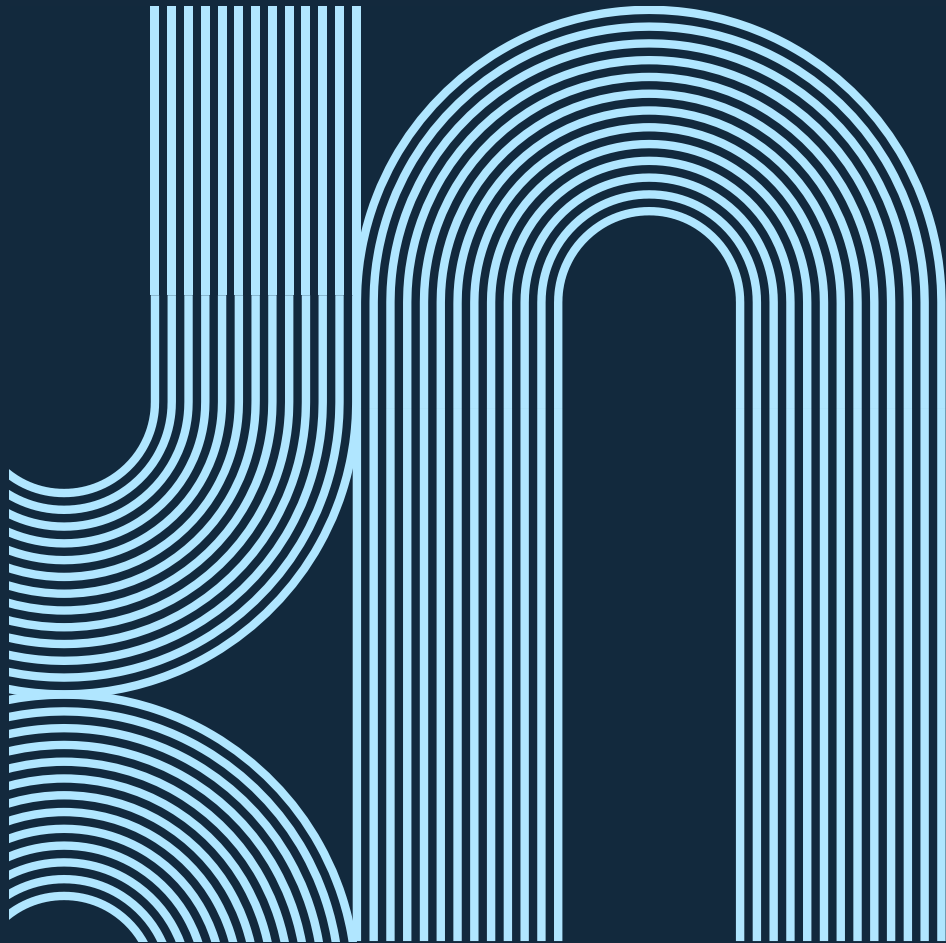


Litigation newsletter.

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Preventing international fraud – comity may justify an injunction

Kea Investments Ltd v Wikeley [2026] NZSC 97

In *Kea Investments Ltd v Wikeley* [2026] NZSC 97, the Supreme Court considered when a New Zealand court can issue an anti-suit or anti-enforcement injunction to stop someone using a foreign court to carry out fraud. The concept of comity was central to the decision.

Background

The case arose from an elaborate worldwide fraud committed by Mr Wikeley (a former New Zealand businessman) and Wikeley Family Trustee Ltd (**WFTL**, a New Zealand company) against Kea Investments Ltd (**Kea**, a British Virgin Islands company). The fraud centred on a forged "Coal Agreement", purportedly made in 2012 between Mr Wikeley, as trustee of the Wikeley Family Trust (**WT Trust**), and Kea, under which Kea was supposedly obliged to fund coal-mining investments in the United States. The agreement was said to be subject to the jurisdiction of the United States and governed by Kentucky law. In 2021, Mr Wikeley incorporated WFTL and it became the trustee of the WT Trust. WFTL sued Kea in Kentucky for a fictitious breach of the fictitious Coal Agreement, and obtained default judgment of US\$123.75m.

Kea obtained anti-suit and anti-enforcement injunctions against Mr Wikeley and WFTL from the New Zealand High Court, requiring them to procure the discharge of the Kentucky judgment and not enforce it anywhere in the world, but these were discharged by the Court of Appeal. Kea successfully appealed to the Supreme Court.

Supreme Court decision

Anti-suit and anti-enforcement injunctions are rare but powerful orders that prevent a person from pursuing proceedings in another forum, or from enforcing a foreign judgment.

The Supreme Court set out the four essential elements of an anti-suit injunction:

- The domestic court must have personal jurisdiction over the defendant
- That court must have a sufficient connection to the dispute to be the natural forum
- The defendant's conduct in threatening or bringing foreign proceedings must be wrongful. This tends to involve unconscionable (vexatious or oppressive) litigation in a foreign state, or disregard of a contractual right not to be sued there
- The interests of justice must require the injunction – in other words, the order must be necessary.

Anti-enforcement injunctions serve a similar function with essentially the same requirements. The Court rejected the need for "exceptional circumstances", holding instead that these injunctions are simply rare because the conditions for granting them are rarely met.

The main concern with these injunctions is that they could undermine comity: the principle that domestic courts must respect the legitimate exercise of jurisdiction by foreign courts. The Court of Appeal thought that comity prevented New Zealand courts from interfering with a judgment made in good faith by a foreign court. The Supreme Court accepted that comity requires caution, but found that it does not require blind deference.

Here, the clear fraud changed the usual comity analysis in two ways. First, obtaining a judgment by fraud is itself vexatious and oppressive conduct, which justifies anti-enforcement relief. Secondly, foreign and domestic courts both have an interest in stopping judgments obtained by fraud. The High Court's injunctions therefore enhanced comity rather than eroding it. The injunctions were an example of co-operation between courts of different jurisdictions to stop cross-border frauds from subverting justice.

The Supreme Court held that a person seeking an anti-suit or anti-enforcement injunction does not first need to exhaust their remedies and appeal rights in the foreign court, particularly when the foreign proceedings are themselves part of the fraud. Comity does not require a New Zealand court to wait and see whether a foreign court will fix the problem – this would go against what comity is meant to achieve.

Significance

Kea v Wikeley is now the leading authority on anti-enforcement and anti-suit injunctions. By removing the "exceptional circumstances" requirement and the need to exhaust foreign remedies first, the Court has removed two practical obstacles to obtaining this relief. More fundamentally, the decision shows that comity and these injunctions do not always pull in opposite directions: in the right case, comity may actually require the relief to be granted. The Court closed by asking, "if not by the New Zealand High Court, then by whom?" – signalling that New Zealand courts may need to play a more active role in protecting comity between courts in an increasingly globalised world.

Dividing relationship property and contracting out of intestacy laws

Rimmer v Wilton [2026] NZSC 122

The Supreme Court issued a landmark judgment in *Rimmer v Wilton* [2026] NZSC 122, finding that, if spouses or de facto partners make an agreement contracting out of the Property (Relationships) Act 1976 (**PRA**), this can limit their entitlements under the intestacy provisions of the Administration Act 1969 (**Administration Act**).

Background

Mr Rimmer and his de facto partner, Ms Wilton, owned a property together in Hūnua. In 2002, they entered into a 'contracting out agreement' under s 21 of the PRA, dealing with the status, ownership and division of their property, including on death (**Agreement**). The Agreement provided that the Hūnua property was relationship property and that, if one partner died, the survivor had a lifetime right to occupy it. The Agreement expressly settled all claims that either party might have against the other under any statute, at common law or in equity, and applied after death.

Mr Rimmer died intestate (without a will) in 2016. He was survived by Ms Wilton and his two adult children.

Under s 61 of the PRA, when one spouse or de facto partner dies, the surviving partner may choose one of two options: apply for a division of relationship property pursuant to the PRA (Option A); or receive any beneficial interest the surviving partner is entitled to under the will or on the intestacy of the deceased partner (Option B).

Ms Wilton chose Option B, then claimed entitlements under both the Agreement and the intestacy provisions of the Administration Act. Mr Rimmer's children argued that the Agreement defined her only entitlements to the estate.

Supreme Court decision

The Supreme Court agreed with Mr Rimmer's children. The outcome of this case turned on the proper interpretation of the Agreement in the light of the provisions of the PRA and the Administration Act.

The Court held that:

- Read together, the relevant clauses of the Agreement limited Ms Wilton's entitlement to the Hūnua property to her share, with no entitlement to Mr Rimmer's share apart from her life interest
- It would have been open to Mr Rimmer to bequeath his share to Ms Wilton in a will, but he did not do so. In those circumstances, the Agreement continued to regulate the position and reflected his testamentary intentions

- The Agreement prevented Ms Wilton from claiming an entitlement to Mr Rimmer's share of the relationship property under s 77 of the Administration Act, as this was a "claim" settled by the Agreement. This was consistent with the contracting-out provisions of the PRA, s 81(6) of the Administration Act, and existing High Court authority, all of which confirm that parties can contract out of their statutory entitlements and provide for the division of relationship property on death
- A contracting out agreement under the PRA can regulate the parties' entitlements regardless of which (if any) option is chosen under s 61, and whether the deceased partner left a will. However, the Court has jurisdiction to set aside the agreement under ss 87 and 21J of the PRA if giving it effect would cause serious injustice.

Practical implications

The PRA provides a comprehensive scheme allowing parties to a relationship to agree on their property rights, subject to statutory safeguards. When parties have agreed to divide their property under a s 21 agreement, that agreement can mean that the parties forego any intestacy entitlement. Well drafted s 21 agreements and wills provide greater certainty over how property will be divided at the end of a relationship or upon death. We recommend that parties check their s 21 agreements to ensure they reflect the parties' wishes, in light of this decision.



Trustee appointments must be for a proper purpose

Lim-Yip v Yim-Yip [2026] NZCA 297

In *Lim-Yip v Yim-Yip* [2026] NZCA 297, the Court of Appeal confirmed that:

- A trustee cannot be appointed for an improper purpose, and
- Pursuing unnecessary litigation can have adverse cost consequences.

Background

In 2003, Mrs Lim established a trust for the benefit of her eight children (**Trust**). In 2006, the Trust loaned \$450,000 to the family trust of one of the children, Ming. Mrs Lim died in early 2019, after which the Trust demanded repayment of the loan. Using a power conferred by Mrs Lim's will, Ming and his sibling Hong appointed themselves trustees of the Trust (replacing siblings Steven and Suey, and an independent trustee company) and revoked the repayment demand.

High Court proceeding

Steven and Suey initially sought removal of Ming and Hong as trustees and re-appointment of themselves, together with the independent third trustee. On the first day of trial, however, they amended their claim to seek only the appointment of an independent trustee. Although Ming and Hong agreed to this, they insisted on pursuing a declaration that their appointment had been valid.

Applying s 94 of the Trusts Act 2019 (under which a person with the power to remove or appoint trustees must exercise the power honestly and in good faith and for a proper purpose), Blanchard J found that Ming's and Hong's primary purpose had been to benefit Ming by revoking the repayment demand. That purpose was improper, invalidating their appointment.

The Court awarded Steven and Suey costs uplifted by 50%, on the basis that Ming and Hong had unreasonably insisted on a five-day trial when there were no practical consequences.

Court of Appeal decision

The Court of Appeal agreed that the appointment of Ming and Hong was for an improper purpose and therefore invalid.

The correct legal test was not in issue. In *Cooper v Pinney* [2024] NZSC 181, [2024] 1 NZLR 935, the Supreme Court held that a fiduciary power to appoint a trustee must be exercised in good faith, in the beneficiaries' interests, and not for any improper purpose. Applying this test involves a two-stage inquiry:

- Objectively, what purposes did the settlor of the trust permit?
- Subjectively, did the person exercising the power act in accordance with those purposes and not for an improper reason?

The parties agreed the power of appointment did not permit appointment for self-benefit. Ming and Hong argued they had appointed themselves to obtain financial information that Steven and Suey had withheld, and to “steady the ship”. The Court of Appeal rejected this, finding the appointment was driven by Ming’s interest in stopping the loan being called in.

On costs, the Court of Appeal agreed that Ming and Hong's insistence on continuing with the trial had been unreasonable, but found Steven and Suey had refused to engage with settlement attempts pre-trial. As unreasonable conduct on both sides had inflated costs, their liabilities offset each other, and the High Court costs should lie where they fell.

Key takeaways

This case usefully illustrates well-established principles on the appointment of trustees – fiduciary powers must be exercised in good faith and for a proper purpose. It also shows that pursuing moot proceedings or obstructing early resolution can carry costs consequences.

Limits on reviewing the actions of charitable trusts

Taranaki Community Accountability Society Inc v Ussher [2026] NZHC 2519

In *Taranaki Community Accountability Society Inc v Ussher* [2026] NZHC 2519, the High Court declined to stop a charitable trust from selling TSB Bank.

Background

Toi Foundation is a charitable trust which, via its holding company, owns 100% of the shares in TSB Bank. On 1 June 2026, Toi Foundation agreed to sell its shareholding to Heartland Group Holdings Ltd (**Heartland**), subject to trustee approval.

Taranaki Community Accountability Society Inc (**TCAS**) is a community advocacy organisation. It sought an urgent interim injunction preventing the trustees from voting on the sale, claiming inadequate community consultation.

The Court's decision

TCAS's claims were brought under s 126 of the Trusts Act 2019 (which allows the Court to review a proposed decision on the grounds that it is not reasonably open to the trustee in the circumstances) or, alternatively, the Court's inherent jurisdiction. The Court held that such claims can only be brought by a beneficiary, and that Toi Foundation, as a charitable trust, had no beneficiaries. Consequently, TCAS lacked standing to bring the claims and the Court had no jurisdiction to grant the relief sought.

In any case, the injunction application did not meet the established three-part test from *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA):

- There was no serious question to be tried. Taking a "practical and purposive" approach to interpreting the trust deed, the Court found that the trustees complied with their consultation obligations and did more than was required
- The balance of convenience was decisively against granting an injunction. There was a real risk that the sale would fall through, causing harm to Toi Foundation and its charitable purposes that TCAS could not remedy
- An injunction was not in the overall interests of justice, given the risk of harm to Toi Foundation and the rational basis for the proposed sale.

This is a topical case dealing with trustee obligations, standing to review the actions of charitable trusts, and injunctions to restrain commercial deals. Since this decision, both the Toi Foundation trustees and the Heartland shareholders have voted to approve the sale of TSB Bank.



The price of an interim order – an undertaking as to damages

Apollo Xi Ltd v Nexus Markets Ltd [2026] EWHC 2240

An applicant for an interim order (such as an injunction or a freezing order) usually must give an undertaking as to damages, agreeing to compensate the other party for any loss the order causes if the Court requires. This can amount to a blank cheque. In *Apollo Xi Ltd v Nexus Markets Ltd* [2026] EWHC 2240 (Comm), the English Commercial Court considered an application to enforce such an undertaking.

Background

Apollo Xi Ltd (**Apollo**) is a special-purpose vehicle. Nexedge Markets Ltd (**Nexedge**) is an introducing broker for "contracts for difference", authorised and regulated by the Financial Conduct Authority (**FCA**).

Apollo advanced Nexedge a loan of US\$10m, partly to enable Nexedge to apply to the FCA for a 'Variation of Permission' (**VoP**) so it could hold client money and trade directly. Nexedge applied for the VoP but, before this was obtained, Apollo sought repayment of the loan.

Apollo obtained a without-notice freezing injunction over the loan. The Court later discharged this, finding that Apollo had breached its duty of full and frank disclosure and that the injunction should not have been granted. Nexedge sought to enforce the undertaking as to damages that Apollo had provided.

The decision

In England, enforcing an undertaking as to damages involves two stages:

- As a matter of discretion, should the Court order that the undertaking be enforced?
- If yes, what loss has the defendant suffered, was it caused by the interim order, and was it not too remote?

This decision addressed only the first (permission) stage of the test. The Court noted that:

- There is no conceptual limit to the heads of recoverable loss, including loss of chance, damages at large (eg upset, stress, reputational and business harm) and lost management time
- There is a strong presumption favouring enforcement once an injunction is discharged, rebuttable only by special circumstances such as inequitable conduct, a material change of circumstances, or proof that no loss was suffered
- The defendant cannot use the 'no loss' category to turn the permission stage into a mini trial – the claimant need only show a credible case that the injunction caused loss
- The injunction must be an effective cause of the loss, though not the only cause. The defendant cannot rely on its own wrongful conduct to break the chain of causation.

Apollo opposed Nexedge's application, arguing Nexedge had suffered no loss and that any loss arose from the underlying loan repayment claim rather than the freezing injunction. The Court rejected this. There was credible evidence that Nexedge had suffered loss (estimated to exceed £5m) from disruption and delay to the VoP application, reputational damage, business disruption, and the application's ultimate failure. It was also arguable that Apollo had brought the loan claim maliciously to cause loss to Nexedge, and Apollo could not rely on its own wrong to break the chain of causation. The Court therefore granted Nexedge's application to enforce the undertaking.

Key takeaways

An interim order is a serious remedy that can cause significant loss. A party seeking one, and giving an undertaking as to damages, must comply with its obligations to provide full and frank disclosure, and be prepared to pay any damages arising from the order.

Restraining a call on a performance bond – an unsettled test

TTSJV v BapCo Refining BSC [2026] EWHC 2047

In *TTSJV v BapCo Refining BSC* [2026] EWHC 2047 (TCC), the English High Court considered when an injunction may be granted to restrain a call on a performance bond.

The English position per *BapCo*

An applicant for an injunction must usually show that there is a serious issue to be tried. English law applies a different test to applications to enjoin the cashing of a letter of credit or a call on a performance bond. Traditionally, an applicant needed to show a clear case of fraud ("established or obvious fraud"). More recently, the circumstances in which an injunction can be obtained have broadened somewhat.

The applicable legal test was at issue in *BapCo*. A consortium of contractors (**TTSJV**) applied for an injunction to restrain the principal (**BapCo**) from calling on a performance bond under a construction contract. TTSJV argued that injunctive relief could be granted when there was a "strongly arguable case" that the terms of the underlying contract precluded the call.

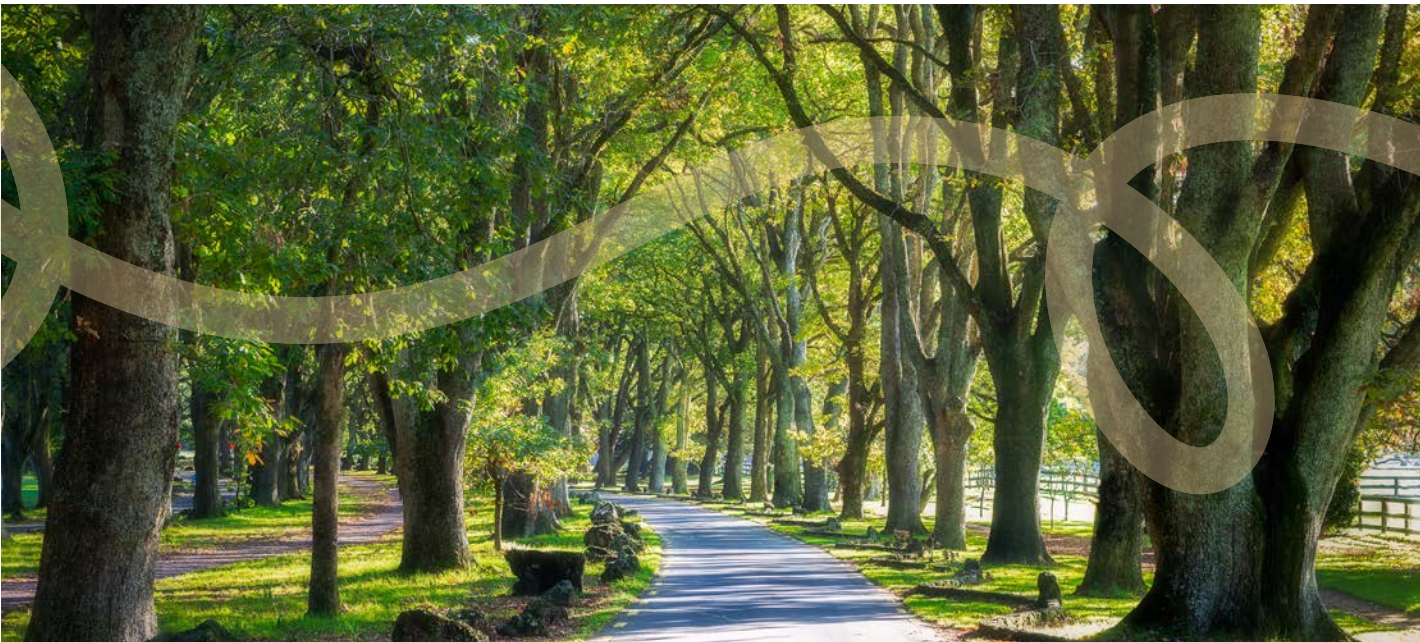
The Court, however, held that it must be "positively established" that no call could be made under the terms of the bond or the underlying contract (ie the underlying contract clearly and expressly prevented a demand being made under the bond). A strongly arguable case was not enough. In either case, the threshold was not met here.

The New Zealand position

The law on this issue is unsettled in New Zealand, with the High Court adopting different approaches in recent years:

- In *McVeigh v R* [2020] NZHC 1018, the Court held that a plaintiff had to establish a strongly arguable case that the underlying contract, or the terms of the bond, precluded a call on the bond (a test rejected in *BapCo*, but a higher threshold than the usual test of a serious issue to be tried)
- By contrast, the Court in *Hawkins Ltd v Elizabeth Properties Ltd* [2024] NZHC held that the usual threshold of a serious issue to be tried applied; the test was no different in the context of an injunction to restrain the calling of a performance bond.

On either approach, the threshold is lower than the law in England as held in *BapCo*, making it easier for a contractor to enjoin a principal from calling on a performance bond. The risk of an injunction turns heavily on the terms of the underlying contract and the bond (eg whether the bond is on demand or conditional).



Arbitral awards – the iron curtain of finality prevails

Westhaven Investments Ltd v Viaduct Harbour Holdings Ltd [2026] NZHC 2480

In *Westhaven Investments Ltd v Viaduct Harbour Holdings Ltd* [2026] NZHC 2480, a lessee's application for leave to appeal an arbitral award relating to a rent review failed, confirming that such appeals are allowed only in limited circumstances.

Background

Westhaven Investments Ltd (**Westhaven**) holds a 72.5-year ground lease over property owned by Viaduct Harbour Holdings Ltd (**Viaduct**). The lease requires periodic rent reviews to set a "fair yearly rent". An arbitral tribunal of a retired High Court Judge and an experienced valuer (**Tribunal**) set the "fair yearly rent" at \$580,000 per annum for 11 years from December 2022 (**Award**). Westhaven, which had argued for \$340,000 per annum, sought leave to appeal the Award to the High Court.

Threshold to appeal an arbitral award

Arbitral awards are generally final, but a "question of law" may be appealed with the parties' agreement or leave of the Court (clause 5, Schedule 2, Arbitration Act 1996). A question of law covers the incorrect interpretation of applicable law, but not whether there was sufficient evidence or whether the tribunal drew correct factual inferences. The Court cannot grant leave unless resolving the question of law could "substantially affect" a party's rights.

Once that threshold is met, the Court must exercise its discretion in a "disciplined way", guided by the factors set out by the Court of Appeal in *Gold and Resource Development v Doug Hood Ltd* [2000] 3 NZLR 318 (CA). These include the strength and nature of the point of law, how it arose before the tribunal, the arbitrators' qualifications, the importance of the issue to the parties, the amount at stake, delay, and finality.

With those principles in mind, Becroft J considered each of Westhaven's proposed questions of law.

Leave was not justified

The first question was whether the Tribunal erred by assessing the fair yearly rent against the term remaining at the start of the lease (72.5 years), rather than the term remaining at the rent review date (32.5 years, as Westhaven argued). The Court found this was a question of law, but the *Gold* factors weighed decisively against leave:

- The question was "one off", with no precedent value: it turned on the interpretation and circumstances of this specific lease. There was no strong indication of error that could justify leave in those circumstances
- This question was central to the arbitration. Both parties argued it before the Tribunal, which issued a considered decision, and the arbitrators were highly qualified. Having chosen arbitration, the parties should be held to that choice
- The dispute mattered greatly to both parties, but being "just a question of money" counted against leave. The amount at stake was not decisive, nor were the costs and delay of an appeal.

Westhaven's second and third questions – whether the Tribunal was right to favour a 'classic' over a 'traditional' valuation approach, and whether it was right to accept evidence on the rate of diminution of value – failed at the first hurdle: both were questions of fact, not law.

Key takeaways

A key feature of arbitration is that it is intended to be final, leaving little scope to appeal an adverse award. This finality can be both advantageous and disadvantageous, and commercial parties should weigh this up before agreeing to arbitrate any disputes.

Transferred loss – an exception to the general rule of recovery

Forthwell Ltd v Pontegadea UK Ltd [2026] UKSC 33

In *Forthwell Ltd v Pontegadea UK Ltd* [2026] UKSC 33, the UK Supreme Court (**UKSC**) addressed the principle of transferred loss. As a general rule, a plaintiff can only recover damages for loss that it has itself suffered because of a breach of contract. The principle of transferred loss is an exception to that rule, which, in certain circumstances, allows a plaintiff to recover losses suffered by a third party.

The facts and findings in *Forthwell*

In *Forthwell*, a tenant sought to recover from its landlord the lost profits of one of its subsidiaries that occupied the premises under a licence from the tenant. Those losses were the subsidiary's, not the tenant's. The issue was whether they were recoverable as transferred loss under Scots law.

In *Swynson Ltd v Lowick Rose LLP* [2018] AC 313, UKSC had considered the principle of transferred loss under English law. In that case, the UKSC held that:

- There is a limited exception to the general rule that a plaintiff can only recover damages for its own loss. It applies when the known object of a transaction is to benefit a third party, and the anticipated effect of a breach of duty will be to cause loss to that third party
- This exception is referred to as the 'narrow ground' of the principle of transferred loss, or the 'Albazero exception'. It is a rule of implication based on the common intention of the contracting parties rather than a rule of law
- When the narrow exception applies, the plaintiff sues on behalf of, and for the benefit of, the injured party, and must account to that party for any damages awarded

- The exception is necessary to give effect to the object of the contract and to avoid a legal black hole, in which the only party entitled to sue would differ from the only party that suffered loss from the breach. The exception does not apply when the third party has a direct right of action.

In *Forthwell*, the UKSC held that Scots and English law are aligned, with the narrow ground of transferred loss applying in both jurisdictions. On the facts of the case, however, the exception did not apply.

In both *Swynson* and *Forthwell*, the UKSC declined to decide whether the 'broader ground' of the transferred loss principle is part of the law in the UK. That broader ground was proposed by Lord Griffiths in *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd* [1994] 1 AC 85: Lord Griffiths considered that the contracting party might itself have an interest in performance (ie giving the third party the intended benefit) that enabled it to claim damages without proving actual loss.

Relevance in New Zealand

The narrow exception to the principle of transferred loss has been approved in at least two New Zealand cases, though held not to apply on the facts in either. The more recent case, *Farrand Orchards Ltd v Kerikeri Irrigation Company Ltd* [2022] NZHC 765, considered *Swynson*.

The principle may therefore allow a party to a contract, in narrow circumstances, to recover loss suffered by a third party. It would not apply when the third party has a direct right of action under the privity provisions of the Contract and Commercial Law Act 2017.



Reasonable steps to satisfy a condition: when deferring to the other side is not enough

Van Asch Ventures Ltd v Kingston Station Ltd [2026] NZHC 2425

In *Van Asch Ventures Ltd v Kingston Station Ltd* [2026] NZHC 2425, the High Court considered what it takes to satisfy an obligation to take reasonable steps to fulfil a contractual condition.

Background

Van Asch Ventures Ltd (**VAVL**) agreed to purchase Kingston Station, a large sheep and beef station including Crown pastoral leasehold, from Kingston Station Ltd (**KSL**). The Sale and Purchase Agreement (**SPA**) was conditional on the Commissioner of Crown Lands (**Commissioner**) consenting to the transfer of the pastoral lease within 12 months (**Consent Condition**). Clause 9.10(2) required the party benefiting from a condition to do all things reasonably necessary to enable its fulfilment by the due date. A separate clause gave KSL's sole director an occupation right to the Kingston Station homestead (**Occupation Right**).

KSL applied for the Commissioner's consent to transfer the Crown pastoral lease, but Land Information New Zealand (**LINZ**), on the Commissioner's behalf, advised it could not accept the application, raising concerns about its scope and the Occupation Right. KSL and VAVL agreed a series of steps to resolve those issues. VAVL completed its steps, but KSL took none.

The Consent Condition was therefore not met by the due date. VAVL claimed that KSL had failed to take reasonable steps to satisfy it and so was not entitled to cancel the SPA. KSL sought summary judgment, seeking to have VAVL's claim dismissed.

The Court's findings

Associate Judge Lester declined KSL's application, finding KSL had not established that VAVL's claim could not succeed.

KSL's counsel accepted that dividing labour between the parties did not discharge KSL's clause 9.10(2) obligations. KSL's evidence confirmed it took no steps, agreed or otherwise, to resolve the issues raised by LINZ.

The Court noted that post-deadline discussions between VAVL's solicitors and LINZ suggested a viable solution had existed, and that KSL could have helped find one rather than deferring to VAVL's view that none was available. Applying *Melco Property Holdings (NZ) 2012 Ltd v Hall* [2022] NZSC 60, [2022] 1 NZLR 59, the Court held KSL needed to show its inaction did not materially affect the condition's prospects of fulfilment, and it had not done so.

The Court also considered it arguable that, since KSL never had a live application before the Commissioner, it was obliged to agree to an extension of time to fulfil the Consent Condition.

Practical significance

Although interlocutory, this decision is a useful reminder that the "reasonably necessary steps" obligation under a standard condition clause is not satisfied by passivity, even if the other party believes the condition cannot be met. Courts may consider post-deadline events when assessing whether a party's earlier conduct was reasonable. A defendant seeking summary judgment must show its default did not materially affect the condition's prospects of satisfaction – a high bar.

Buddle Findlay acts for VAVL in this case.



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