge of the injunctions has created serious, practical difficulties for WFTL and its interim liquidators. Mr Wikeley and his associates appear to have taken the removal of the injunctions as an invitation to continue trying to enforce the Default Judgment. The CA Judgment has encouraged and resulted in members of the Wikeley family and associates both:
 - 5.1 threatening and taking action against the interim liquidators personally, as a result of the interim liquidators declining to take action to enforce the Default Judgment; and
 - 5.2 taking active steps to remove the Default Judgment from control of WFTL's interim liquidators.
- 6 Absent the relevant permanent injunctions, the interim liquidators are being pressured to perpetuate a fraud. As officers of the New Zealand High Court, they will not take steps to perpetuate any fraud but the removal of the injunctions has left them facing threats of claims against them personally. The reinstatement of the injunctions is necessary not only to protect the interim liquidators personally, but also to protect the processes of the Court that led to their appointment in the first place.
- 7 The interim liquidators agree that this appeal concerns whether New Zealand courts can act effectively to protect their own processes to prevent New Zealand companies and trusts from being used to facilitate international fraud. In addition, the protection of the Court's own officers is also at stake.

B. INTERIM LIQUIDATORS' APPOINTMENT AND ACTIONS

- 8 Kea's submissions and chronology have set out in detail the history of this proceeding. At the risk of some repetition, these submissions set out in some detail steps taken by the interim liquidators following their appointment and their perspective on the relevant events. That detail is necessary to understand the serious and practical difficulties created for the interim liquidators by the CA Judgment, and why the appeal should be allowed.

Appointment of interim liquidators

- 9 On 6 April 2023, the High Court ordered the appointment of the interim liquidators.²
- 10 They were appointed after Mr Wikeley had incorporated a new company in Kentucky (Wikeley Inc) and purported to assign the Coal Agreement and the Default Judgment to it to alienate WFTL's assets from New Zealand.³ Wikeley Inc is the fourth respondent in this proceeding.
- 11 The High Court appointed the interim liquidators on the basis that:⁴

... WFTL and Mr Wikeley likely have in a serious way failed to comply with duties relating to the company under the Companies Act 1993. In particular, it appears likely that they have acted in breach of this Court's earlier interim orders by assigning or purporting to assign the Coal Agreement and the very substantial default judgment in circumstances which amount to a breach of Mr Wikeley's duty to exercise his powers for a proper purpose.
- 12 Since their appointment, the interim liquidators have taken steps to preserve the value of assets owned and managed by WFTL. On appointment they contacted Mr Wikeley, as sole director and shareholder of WFTL, notifying him of their appointment and requesting information about WFTL's creditors and assets.
- 13 On 11 April 2023, Mr Wikeley incorporated USA Asset Holdings Inc, the fifth respondent, in Kentucky.⁵ Mr Wikeley then purported to replace WFTL with USA Assets Holdings Inc as trustee of the Wikeley Family Trust (the **Trust**).
- 14 On 13 April 2023, Mr Wikeley advised the interim liquidators that WFTL had been replaced as trustee, and that "*all property, of any kind held by WFTL, falls now under the stewardship of [USA Asset*

² Minute of Gault J dated 6 April 2023 (CIV-2022-404-2086) [[101.0073](#)].

³ Minute of Gault J dated 6 April 2023 (CIV-2022-404-2086) [[101.0073](#)].

⁴ Minute of Gault J dated 6 April 2023 (CIV-2022-404-2086) at [7]. [[101.0073](#)].

⁵ Bishop 1 at [33] [[Evidence Tab 016/201.0096](#)]; and Article of Incorporation [[305.2302](#)].

Holdings Inc]".⁶ He did not provide the details sought of WFTL's creditors and assets.

Recognition of interim liquidation in US Courts – May 2023

- 15 Mr Wikeley's actions undermining the New Zealand Court's jurisdiction required the interim liquidators to engage US counsel to, amongst other things, seek (and obtain) recognition of their appointment in the United States and declarations that Mr Wikeley's attempts to alienate WFTL's assets were void or of no effect.⁷ The recognition of the interim liquidation by the US Bankruptcy Court on 25 May 2023 imposed an automatic stay against any actions against WFTL or its assets.⁸

Formal proof hearing and Formal Proof Judgment – May 2023 – November 2023

- 16 On 17 May 2023, the High Court, by way of formal proof, heard Kea's claim that the respondents to this appeal had conspired to harm and defraud Kea by attempting to enforce the Default Judgment.
- 17 Ahead of that hearing, the interim liquidators filed evidence updating the Court as to the steps they had taken since their appointment to maintain the value of assets owned or maintained by WFTL.⁹ Those steps included:
- 17.1 requesting that Mr Wikeley provide them with information about WFTL's property and creditors. Mr Wikeley did not provide such information, as above;
 - 17.2 obtaining from the US Bankruptcy Court, under Chapter 15, recognition of their appointment as interim liquidators.

⁶ Burrett 1 at [9] [**Evidence Tab 032/201.0268**]; and Exhibit NGB-2 at [**305.2429**].

⁷ Burrett 2 at [**Evidence Tab 034/201.0294**].

⁸ Order of the US Bankruptcy Court dated 25 May 2023 [**308.3685**]. The effect of the stay was addressed further by the US Bankruptcy Court in its 15 May 2024 order recognising other orders of the New Zealand High Court (discussed further below): [**311.5118**] at [**311.5123**].

⁹ Burrett 1 at [6]-[32] [**Evidence Tab 032/201.0268**].

- 18 The formal proof hearing addressed three causes of action:
- 18.1 conspiracy by defendants;
 - 18.2 default Judgment not entitled to recognition; and
 - 18.3 declarations setting aside Coal Agreement, purported assignments and change of trustee.
- 19 The interim liquidators advised the Court that WFTL would abide by the Court's decision in respect of the first and second causes of action.¹⁰ The interim liquidators took that position as they had no information that would have assisted the Court in determining those causes of actions, beyond the information already before the Court. In particular, the interim liquidators had not obtained any information that would assist the Court in determining the legitimacy of the Coal Agreement and whether the Default Judgment had been legitimately obtained.
- 20 The interim liquidators supported Kea's third cause of action, seeking declarations setting aside the purported assignment of WFTL's assets and the removal of WFTL as trustee.¹¹ They did so because the steps taken by Mr Wikeley appeared to have been taken with the intention of placing the assets and control of the Trust beyond the interim liquidators. (At that time, there was no final determination of whether the Default Judgment had been obtained by fraud.) Those steps had the effect of directly interfering with the purpose of the interim liquidators' appointment.
- 21 On 17 November 2023, the High Court delivered its judgment in favour of Kea (the **Formal Proof Judgment**).¹²

Second Formal Proof Judgment – December 2023

- 22 On 5 December 2023, a further High Court judgment was issued making orders preventing the defendants from appointing any

¹⁰ Burrett 1 at [33.3] [**Evidence Tab 032/201.0268**].

¹¹ Burrett 1 at [33] [**Evidence Tab 032/201.0268**].

¹² *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 [**05.0172**].

additional or replacement trustee of the Trust, or changing the law of that trust (**Second Formal Proof Judgment**).¹³

- 23 The relevant defendants to whom those orders applied (i.e. those with the power to change the trustee of the Trust) are Mr Wikeley as appointor, and WFTL as trustee.¹⁴

US Bankruptcy Court recognition of formal proof judgment – May 2024

- 24 On 15 May 2024 (on an application by the interim liquidators), in light of the Formal Proof Judgment, the interim liquidators filed a motion in the US Bankruptcy Court seeking recognition of that judgment, and specifically the finding that the Default Judgment is property of WFTL and that the purported transfer of it was void.
- 25 On 15 May 2024, the US Bankruptcy Court made orders granting recognition of parts of the Formal Proof Judgment (**US Bankruptcy Court Recognition Judgment**). The US Bankruptcy Court said:¹⁵

The New Zealand High Court's findings and declarations in the Final Judgment that the actions taken in violation of the New Zealand High Court Injunction, specifically the execution of the Assignments [of the Coal Agreement and the Default Judgment], replacement of the Foreign Debtor as trustee of the Wikeley Family Trust, and change in the governing law of the Wikeley Family Trust, are void is granted comity and given full force and effect in the United States.

Threats by Wikeley family against interim liquidators – May 2024

- 26 On 21 May 2024, Mr Wikeley and his sons, Oliver and William Wikeley, as beneficiaries of the Trust, wrote to the interim liquidators.¹⁶ They:

¹³ *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3532 [05.0227].

¹⁴ The Trust Deed is at Wikeley Family Trust Deed [301.0001]. Clause 9 (at [301.0007]) addresses the removal and replacement of trustees.

¹⁵ Burrett 3 at [3] [Evidence Tab 035/201.0298]; and Exhibit NGB-9 at [311.5140].

¹⁶ Memorandum of counsel for interim liquidators of second respondent, dated 1 October 2024 [101.0232]. Wikeley's letter at [101.0237].

- 26.1 demanded the interim liquidators take steps to enforce and collect the Default Judgment with urgency (in light of the US Bankruptcy Court Recognition Judgment), and provide a plan on how they intended to do so within 72 hours;
 - 26.2 put the interim liquidators on notice that any attempt to not collect on the Default Judgment, or any other adverse actions, may result in contempt of Court orders;
 - 26.3 asserted that the interim liquidators were legally obligated to challenge Kea's appeal in the Kentucky Court of Appeal, and any failure to do so would trigger the beneficiaries to take steps against the interim liquidators and their firm.
- 27 The interim liquidators responded that:¹⁷
- 27.1 they would not take any steps to enforce or act on the Default Judgment, as doing so would breach the High Court's orders made in the Formal Proof Judgment;
 - 27.2 the 15 May 2024 judgment of the US Bankruptcy Court, giving recognition to various findings in the Formal Proof Judgment, was mischaracterised by Mr Wikeley and did not require the interim liquidators to collect the Default Judgment;
 - 27.3 they recognised Mr Wikeley's appeal of the Formal Proof Judgment and said they would preserve the status quo so that "*no rights of [WFTL] are impaired*" while Mr Wikeley's appeal was ongoing.

¹⁷ Memorandum of counsel for interim liquidators of second respondent, dated 1 October 2024 [101.0232]. Interim Liquidators' letter at [101.0237].

C. CA JUDGMENT

28 Mr Wikeley appealed the two Formal Proof Judgments.¹⁸ On 21 November 2024, the Court of Appeal delivered the CA Judgment on that appeal.¹⁹

29 The CA Judgment expressly upheld, in their entirety, the fraud findings in the High Court. The Court did so on the basis of a series of factual findings.²⁰

30 The Court of Appeal said:²¹

We also uphold all the other orders made by the High Court, including ... the declarations that the Kentucky Default Judgment was obtained by fraud ...

...

We do so because we are satisfied that the Judge was correct in finding a fraudulent conspiracy between the defendants.

31 The CA Judgment discharged the following permanent injunctions:²²

31.1 in the Formal Proof Judgment ordering the respondents to:

- (a) compel discharge of the Default Judgment and preclude any steps relying on the Coal Agreement **(Anti-suit Injunction)**;²³
- (b) refrain from seeking to enforce or act on the Default Judgment anywhere in the world, including by dealing with it by assignment or otherwise, issuing

¹⁸ *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3260 (*Formal Proof Judgment*) [05.0172]; and *Kea Investments Ltd v Wikeley Family Trustee Ltd (in interim liq)* [2023] NZHC 3532 (*Second Formal Proof Judgment*) [05.0227].

¹⁹ *Wikeley v Kea Investments Ltd* [2024] NZCA 609 [05.0001].

²⁰ CA Judgment at [134]–[146] [05.0001].

²¹ CA Judgment at [211(d)] [05.0001].

²² CA Judgment at [217] [05.0001].

²³ Granted in the Formal Proof Judgment at [156(a)(i) and (iii)] [05.0172] and Court of Appeal Judgment at [204]–[207] and [211(b)] [05.0001].

subpoenas, issuing interrogatories, seeking discovery, or otherwise seeking disclosure of information concerning Kea (**Anti-enforcement Injunction**).

- (c) cause their privies and assignees to comply with the orders in paragraphs (a)-(c); and
- (d) reserving leave in relation to further relief necessary to give effect to these orders.

31.2 in the Second Formal Proof Judgment, ordering the respondents not to take any steps, and not cause or permit any other person to appoint an additional or replacement trustee of the Trust and change the proper law of the Trust.

Interim liquidators not discharged

- 32 The CA Judgment determined that the Wikeleys' correspondence breached the injunctions that were in place at the time.²⁴ The Court noted that the Wikeleys were pressuring the interim liquidators to act in a way that would have offended active injunctions and been inconsistent with their obligations to the New Zealand High Court.²⁵
- 33 The CA Judgment did not discharge the appointment of the interim liquidators.²⁶ In contrast to its assessment of the injunctions, the Court said that no equivalent issues of comity were involved in the appointment of the interim liquidators.
- 34 The CA Judgment said that:

34.1 The interim liquidators' appointment served "*valid domestic interests by ensuring assets available to satisfy any New Zealand judgment remained under the control of New Zealand parties*".²⁷

²⁴ CA Judgment at [198] [05.0001]. At the time of the Wikeleys' letter the injunctions were permanent.

²⁵ CA Judgment at [199] [05.0001].

²⁶ CA Judgment at [196] [05.0001].

²⁷ CA Judgment at [196] [05.0001].

- 34.2 The interim liquidators remain under the control of the New Zealand High Court.²⁸
- 35 The CA Judgment recognised the difficult position in which the discharge of the permanent injunctions left the interim liquidators. The Court specifically acknowledged that:²⁹
- 35.1 the interim liquidators could seek directions that they do not take steps to enforce the Default Judgment pending resolution of the Kentucky appeal; and
- 35.2 the alternative would be to potentially expose WFTL to substantial costs on enforcement proceedings based on an underlying judgment which may ultimately be set aside on appeal.
- 36 The CA Judgment further acknowledged that:
- ...if the Kentucky Default Judgment were not set aside, the interim liquidators could face renewed pressure to enforce the Kentucky Default Judgment in order to meet the New Zealand judgment debt and costs awards against WFTL — this despite the judgments of the High Court and this Court finding claims under the Coal Agreement to be fraudulent and made pursuant to a conspiracy. We do not at this stage express any view about how the principles of international comity might respond to that particular scenario.
- 37 The interim liquidators have keenly felt such renewed pressure to enforce the Default Judgment since the CA Judgment. Mr Wikeley, his family and associates appear to consider the Court's discharge of the permanent injunctions³⁰ as an invitation to seek to enforce the fraudulent Default Judgment. This includes Mr Wikeley's children (Oliver, William and Gemma) obtaining ex parte orders in the Kentucky Circuit Court that appointed a "special fiduciary" over the Trust and purported to remove WFTL's assets from the control of

²⁸ CA Judgment at [197] [05.0001].

²⁹ CA Judgment at [200] [05.0001].

³⁰ Which remain in force pending determination of this appeal.

the interim liquidators, and by extension the jurisdiction of New Zealand. This is addressed in further detail below.

D. EVENTS FOLLOWING CA JUDGMENT

Further threats against interim liquidators – November 2024

38 In light of the 21 November 2024 CA Judgment, Mr Wikeley and his sons (Oliver and William Wikeley) wrote to the interim liquidators.³¹ The Wikeleys:

- 38.1 asserted that the dismissal of the anti-enforcement injunctions by the CA Judgment meant the interim liquidators were now obligated to oppose Kea’s appeal in Kentucky and enforce the Default Judgment;
- 38.2 failure to do so indicated collusion between Kea and the interim liquidators to undermine the Default Judgment;
- 38.3 threatened that any alleged failure to comply with their fiduciary duties would result in:
 - (a) the beneficiaries of the Trust initiating claims for breach of fiduciary duty, including against the interim liquidators personally;
 - (b) complaints with professional bodies, including the New Zealand Institute of Chartered Accountants, regarding alleged breaches of ethical and fiduciary duties; and
 - (c) the beneficiaries potentially addressing “*improprieties*” or conflict of interests in public.

³¹ Affidavit of Sean Coupe at [3]; and Exhibit A at pages 1–4.

**Stay of discharge of injunctions by Court of Appeal –
December 2024**

- 39 On 19 December 2024, on application by Kea, the Court of Appeal made orders staying the discharge of the injunctions set out above.³²
- 40 The discharge of the mandatory injunction requiring WFTL to withdraw the Default Judgment was not stayed.³³ That injunction is therefore no longer in place.

**Interim liquidators filed directions proceeding in High Court
– December 2024**

- 41 Given the renewed threats against them, and the effect of the CA Judgment, the interim liquidators sought directions from the High Court.
- 42 On 20 December 2024, the interim liquidators and WFTL filed an application seeking 'holding pattern' directions pending the final determination of the fraud issue. The 'holding pattern' directions sought were that the interim liquidators and WFTL neither enforce nor discharge the Default Judgment pending further directions of the Court.
- 43 The originating application anticipated amending the application to seek further orders following this Court's final determination of whether the Default Judgment was procured by fraud.
- 44 Mr Wikeley, Regard Law Group LLC and MK Solicitors each took steps to oppose the directions application, on the basis that the Default Judgment was said to be valid, valuable and enforceable.³⁴

³² *Wikeley v Kea Investments Ltd* [2024] NZCA 686 at [18]–[19].

³³ *Wikeley v Kea Investments Ltd* [2024] NZCA 686 at [19].

³⁴ Affidavit of Sean Coupe at [12]–[14]; and Exhibit A at pages 39–46. Similarly, the Wikeleys' notice of opposition to the interim liquidators' directions application before the High Court also state that discharge of the Default Judgment "would irreversibly extinguish a valuable asset of the Trust to the detriment of the Respondents and beneficiaries". That notice of opposition is annexed to Kea's submissions opposing adjournment dated 16 September 2025.

Final finding that default judgment obtained by fraud – 4 July 2025

- 45 On 4 July 2025, this Court declined Mr Wikeley’s leave application to appeal the fraud findings in the CA Judgment.³⁵ This Court found that Mr Wikeley was largely seeking to relitigate concurrent findings of fact in the Courts below.³⁶
- 46 The rejection of Mr Wikeley’s application for leave resulted in a final determination that the Default Judgment was procured by fraud (and that the Coal Agreement itself was fraudulent and void). Issues of fraud form no part of this appeal.
- 47 Also on 4 July 2025, in granting Kea leave to bring this appeal, this Court granted a further stay of the discharge of the High Court’s injunctions pending determination of the appeal.³⁷

Amended directions application by interim liquidators – July 2025

- 48 On 7 July 2025, following the final determination that the Default Judgment was fraudulent,³⁸ the interim liquidators and WFTL filed and served an amended directions application.
- 49 In general terms the amended application sought directions that it is lawful and proper for the interim liquidators and WFTL:
- 49.1 not to enforce the fraudulent Default Judgment; and
- 49.2 to discharge the fraudulent Default Judgment.
- 50 The amended directions application was scheduled to be heard on 18 July 2025.

³⁵ *Wikeley v Kea Investments Ltd* [2025] NZSC 76 at [20] [\[05.0279\]](#).

³⁶ *Wikeley v Kea Investments Ltd* [2025] NZSC 76 at [17] [\[05.0279\]](#).

³⁷ *Kea Investments Ltd v Wikeley* [2025] NZSC 75 at [6] [\[05.0077\]](#).

³⁸ *Wikeley v Kea Investments Ltd* [2025] NZSC 76 [\[05.0279\]](#).

17 July 2025 – ex parte orders from Kentucky Circuit Court

- 51 On the morning of the High Court directions application hearing, Craig McCloud,³⁹ a US attorney acting for Oliver, William and Gemma Wikeley (Kenneth Wikeley's children) emailed the interim liquidators' solicitors an ex parte order he had obtained in the Kentucky Circuit Court.⁴⁰
- 52 The ex parte order, among other things:⁴¹
- 52.1 appointed Elizabeth Woodward as a "special fiduciary" over WFTL's "Kentucky-situs property", including the Default Judgment; and
- 52.2 suspended WFTL's powers to "*administer, deal with, transact, affect, and/or impair in any way, without limitation, in respect of [WFTL's] Kentucky-situs property*",

(Ex Parte Orders)

- 53 The petition seeking the Ex Parte Orders was supported by several exhibits, including two affidavits in support from Oliver and William Wikeley.⁴² The affidavits both stated that Mr Wikeley would have supported the Ex Parte Orders "*but cannot because he's under an injunction*".
- 54 Upon receipt of the Ex Parte Orders, the interim liquidators instructed Kentucky counsel to take steps in the US Bankruptcy Court and the Kentucky Circuit Court to have the Ex Parte Orders set aside.

- **Impact upon directions proceeding**

- 55 As a result of the Ex Parte Orders, the interim liquidators and WFTL:

³⁹ Mr McCloud purports to be an expert witness in the High Court directions application, having earlier provided an affidavit dated 24 June 2025 in support of MK Solicitors' notice of opposition.

⁴⁰ Affidavit of Sean Coupe at [3]; and Exhibit A at pages 1–4.

⁴¹ Affidavit of Sean Coupe at [24]; and Exhibit A at pages 90–95.

⁴² Affidavit of Sean Coupe at [23]; and Exhibit A at pages 88–89.

55.1 only sought the first direction—that they not enforce the fraudulent judgment— at the 18 July 2025 hearing; and

55.2 asked that the application for the second direction be adjourned, so that the effect of the Ex-Parte Orders could be clarified.

56 At the conclusion of the 18 July 2025 hearing, the High Court gave the first direction sought by the interim liquidators and WFTL, namely that they:⁴³

May properly and justifiably refrain from seeking to enforce or act on, anywhere in the world, the default judgment obtained in January 2022 in the Commonwealth of Kentucky Circuit Court by WFTL against Kea Investments Ltd

57 The High Court’s reasons judgment for that direction was issued on 22 September 2025.⁴⁴

58 The interim liquidators and WFTL have asked for a hearing for the remainder of the directions application—that it is lawful and proper to discharge the Default Judgment. That further hearing has been set down with a date yet to be allocated.

US Bankruptcy Court – declaration that Ex Parte Orders are void

59 On 30 July 2025, after a hearing in which the Court heard from: the Interim Liquidators’ counsel; Mr McCloud; and counsel for Ms Woodward, the US Bankruptcy Court made orders declaring that:⁴⁵

59.1 the Ex Parte Orders are void ab initio; and

59.2 no party may submit to or use the Ex Parte Orders in any other Court proceeding anywhere in the world.

⁴³ Affidavit of Sean Coupe at [17]; and Exhibit A at pages 56–58.

⁴⁴ *Gibson v Wikeley* [2025] NZHC 2762.

⁴⁵ Affidavit of Sean Coupe at [36]; and Exhibit A at pages 171–173.

60 On 4 August 2025, the US Bankruptcy Court issued a “Supplemental Order Declaring Ex Parte Order Void Ab Initio”, providing a more detailed explanation of its findings of fact, conclusions of law and decision.⁴⁶

61 On 12 August 2025, the Kentucky Circuit Court made an order recognising the US Bankruptcy Court’s order and declaring the Ex Parte Order and Ms Woodward’s appointment void ab initio.⁴⁷

US Bankruptcy Court—Further proceedings

62 Since then, Oliver Wikeley has brought several motions in the US Bankruptcy Court, including:

62.1 12 August 2025: A motion to set aside the orders of the US Bankruptcy Court declaring the Ex Parte Order Void;⁴⁸

62.2 13 August 2025: A motion seeking the admission of Markus Stadler⁴⁹ pro hac vice as counsel for Oliver Wikeley;⁵⁰

62.3 21 August 2025: A motion to alter or amend the US Bankruptcy Court’s 18 August 2025 order denying his 12 August 2025 motion;⁵¹

62.4 1 September 2025: A motion for vacatur seeking to set aside the US Bankruptcy Court’s Recognition Judgment—the foundation of the stay imposed by the US Bankruptcy Court.⁵²

63 The filings by Oliver Wikeley accuse the interim liquidators of defalcating or embezzling the Trust’s assets, committing criminal

⁴⁶ Affidavit of Sean Coupe at [36]; and Exhibit A at pages 174–185.

⁴⁷ Affidavit of Sean Coupe at [38]; and Exhibit A at pages 200–203.

⁴⁸ Affidavit of Sean Coupe at [41]; and Exhibit A at pages 204–214.

⁴⁹ Markus Stadler is an attorney from MK Solicitors who had assisted Mr Regard in obtaining the Default Judgment. Mr Stadler purported to give opinion evidence as to Kentucky law in the High Court directions application, in support of MK Solicitors’ 5 March 2025 notice of opposition to the directions application.

⁵⁰ Affidavit of Sean Coupe at [42]; and Exhibit A at pages 278–285.

⁵¹ Affidavit of Sean Coupe at [41]; and Exhibit A at pages 221–277.

⁵² Affidavit of Sean Coupe at [44]; and Exhibit A at pages 300–394.

acts against the Trust, and misleading the US Bankruptcy Court as to the status of the WFTL's liquidation in New Zealand.⁵³

64 The US Bankruptcy Court has:

64.1 denied Oliver Wikeley's 12 August 2025 motion;⁵⁴

64.2 initially granted the 13 August 2025 motion to allow Markus Stadler pro hac admission, before revoking its order on 18 August 2025;⁵⁵

64.3 held a hearing on 25 September to consider filings by Oliver Wikeley at which time Markus Stadler was held in contempt and fined for drafting Oliver Wikeley's pleadings despite his pro hac admission being denied. At the time of filing of these submissions, the US Bankruptcy Court had not made any orders following the 25 September hearing. The interim liquidators will update the Court in respect of any further orders made.

E. ROLE AND DUTIES OF INTERIM LIQUIDATORS

65 The role and duties of interim liquidators bring into sharp relief the practical difficulties created by the CA Judgment.

66 The primary purpose of interim liquidation is to maintain the value of a company's assets.⁵⁶ Under s 246(3) of the Companies Act 1993, interim liquidators have the rights and powers of a liquidator as necessary or desirable to maintain the value of those assets.

67 Liquidators' principal duties are to take possession of, protect, realise and distribute the company's assets, and in doing so must act in a reasonable and efficient manner.⁵⁷ They must act

⁵³ Affidavit of Sean Coupe at Exhibit A at pages 300–394.

⁵⁴ Affidavit of Sean Coupe at [41]; and Exhibit A at pages 218–220.

⁵⁵ Affidavit of Sean Coupe at [42]; and Exhibit A at pages 286–287.

⁵⁶ Companies Act 1993, s 246 [**IL Auth Tab 1**].

⁵⁷ Companies Act 1993, s 253.

independently, and impartially in the best interests of creditors and stakeholders.⁵⁸

- 68 Liquidators are also officers of the Court.⁵⁹ They have a similar responsibility to the Court as a barrister and solicitor does.⁶⁰
- 69 As officers of the Court, the interim liquidators are obliged to act in a manner consistent with the highest principles. Liquidators are not permitted to take advantage of the strict legal rights available to them if to do so would mean that they were acting unjustly, inequitably, or unfairly.⁶¹
- 70 This principle is traced back to the 19th century English Court of Appeal decision—*Re Condon*.⁶²
- 71 In *Re Condon*, a trustee in bankruptcy received funds that in equity it should not have received. While the trustee could as a matter of practical reality deal with those funds as it saw fit, the Court considered that as an officer of the Court, the trustee ought to “set an example to the world” by not relying on those strict legal rights, and instead pay the funds to the person really entitled to them.
- 72 The *Re Condon* rule has a long history of application in the United Kingdom and New Zealand.⁶³ The New Zealand Court of Appeal applied the rule in *Strategic Finance Ltd v Bridgman*.

⁵⁸ Lynne Taylor and Grant Slevin *The Law of Insolvency in New Zealand* (2nd ed, Thomson Reuters, Wellington, 2021) at [24.1], page 577.

⁵⁹ *Flynn v McCallum* CIV-2005-470-611, 17 December 2009 at [107] and [131].

⁶⁰ *Re Lab-Plas Holdings Ltd (in liq)* M499/97, 3 May 2000 at [8].

⁶¹ *Strategic Finance Ltd (in rec and in liq) v Bridgman* [2013] NZCA 357, [2013] 3 NZLR 650 at [108] **[IL Auth Tab 6]**, referring to the rule in *Re Condon, ex parte James* (1874) LR 9 Ch App 609 (CA).

⁶² *Re Condon, ex parte James* (1874) LR 9 Ch App 609 (CA) **[IL Auth Tab 5]**.

⁶³ For applications in New Zealand see: *Re Thomas Horton* [1925] NZLR 739 (SC); *Re Cider (New Zealand) Ltd (in liq)* [1936] NZLR 374 (SC); *Re Byers, ex parte Davies* [1965] NZLR 774 (SC); *Official Assignee v Westpac Banking Corporation* (1993) 4 NZBLC 102,939 (HC); and *Commissioner of Inland Revenue v Robertson* [2017] NZHC 31.

For applications in the United Kingdom see: *Ex parte Simmonds, In re Carnac* (1885) 16 Q.B.D. 308; *Re Tyler, ex parte the Official Receiver* [1907] 1 KB 865 (CA); and *Re Thellusson, ex parte Abdy* [1919] 2 KB 735 (CA).

- 73 In *Strategic Finance*, a company in liquidation received a GST refund in circumstances where the Commissioner had overlooked the Commissioner's ability to apply a set off for tax debts owed by the company. The Court of Appeal found that the liquidators were obliged by the rule in *Re Condon* to pay the mistaken GST refund to the Commissioner, rather than stand on their strict legal rights to withhold the funds.⁶⁴
- 74 The present case is more serious than in *Strategic Finance*, and indeed than other cases applying this rule. There have been concurrent and now final Court findings that the Default Judgment was procured by fraud. It is not a case of mistake.

F. PERMANENT INJUNCTIONS OUGHT TO BE REINSTATED

CA Judgment leaves material practical issues unresolved

- 75 The CA Judgment has created unresolved practical challenges for the interim liquidators. These challenges do not appear to have been considered in the CA Judgment's analysis of whether to discharge the High Court's injunctions.
- ***Control of the Trust and its property***
- 76 The Trustee Injunction, which remains in place pending the determination of this appeal, prevents parties from replacing WFTL as the trustee of the Trust.
- 77 Despite that, the Wikeleys have twice sought to replace WFTL as trustee of the Trust and/or holder of the Default Judgment. First, with Wikeley Inc and with USA Asset Holdings Ltd in 2023. Second, Mr Wikeley's children also sought to usurp WFTL as trustee by obtaining Kentucky Circuit Court orders appointing Ms Woodward as "special fiduciary" over the Trust.
- 78 If Kea's appeal is declined and the High Court injunction preventing a change of trustee is discharged, there will be uncertainty as to

⁶⁴ *Strategic Finance Ltd (in rec and in liq) v Bridgman* [2013] NZCA 357, [2013] 3 NZLR 650 at [120] [**IL Auth Tab 6**].

who will control the Trust and its property (including the Coal Agreement and the Default Judgment).

- 79 It is clear that Mr Wikeley and his family wish to monetise the Default Judgment. They appear to feel free to disregard the fraud findings. They appear to believe that they can continue the fraud because no similar finding has been made in the US Courts. Nevertheless, the New Zealand Courts' findings are final and binding on WFTL.
- 80 If the interim liquidators will not enforce the Default Judgment, the Wikeleys' prior conduct indicates they will take any steps which they perceive will provide them with control of the Default Judgment.
- 81 Only WFTL, as legal owner, or its attorney can transfer the Default Judgment.
- 82 If the injunctions are lifted, it does not automatically follow that WFTL will no longer be trustee of the Trust. Further steps would be required by a person with the power to change the trustee.
- 83 Mr Wikeley, as appointor, is empowered to remove and replace WFTL as trustee, under clause 9 of the Trust's trust deed.⁶⁵ To facilitate any such change of trustee, the appointor may act as the Trustee's attorney in transferring trust assets to a new trustee: clause 9.3. Mr Wikeley's powers to change trustees and transfer trust assets come to an end if he is declared bankrupt: clause 9.7.
- 84 The interim liquidators cannot voluntarily transfer the Default Judgment to any party intending to further the fraud. To do so would breach their obligations.
- 85 Mr Wikeley, if he is not bankrupt, may seek to change the trustee of the Trust, and transfer (as attorney) the Default Judgment and the Coal Agreement to that new trustee.
- 86 Any such purported transfer would be the subject of dispute. The interim liquidators say that, notwithstanding such a transfer, WFTL

⁶⁵ Wikeley Family Trust Deed [301.0001] at [301.0007].

would nevertheless remain the legal holder of the Default Judgment and the Coal Agreement.

- 87 First, any purported assignment would be ineffective to transfer a fraudulent contract:

87.1 A fraudulent contract cannot give rise to any rights. As the New Zealand Courts have found, the Coal Agreement is fraudulent and void. It has no rights attached to it capable of being assigned.

87.2 The purpose of such an assignment would be to further a fraudulent conspiracy. An assignment of that nature would itself be an illegal contract and therefore of no effect under s 73(1) of the Contract and Commercial Law Act 2017.⁶⁶

- 88 Second, WFTL, as trustee, has a lien over the assets of the Trust, which protects its right of indemnity from the trust assets.⁶⁷ Those assets will remain in WFTL's legal ownership, until they have been used to satisfy all of WFTL's creditors. Further, the proprietary interest created by the trustee's lien prevails over s 116(1) of the Trusts Act 2019. The section expressly preserves that right (at s 116(3)).

- 89 This analysis is materially complicated by the parties' contrasting views on the value of the Default Judgment.

- 90 The interim liquidators consider that the Default Judgment is valueless, given the final determination that it was obtained by fraud. As observed by the Court of Appeal, a judgment obtained by fraud is not an asset but rather a liability if it is sought to be enforced.⁶⁸

⁶⁶ [IL Auth Tab 2].

⁶⁷ *Cummins v Body Corporate 172108* [2022] NZCA 658 at [10] [IL Auth Tab 4]; and *Octavo Investments Pty Ltd v Knight* (1979) 144 CLR 360. In any transfer of assets upon a change of trustee, that lien is protected: Trusts Act 2019, s 116(3) [IL Auth Tab 3].

⁶⁸ CA Judgment at [200] [05.0001].

91 However, Mr Wikeley, Oliver Wikeley and William Wikeley (represented in the directions application by Wynn Williams and James Farmer KC)—maintain that the Default Judgment is a “*valuable asset of the trust*”.⁶⁹ WFTL has a lien over all assets of the Trust, as above.

92 The uncertainty about who controls the Trust and the Default Judgment (if the injunctions are ultimately discharged) will inevitably be the subject of further costly and protracted litigation in New Zealand and the United States. A new conflict of laws problem may arise should the Wikeley parties attempt to litigate these issues in the Kentucky and/or US Federal Courts.

- ***Pursuit of Kea’s appeal in Kentucky creates practical issues***

93 The CA Judgment discharged the injunctions on the basis that comity requires that Kea’s appeal of the Default Judgment is first determined in the Kentucky Court of Appeals. The pursuit of Kea’s appeal in Kentucky creates practical issues for the interim liquidators and WFTL.

94 The first difficulty arising with such approach is determining who would be party to the proceeding. This is contingent on who is deemed to control the Trust and the Default Judgment. As above, that control remains with WFTL and the interim liquidators.

95 However, as officers of the Court, and under the principle in *Re Condon*, the interim liquidators cannot resist efforts by Kea to set aside the fraudulently obtained Default Judgment (whether by appeal or otherwise).

96 On the other hand, not opposing Kea’s appeal (either by relinquishing control of WFTL and the Default Judgment, or abiding the decision) may allow another party to seek to perpetuate fraud. That would expose WFTL to risk of “substantial costs” (as the

⁶⁹ See the Wikeleys’ notice of opposition to the interim liquidators’ directions application before the High Court, annexed to Kea’s submissions opposing adjournment dated 16 September 2025.

CA Judgment itself identified⁷⁰), to the detriment of its creditors. In turn, the interim liquidators would be at risk of breach of their obligations.

- ***Directions application does not resolve all issues***

97 To mitigate the issues above, the interim liquidators and WFTL have sought directions from the High Court. The Court of Appeal had expressly noted that it may be necessary for the interim liquidators to seek such directions following the CA Judgment.⁷¹

98 The interim liquidators have obtained a direction from the High Court that they, and WFTL as trustee of the Trust:⁷²

...may properly and justifiably refrain from seeking to enforce or act on, anywhere in the world, the [Default Judgment].

99 However, that direction does not resolve all the practical challenges created by the CA Judgment. Nor will the further direction sought (that the interim liquidators may properly and justifiably discharge the Default Judgment) resolve those issues, if obtained.

100 The directions application does not resolve any contest for control of the Default Judgment that arises from the discharge of the injunction preventing alteration of the trustee. That is because WFTL and the interim liquidators can only seek permissive directions. Their directions application does not seek any injunction regarding control of the Trust or its assets.

The permanent injunctions are consistent with protection of the Court's own processes and its officers

101 The CA Judgment identified that whether the relevant proceedings are "*likely significantly and irreversibly to interfere with the administration of justice in New Zealand*" is a central factor to the granting of an anti-suit or anti-enforcement injunction. While the CA Judgment focused on avoiding offending principles of comity, it did not adequately address the impact of its decision on

⁷⁰ CA Judgment at [200] [05.0001].

⁷¹ CA Judgment at [200] [05.0001].

⁷² *Gibson v Wikeley* [2025] NZHC 2762 at [2].

New Zealand-based parties, or New Zealand-based liquidators supervised by the New Zealand Courts. There is inherent interference with administration of justice where an officer of the New Zealand High Court, or a New Zealand company, no longer has the benefit of orders protecting them from having to take steps to enforce a fraudulent judgment.

- 102 By discharging the injunctions, the Court of Appeal has removed any express prohibition on the interim liquidators enforcing the Default Judgment outside of New Zealand. Mr Wikeley and his associates have interpreted this discharge as meaning that there is nothing preventing the interim liquidators from enforcing the Default Judgment.
- 103 The interim liquidators have not sought to enforce the fraudulent Default Judgment. To do so would be a breach of their duties to not act unjustly, unfairly or inequitably, and a breach of the *Re Condon* rule.
- 104 The interim liquidators' adherence to the duties owed to this Court, have left them facing criticisms from Mr Wikeley and his associates who have threatened proceedings against the interim liquidators personally⁷³ and accused them of:⁷⁴
- 104.1 defalcating or embezzling the Trust's assets;
 - 104.2 committing criminal acts against the Trust; and
 - 104.3 misleading the US Bankruptcy Court "*into thinking that there was an actual liquidation underway in New Zealand*".
- 105 Further, proceedings challenging the appointment of the interim liquidators and their control over the Default Judgment are currently on foot in the United States.⁷⁵ The integrity of the interim liquidators is being challenged in those proceedings.

⁷³ Affidavit of Sean Coupe at [3]; and Exhibit A at pages 1–4.

⁷⁴ Affidavit of Sean Coupe at Exhibit A at pages 300–394.

⁷⁵ Affidavit of Sean Coupe at Exhibit A at pages 300–394.

- 106 The Court concluded that the interim liquidators were to remain in office as their appointment served “*valid domestic interests by ensuring assets ... remained under the control of New Zealand Parties*”. In making that finding, the CA Judgment ignored the multi-jurisdictional practical realities of the interim liquidators’ appointment. The Wikeleys’ apparent intention to replace WFTL as trustee raises concerns that the Default Judgment will be removed from the control of New Zealand parties and to overseas individuals or entities (consistent with prior efforts to transfer the Default Judgment). The removal of the injunctions allows for parties to contest control of the Default Judgment.
- 107 The Court of Appeal elected to not express a view about how the principles of international comity might respond to a scenario where the Default Judgment is not set aside by the Kentucky courts—despite the New Zealand Courts’ fraud findings.⁷⁶ In the event a foreign court concludes that the Default Judgment was not obtained by fraud, the interim liquidators are left in a difficult position. They cannot, given their duties as officers of the New Zealand Courts, perpetuate a fraud found by the New Zealand Courts by enforcing the Default Judgment, but may be confronted by claims to enforce a judgment found to be valid by overseas courts.

Relief is directed to parties as well as foreign courts

- 108 The Court of Appeal rejected the premise that the order sought “*is only directed to the parties and not to the foreign court*”. It found that an injunction order, in substance, was addressed to United States courts and could (in theory) provoke countermeasures, with the result that no legal system will be able to administer justice. The circumstances in which the interim liquidators find themselves show that the position of the parties ought not be disregarded in an effort to avoid breaching principles of comity.
- 109 The discharge of the permanent injunctions overlooks the practical reality in this case. WFTL is a New Zealand entity that is the trustee of a New Zealand trust. WFTL, or any replacement trustee will need to make decisions about Trust’s affairs and the Default Judgment.

⁷⁶ CA Judgment at [201] [\[05.0001\]](#).

Currently these decisions are to be made by the interim liquidators. The interim liquidators consider it appropriate and helpful that the New Zealand courts rule on what WFTL may or may not do with the Default Judgment.

G. CONCLUSION

- 110 Kea's appeal ought to be allowed and the injunctions discharged by the CA Judgment permanently reinstated.

Dated: 1 October 2025

M D Arthur / J Marcetic
Counsel for interim liquidators of
second respondent

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

Counsel for the interim liquidators of the second respondent certifies that, having made appropriate inquiries to ascertain whether these submissions contain any suppressed information, to the best of their knowledge, the submission is suitable for publication.

LIST OF AUTHORITIES:

Legislation:

- [Companies Act 1993](#).
- [Contract and Commercial Law Act 2017](#).
- [Trusts Act 2019](#).

New Zealand Cases:

- *Commissioner of Inland Revenue v Robertson* [2017] NZHC 31.
- [Cummins v Body Corporate 172108](#) [2022] NZCA 658.
- *Flynn v McCallum* CIV-2005-470-611, 17 December 2009.
- *Official Assignee v Westpac Banking Corporation* (1993) 4 NZBLC 102,939 (HC).
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- *Re Lab-Plas Holdings Ltd (in liq)* M499/97, 3 May 2000.
- *Re Thomas Horton* [1925] NZLR 739 (SC).
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Australian Cases:

- *Octavo Investments Pty Ltd v Knight* (1979) 144 CLR 360.

United Kingdom Cases:

- *Ex parte Simmonds, In re Carnac* (1885) 16 Q.B.D. 308.
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- *Re Condon, ex parte James* (1874) LR 9 Ch App 609 (CA).

Texts:

- Lynne Taylor and Grant Slevin *The Law of Insolvency in New Zealand* (2nd ed, Thomson Reuters, Wellington, 2021).