

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2022-404-2086
[2022] NZHC 2881**

BETWEEN

KEA INVESTMENTS LIMITED
Plaintiff

AND

WIKLEY FAMILY TRUSTEE LIMITED
First Defendant

KENNETH DAVID WIKLEY
Second Defendant

ERIC JOHN WATSON
Third Defendant

Hearing: 31 October 2022 (telephone conference) and 3 November 2022
(via VMR)

Appearances: M C Harris, JLW Wass and S T Coupe for the Plaintiff

Judgment: 4 November 2022

JUDGMENT OF GAULT J

*This judgment was delivered by me on 4 November 2022 at 3:30 pm
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

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Solicitors / Counsel:

Mr JLW Wass, Barrister, Auckland

Mr M C Harris and Mr S T Coupe (plaintiff's instructing solicitor), Gilbert Walker, Auckland

[1] By interlocutory application without notice dated 31 October 2022, Kea Investments Ltd (Kea) seeks an urgent interim injunction restraining the defendants, Wikeley Family Trustee Ltd (WFTL), Mr Kenneth Wikeley and Mr Eric Watson, from taking steps to perpetuate what Kea says is a massive worldwide fraud against it.

Parties

[2] Kea is a British Virgin Islands (BVI) company whose shareholder is Sir Owen Glenn. He is also a director.

[3] WFTL is a New Zealand company incorporated by Mr Wikeley on 23 July 2021. Mr Wikeley is a company director and businessman residing in Queensland, Australia. He is the sole director and shareholder of WFTL.

[4] Mr Watson is a New Zealand citizen and businessman. His place of residence is currently unknown to Kea.

Affidavits in support

[5] Kea's application is supported by affidavits of Sir Owen Glenn, Mr Long (another director of Kea), Mr Graham (a partner of Farrer & Co LLP, London, Kea's English solicitor), Mr Munro (Global Managing Partner of Harneys law firm and head of Harneys Fiduciary), and Ms Willson (an executive assistant at Gilbert Walker).

Background

[6] In 2011-2012, Mr Watson sought to persuade Sir Owen Glenn to make investments with him. Investments followed but the relationship broke down around 2013, which led to disputes.

[7] On 31 July 2018, the English High Court ruled that Kea and Sir Own Glenn had been fraudulently induced to participate in an investment called Project Spartan at a cost of £129 million.¹ The architect of the fraud was Mr Watson. Nugee J was "completely satisfied" that Mr Watson had "resorted to deliberate deception".²

¹ *Glenn v Watson* [2018] EWHC 2016 (Ch), culminating at [528].

² At [54].

The Judge also found that Mr Dickson, Kea’s director at the relevant time, had breached his fiduciary duties to Kea.³ Mr Watson was subsequently committed to prison for contempt for his failure to comply with disclosure orders following the English judgment.⁴ Kea is still trying to enforce the judgment against Mr Watson.

Further alleged fraud

Statutory demand in BVI and Kentucky proceedings

[8] On 29 June 2022, Kea and its English solicitor received a letter from a BVI-based law firm attaching a statutory demand seeking to enforce against Kea a judgment debt of USD136,290,994 (including interest and court/service costs). The statutory demand indicated that WFTL, as trustee of the Wikeley Family Trust (a New Zealand trust), had obtained a default judgment against Kea from a Court in Kentucky, USA dated 31 January 2022 for alleged breach of a purported “Coal Funding and JV Investment Agreement” said to have been executed in 2012 (Coal Agreement). This June 2022 letter was the first Kea had heard of both the Coal Agreement and the Kentucky Court proceeding. The Coal Agreement was not provided to Kea with the statutory demand; it was provided on 7 July 2022. Kea considers the Coal Agreement, and the claims made under it, are fabrications constructed by Mr Wikeley and Mr Watson to defraud Kea.

[9] Following enquiries with Kea’s registered agent in BVI, Kea learned that the First Amended Complaint in the Kentucky proceeding had been delivered to the offices of Kea’s registered agent in BVI. However, Kea’s registered agent did not pass the complaint on to Kea.

[10] On 12 July 2022, Kea applied to set aside the statutory demand in the BVI. That application is listed for 5 December 2022.

³ *Glenn v Watson* [2018] EWHC 2016 (Ch), culminating at [429]-[431] and [492].

⁴ *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch) (finding of contempt) and *Kea Investments Ltd v Watson* [2020] EWHC 2796 (Ch) (committal).

[11] As Kea had not been aware of WFTL's claim in Kentucky, Kea did not take the required steps to defend it.⁵ The Kentucky Court entered default judgment against Kea on 31 January 2022 for USD123,750,000 plus interest and costs. The judgment was entered without any hearing and therefore without any examination by the Court of the merits of WFTL's claim.

[12] Kea instructed Kentucky lawyers to apply to set aside the default judgment. That motion to set aside the default judgment was filed on 21 July 2022. It was heard on 7 October 2022 and denied on 18 October 2022 on the ground that Kea had been properly served. The Court held that, because Kea had failed to take steps following service at its registered office, the Court did not have to, and would not, consider whether there was a meritorious defence or whether the plaintiff would suffer detriment if the judgment was set aside.

[13] On 21 October 2022, Kea issued a motion to amend, alter or vary (MAAV) the denial of its application. This was heard on 28 October 2022 and the Court indicated that it would deny the motion. As at the date this proceeding was commenced, that order had not been entered. Kea intends to issue and serve an appeal against the order of 7 October 2022 and the dismissal of the MAAV as soon as possible. However, any appeal will take time and Kea is concerned there is a substantial risk that the Kentucky Court of Appeal will take the same approach as the first instance Judge and not consider the merits.

[14] On 10 October 2022, WFTL served notice on Kea that it intended to serve (reissued) Kentucky subpoenas on some 11 banks in Kentucky and New York, and a New Jersey subpoena on a bank in New Jersey, effectively seeking details of all dollar transactions carried out by Kea since 1 January 2012. Kea is taking steps in relation to such subpoenas and a hearing is scheduled in Kentucky on Friday 4 November 2022 in which it will seek to pause subpoenas and interrogatories, but Kea is concerned that, as the Kentucky Court has refused to set aside the default judgment and consider the fraud issue, it will not entertain further argument along those lines.

⁵ The complaint was filed on 19 August 2021. An amended complaint was filed on 3 December 2021.

Coal Agreement

[15] The Coal Agreement purports to be an agreement between Mr Wikeley as trustee for the Wikeley Family Trust New Zealand and Kea represented by Mr Dickson. It is dated 23 October 2012 and witnessed by Mr Watson. It purports to commit Kea to provide capital to fund coal investments presented by Mr Wikeley. Kea considers the document is a forgery or at least unenforceable, essentially on the grounds that:

- (a) In the nine years between the purported agreement and the Kentucky proceeding, WFTL had made no demand on or complaint to Kea in relation to funds payable under the agreement; there was no pre-action correspondence.
- (b) Kea has no records relating to the Coal Agreement. No such documents were provided in 2013 when Mr Dickson was ordered by the Nevis Court to provide all of Kea's records. Nor is an interest under the Coal Agreement mentioned in the list of assets provided under the Nevis Court order.
- (c) Neither Sir Owen Glenn, nor Mr Munro of the Nevis professional trustee, nor any of Kea's current directors, had any knowledge of the Coal Agreement prior to receipt of the statutory demand.
- (d) The Coal Agreement is irregular, oddly formatted and not professionally drafted.
- (e) The Coal Agreement makes no commercial sense. It involves the payment of very significant sums of money to the Wikeley Trust in return for very little.
- (f) Mr Wikeley incorporated WFTL in New Zealand on 23 July 2021, shortly before commencing the Kentucky proceeding.

- (g) On the date that Mr Watson ostensibly witnessed the signatures of both Mr Wikeley and Mr Dickson, Mr Dickson was in Paris. Mr Wikeley's subsequent evidence in Kentucky conflicts with WFTL's own complaint and the document itself.
- (h) There is no mention of the Coal Agreement in the detailed meeting pack for the meeting in Paris on 23 October 2021² (when Mr Wikeley now claims it was signed by Mr Dickson), or in any of the emails setting up that meeting with Mr Dickson.
- (i) WFTL has not produced any document showing or evidencing any requests for drawdowns under the agreement, or any documents evidencing that it was entered into or performed, other than the purported agreement itself.
- (j) WFTL's Kentucky lawyer has refused to say whether he or his client has the original of the agreement.
- (k) Mr Watson appears to be supporting WFTL in its Kentucky litigation. WFTL has produced documents from the Spartan litigation trial bundle in evidence in Kentucky despite the fact that neither it nor Mr Wikeley were involved in that litigation.
- (l) Mr Wikeley, Mr Watson and Mr Dickson have all been subject to adverse findings by the English or New Zealand Courts.
- (m) Mr Watson is connected with Mr Rizwan Hussain (mentioned next).

Related interference with Kea

[16] As well as the default judgment, Kea refers to other steps taken against it subsequently by Mr Hussain, said to be a known fraudster acting in concert with Mr Watson. Kea says that the pair met while in prison – Mr Hussain was imprisoned for contempt of court at the same time as Mr Watson in late 2020, and at the same

prison. Kea refers to judgments in the English High Court where Mr Hussain has been involved in fraudulent schemes to take over companies to which he is a stranger.⁶

[17] Kea says that by letters of 7-8 August 2022, Mr Hussain, using a pseudonym, attempted to take control of Kea by purportedly removing all of Kea's genuine directors and replacing them with so-called 'protective directors'. These protective directors purported to take control of Kea and to settle the Kentucky proceeding for USD100 million. Kea says the fraudulent communications issued by the pseudonym in the name of Kea included a notice to the Kentucky Court claiming that Kea had settled WFTL's claim. On 8-9 August 2022, lawyers for the Wikeley Family Trust notified the Kentucky Court that the case had been settled and sought to vacate the hearing of Kea's motion to set aside the default judgment. Kea says this was an attempt to replace a default judgment which was being attacked by Kea with a debt due under a settlement agreement, so as to further the conspirators' attempts to wind up or extort money.

[18] Kea also says that Mr Hussain was the driver behind four English proceedings commenced in July/August 2022 – one proceeding by Blue Side Services SA against Kea and three proceedings purportedly brought by Kea and some of the protective directors against, among others, Sir Owen Glenn and the English and BVI solicitors/counsel who have been representing Sir Owen Glenn and Kea in the Spartan litigation.⁷

[19] On 12 September 2022, the English High Court found the attempted hijacking of Kea to be a legal absurdity. It struck out these four proceedings and held that Mr Hussain should be subject to a General Civil Restraint Order. The Judge also accepted that Kea had good grounds for thinking that Mr Watson and Mr Hussain were acting in concert in those proceedings, and awarded costs against Mr Watson. These were abusive proceedings conducted for the benefit of Mr Watson.

⁶ For example *Hurricane Energy Plc v Chaffe* [2021] EWHC 2258 (Comm) at [7]-[10]; and *Business Mortgage Finance 4 Plc & v Hussain* [2022] EWHC 449 (Ch) at [5] and [2022] EWHC 661 (Ch).

⁷ *Blue Side Services SA v Kea Investments Ltd* [2022] EWHC 2449 (Comm).

[20] Then, on 15 September 2022, WFTL offered to settle its default judgment for USD10 million, expressly on the basis that it expected this is the amount for which Kea's registered agent in BVI would be insured for malpractice.⁸ The offer was set to expire before the hearing of Kea's motion to set aside. Kea says this offer was another step in the fraud (and that the communication is therefore not privileged).

[21] Kea says that companies associated with Mr Hussain and Mr Watson have also falsely asserted that they are a secured creditor of Kea and that certain valuable interests owned by Kea in other entities have been assigned to the companies associated with Mr Hussain, thereby giving WFTL a pretext for paying some or all of any amounts it may obtain from Kea to Mr Watson.

Conspiracy

[22] Kea says it now appears that these developments are related, and that Mr Wikeley and Mr Watson, together with Mr Hussain, have conspired to defraud Kea through the instrument of the forged Coal Agreement and the default judgment. Mr Watson has a long association with Mr Wikeley. He was imprisoned with Mr Hussain. Kea says Mr Watson is involved in the fabrication and/or fraudulent use of the Coal Agreement, in that:

- (a) he is held out as having obtained the signature of Kea's then director, Mr Dickson;
- (b) the purported Coal Agreement bears his signature as witness to its execution;
- (c) Mr Wikeley claims that Mr Watson acted as Kea's agent in receiving alleged requests for funds under the Coal Agreement said to have given rise to part of Kea's liability;

⁸ Kea does not allege that WFTL's Kentucky lawyers, who made the offer on behalf of WFTL, were acting dishonestly.

- (d) in the Kentucky litigation Mr Wikeley produced documents from the trial bundle in the Spartan litigation which could only have come from Mr Watson; and
- (e) the existence of the Kentucky proceeding can only have come to the knowledge of Mr Hussain through Mr Watson, to allow the purported settlement of the Kentucky proceeding.

[23] Kea says it has reason to suspect that Mr Watson is attempting to use the Kentucky proceeding to frustrate Kea's enforcement of its English judgment against him by winding up Kea and also by diverting its legal team and resources, to vex Kea and Sir Owen Glenn in their long-running dispute – including by forcing disclosure of their confidential financial information and causing them to waste legal fees which are unlikely to be recovered, and to extract value from Kea. Kea says that Mr Wikeley also appears to be attempting to use the Coal Agreement and the Kentucky default judgment to extort Kea and its agents or associates.

[24] Kea says the immediate vehicle for this fraud is WFTL, which has obtained the default judgment. As mentioned, WFTL is a New Zealand company incorporated a month before commencing the Kentucky proceeding.

Relief sought

[25] Kea is conscious that the New Zealand Court will be cautious in granting relief that intersects with ongoing Court proceedings in Kentucky or elsewhere. Counsel for Kea submit however that unless the New Zealand Court intervenes, Kea will suffer irreparable damage and the relief sought has been very carefully drafted to avoid interference with the Kentucky Court. The Kentucky Court has declined to set aside the default judgment and to consider whether Kea has a meritorious defence based on the apparent fraud on the basis that Kea was served with the Kentucky proceeding in BVI and failed to take steps. Kea says that in the absence of restraint, the Kentucky Court is poised to grant invasive and damaging discovery and interrogatory orders against Kea. The Kentucky Court will not stay the default judgment unless Kea puts up a bond for up to USD100 million. Kea says it cannot put up any bond because to do so would give away its ability to challenge the default judgment on the grounds

that it was obtained by fraud in the BVI where it is incorporated and in the jurisdictions where it has assets.

[26] Further, Kea says WFTL is attempting to have Kea wound up in the BVI and its lawyers have recently indicated they will seek an expedited process to achieve that.

[27] Kea says that at some stage a Court outside Kentucky is going to have to engage with Kea's case that the default judgment has been procured by fraud, because Kea's assets and Kea itself are all outside Kentucky. It says the New Zealand Court should exercise its equitable jurisdiction now to prevent a New Zealand company as trustee of a New Zealand trust from continuing to perpetrate a serious and massive fraud on Kea.

[28] Kea's substantive proceeding seeks a permanent injunction and damages. The statement of claim pleads three causes of action: tortious conspiracy; a claim for a declaration that the Kentucky default judgment is not recognised or enforceable in New Zealand under private international law because it was procured by fraud; and the tort of abuse of process of the Kentucky Court.

[29] In relation to interlocutory relief, Kea says the primary aim of the application is to restrain the continued commission of a tort. Kea seeks an interlocutory injunction in essence:

- (a) restraining WFTL and Mr Wikeley from bringing or pursuing any litigation, or taking any steps, to enforce or otherwise act on: (i) the Coal Agreement; (ii) the default judgment; and (iii) the statutory demand; and
- (b) in particular, to hold the position pending an on notice return date by securing Kea's ability to adjourn the proceedings in Kentucky (and elsewhere), ensuring that interrogatories and subpoenas are not pressed, ensuring the trustee of WFTL is not changed, and ancillary matters.

[30] Counsel for Kea submit that this Court's jurisdiction to grant whatever injunctive relief is necessary to restrain the perpetration of an unfolding, significant multinational fraud may be conceived in two ways. First, an interim injunction according to orthodox *American Cyanamid* principles,⁹ and secondly, according to specific principles relating to the grant of an anti-suit injunction or, more precisely, an anti-enforcement injunction to restrain the enforcement of a foreign judgment that has been procured by fraud and cannot be effectively restrained in the foreign court. Some of the interim relief sought calls for consideration of these more specific principles.

[31] Before addressing the principles, I deal with the appropriateness of proceeding on a without notice basis.

Without notice

[32] I must first determine whether the application can properly be dealt with without notice.¹⁰ I may do so only if I am satisfied that one of the grounds for proceeding without notice is made out, relevantly:

- (a) requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; or
- ...
- (e) the interests of justice require the application to be determined without serving notice of the application.

[33] As the Court of Appeal said in *Commerce Commission v Viagogo AG*,¹¹ an application for interim relief should be made without notice to the defendant only where that is essential, either because giving advance notice will defeat the purpose of the order sought, or because the application is so urgent that it is not feasible to give notice.

[34] While I accept there is urgency here given Kea's concern relating to the imminent hearing in Kentucky regarding subpoenas and interrogatories this Friday Kentucky time, that might have been addressed by alerting the defendants to Kea's

⁹ *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL).

¹⁰ High Court Rules 2016, r 7.46(2). See also r 7.23.

¹¹ *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [94].

application and enabling the defendants to participate on a *Pickwick* basis.¹² However, I am satisfied that the interests of justice require the application to be determined without serving notice of the application given the risk that, if the defendants are perpetrating a fraud as Kea claims, they may take steps to defeat the injunction before it is granted if they have notice of the application. As counsel submit, this might include taking steps to appoint a different trustee of the Wikeley Family Trust that is outside New Zealand or expediting steps in Kentucky or in other jurisdictions, including steps of which Kea is currently unaware. This is an exceptional case warranting determination without notice. Of course, any order should be the minimum necessary to preserve the position pending an expedited hearing on notice, with leave reserved for the defendants to apply even sooner.

Applicable principles for interim relief

Principles governing grant of interim injunctions

[35] The general principles governing applications for interim injunctions are well-established. They were summarised by the Court of Appeal in *Commerce Commission v Viagogo AG*.¹³

The principles that govern the grant of interim injunctions under r 7.53 and the court's inherent jurisdiction are well settled. The court will usually adopt a two-stage approach.¹⁴ The first inquiry is whether there is a serious question to be tried. If that threshold is met, the court moves on to consider whether the balance of convenience favours granting or refusing relief. But as this Court observed in *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*, considerations are marshalled under these (non-exhaustive) heads as “an aid to determining, as regards the grant or refusal of an interim injunction, where overall justice lies. In every case the Judge has finally to stand back and ask himself that question.”¹⁵

Principles applicable to the grant of anti-suit injunctions

[36] As counsel for Kea submitted, the anti-suit injunction is a long-recognised species of equitable injunction that restrains a defendant from pursuing proceedings

¹² *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [94].

¹³ At [30].

¹⁴ See *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL).

¹⁵ *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 142.

overseas that are vexatious or oppressive.¹⁶ A particular form of anti-suit injunction – known as an anti-enforcement injunction – is available to restrain a defendant from enforcing a judgment already obtained overseas.

[37] Although uncommon in New Zealand, the Court has power to grant anti-suit injunctions.¹⁷ As Fitzgerald J said in *Lu v Industrial Commercial Bank of China (New Zealand) Ltd*, the legal principles, which derive largely from a number of leading United Kingdom decisions, are reasonably well-settled.¹⁸

[38] As Lord Goff of Chieveley said in the Privy Council decision of *Société Nationale Industrielle Aero-Spatiale v Lee Kui Jak*:¹⁹

The law relating to injunctions restraining a party from commencing or pursuing legal proceedings in a foreign jurisdiction has a long history, stretching back at least as far as the early 19th century. From an early stage, certain basic principles emerged which are now beyond dispute. First, the jurisdiction is to be exercised when the “ends of justice” require it ... Second, where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed ... Third, it follows that an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy ... Fourth, it has been emphasised on many occasions that, since such order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution ...

[39] Counsel acknowledged that although an anti-suit injunction formally operates on the conscience of the defendant, rather than being directed to the foreign court, the courts are understandably cautious about granting an order that may be seen as interfering in the operation of foreign courts.²⁰

[40] The courts have adopted a three-step analysis:²¹

¹⁶ *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345, (1997) 146 ALR 402; *Bushby v Munday* (1821) 5 Madd 297. See also *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 (PC) at 892–896.

¹⁷ *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [100]–[101]. See also the earlier case of *Jonmer Inc v Maltexo Inc* (1996) 110 PRNZ 119 (HC).

¹⁸ *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [100].

¹⁹ *Société Nationale Industrielle Aero-Spatiale v Lee Kui Jak* [1987] 1 AC 871 (PC) at 892.

²⁰ *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [102].

²¹ At [103].

- (a) First, the local court must have jurisdiction over the defendant. As part of this, the local court must be satisfied that it has a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court that an anti-suit injunction entails. This is necessary to ensure that considerations of comity are given sufficient weight.²²
- (b) Secondly, the local court must be satisfied that the commencement or continuation of the foreign proceedings, or the conduct of the defendant in the context of those proceedings, is vexatious, oppressive or otherwise unconscionable. Part of this enquiry is asking whether the plaintiff has a legitimate interest in seeking to restrain the conduct of the defendant.
- (c) Thirdly, the court must ultimately ask itself whether the interests of justice require the injunction to be granted.

[41] Ordinarily, the plaintiff must also establish that the local court is the “natural forum” for the proceeding that the defendant is trying to pursue in the foreign court, for example, a contractual dispute.²³ But the courts have recognised that in a limited category – “single forum cases” – the pursuit of foreign proceedings must be restrained because they are inherently abusive, regardless of whether the local court could or would hear the claim.²⁴ The obvious case in that category is fraud, where the claim should not have been commenced in the first place. In any case, counsel submit that New Zealand is the appropriate forum to determine Kea’s tort and declaratory claims.

Principles applicable to the grant of anti-enforcement injunctions

[42] Particular care is required in the case of anti-enforcement injunctions, where the foreign court has already assumed jurisdiction and given judgment. Even so, it is well-established that in compelling cases the Court may also grant an injunction to

²² *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* [2020] NZHC 402 at [106], citing *Airbus Industrie G.I.E v Patel* [1999] 1 AC 119 (HL) at 138.

²³ *Lu v Industrial Commercial Bank of China (New Zealand) Ltd* at [103].

²⁴ *British Airways Board v Laker Airways Ltd* [1985] AC 58 (HL); *Midland Bank plc v Laker Airways Ltd* [1986] QB 689 (CA).

restrain the defendant from acting on, or enforcing, a judgment that it has already obtained in the foreign court.²⁵ The common theme of the cases is that if any circumstance justifies this form of relief, it is fraud.

[43] As counsel submit on the basis of these authorities, an anti-enforcement injunction will be available where:

- (a) the New Zealand Court has personal jurisdiction over the defendant, and it is consistent with comity considerations for the New Zealand Court to intervene, taking into account its connection to or interest in the underlying dispute and the extent to which the issue could or should be resolved in the foreign Court;
- (b) enforcement of the overseas judgment would be oppressive or vexatious; and
- (c) the plaintiff has good reason for not having sought an anti-suit injunction earlier, including where the foreign judgment has been procured by fraud, or without sufficient notice to the plaintiff to allow it to intervene, and it has otherwise acted without undue delay.

Issues

[44] As indicated, while some of the interim relief sought can be considered in accordance with orthodox interim injunction principles, some calls for consideration of the more specific anti-suit/anti-enforcement injunction principles. Given this amalgam, while the question is ultimately whether the interests of justice require this Court's intervention, in the context of this case I address the issues as follows (acknowledging there is some overlap):

²⁵ *Ellerman Lines Ltd v Read* [1928] 2 KB 144 (CA) at 150-153; *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2008] EWCA Civ 625, [2009] QB 503 at [94]; *Bank St Petersburg OJSC v Arkhangelsky* [2014] EWCA Civ 593, [2014] 1 WLR 4360; and *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 (where the primary injunctive relief was discharged in the Court of Appeal on the basis of an undertaking from the respondent). See also *Ecobank Transnational Inc v Tanoh* [2015] EWCA Civ 1309, [2016] 1 WLR 2231.

- (a) whether the New Zealand Court has personal jurisdiction over the defendants;
- (b) whether there is a serious question to be tried;
- (c) whether further steps by the defendants in, or to enforce, the Kentucky and other proceedings would be oppressive or vexatious;
- (d) whether Kea has delayed; and
- (e) whether other balance of convenience factors and overall justice favour granting interim relief.

Jurisdiction

[45] As counsel submit, the Court has personal jurisdiction over all three defendants:

- (a) WFTL is a New Zealand incorporated company with its registered office in Auckland. WFTL is subject to the supervision of the New Zealand Court, which has jurisdiction as of right over a New Zealand company.
- (b) Mr Wikeley has a long business history in New Zealand as indicated in a previous case in this Court.²⁶ According to the Companies Office Register, he resides in Queensland, Australia and he swore an affidavit for the Kentucky proceedings in Brisbane, Queensland in July 2022. New Zealand Court documents may be served on Mr Wikeley in Australia as of right pursuant to s 13 of the Trans-Tasman Proceedings Act 2010.
- (c) Mr Watson is a New Zealand citizen but no longer lives in New Zealand. He is believed to be a fugitive from the New Zealand

²⁶ *Jacomb v Wikeley* [2013] NZHC 707 at [5].

liquidators of his former company, Cullen Investments Ltd, and from the US Securities and Exchange Commission. If he is outside New Zealand or Australia, then service of the proceeding would have to meet the requirements of rr 6.27 to 6.29 of the High Court Rules 2016. Kea appears entitled to serve him without leave at least on the basis that:

- (i) acts forming part of Kea's tort claims were done in New Zealand;²⁷
- (ii) he is a necessary or proper party to the proceedings properly brought against the other defendants and there is a real issue between the plaintiff and the third defendant that the Court ought to try.²⁸

[46] In its memorandum of counsel, Kea seeks permission to serve Mr Watson by alternative means pursuant to High Court Rules 6.32(1)(a) and 6.1(2) by serving him by email. I consider that should be addressed subsequently by way of an application for substituted service if Mr Watson cannot be served.

[47] I also accept that New Zealand appears to be the appropriate forum for Kea's claims:

- (a) The tort causes of action are likely governed by New Zealand law.²⁹ WFTL, the principal vehicle and "front" for the alleged fraud, is a New Zealand company. The New Zealand Court has a role in preventing a New Zealand company implementing a global fraud. This applies all the more where WFTL is acting as the trustee of a New Zealand trust (the Wikeley Family Trust) which itself is governed by New Zealand law and subject to the Court's supervision under the Trusts Act 2019. The foundational act of the alleged conspiracy appears to have been Mr Wikeley (acting as former trustee of the

²⁷ Rule 6.27(2)(a).

²⁸ Rule 6.27(2)(h).

²⁹ Private International Law (Choice of Law in Tort) Act 2017, ss 8 and 9.

Wikeley Family Trust) incorporating WFTL and then appointing WFTL as trustee so that it could pursue the Kentucky proceedings. Although the overt acts constituting the torts took place and are taking place in a number of other countries, that is not uncommon in multinational frauds and the Court must ultimately settle on a single country.

- (b) Both of the natural defendants have long associations with New Zealand, as does Sir Owen Glenn. While Mr Wikeley and Mr Watson are not presently in New Zealand as far as Kea is aware, they chose to use a New Zealand company and trust to perpetrate their alleged fraud, and there would be little merit in any suggestion it is inappropriate for the New Zealand Court to regulate their conduct.
- (c) The law applicable to the declaration claim is necessarily New Zealand law, since it seeks a declaration as to whether the default judgment can be recognised by New Zealand law. This claim can and will be pursued in New Zealand in any event.
- (d) There is no credible alternative jurisdiction for the trial, except perhaps BVI where Kea is incorporated. However, BVI does not have jurisdiction over any of the current defendants, and all that will be decided in relation to the application to stay or strike out the statutory demand is whether there is a prima facie case that the default judgment was obtained by fraud.

[48] The New Zealand Court may grant urgent interim relief before service has been effected on overseas parties, and before any protest to jurisdiction (including any question about appropriate forum) has been determined.³⁰

[49] For these reasons, I accept that the Court has personal jurisdiction and a sufficient connection to the dispute.

³⁰ *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559.

Serious question to be tried

Conspiracy

[50] Kea says the evidence discloses a conspiracy between WFTL, Mr Wikeley and Mr Watson to perpetuate a massive fraud on Kea.

[51] As counsel submit, the tort of conspiracy requires that two or more persons combine and agree that at least one of them will:³¹

- (a) use unlawful means to cause damage to the claimant; or
- (b) conspire to use means that may be lawful in themselves, but are done with the predominant purpose of injuring the plaintiff.

[52] These are often described as “unlawful means conspiracy” and “lawful means conspiracy” respectively, but are facets of the same tort.

[53] As submitted, the Court of Appeal in *Wagner v Gill* set out the essential elements of unlawful means conspiracy:³²

- (a) The existence of a combination of persons: Whether a company can conspire with its directors and/or shareholders is not settled but, in any event, I accept there is a serious question that Mr Wikeley has conspired with WFTL as former trustee and apparently appointor, and has also conspired with Mr Watson and Mr Hussain.
- (b) Unlawful action (unlawful means): This limb includes torts, but the better view is that unlawful means also includes breach of contract, criminal offences, breach of fiduciary duty or breach of statutory duties.³³

³¹ *JSC BTA Bank v Ablyazov (No 14)* [2018] UKSC 19, [2020] AC 727, [2018] 2 WLR 1125 at [8].

³² *Wagner v Gill* [2014] NZCA 336, [2015] 3 NZLR 157 at [50].

³³ At [59], [68] and [80].

- (c) Intention to injure the claimant: It is not necessary to prove that the conspirators' sole or predominant purpose was to injure the plaintiff.³⁴ Something more than mere foreseeability may be required, but it is sufficient that the conduct is directed at the claimant.³⁵
- (d) Actual damage caused to the claimant: This includes the expense caused to the claimant in exposing and resisting the wrongful activities of the defendants.³⁶

[54] Counsel submit the Coal Agreement and Mr Wikeley's Kentucky affidavit alone provide strong grounds for suspecting fraud, particularly when combined with the complete absence of any pre-action correspondence. Addressing the four elements above, I accept that the evidence filed with the application demonstrates an arguable if not strong prima facie case of tortious conspiracy:

- (a) The evidence indicates that Mr Wikeley and Mr Watson (and WFTL) have acted in combination to procure WFTL's enforcement of the Coal Agreement. As indicated, Mr Wikeley is the sole director and shareholder of WFTL, and apparently caused it to be incorporated to act as the trustee of the Wikeley Family Trust and caused it to be appointed in that role. He has sworn an affidavit in the Kentucky proceedings. Mr Watson is identified as the witness to the execution of the Coal Agreement by both Mr Dickson and Mr Wikeley and, if it was forged, is likely to have been party to that fraud. In response to Kea's allegation of fraud, Mr Wikeley's revised explanation in his Kentucky affidavit as to the circumstances in which the Coal Agreement was executed conflict with the face of the agreement and WFTL's earlier Kentucky Complaint (that is, he executed it in New York the month before Mr Dickson executed it in Paris). Mr Watson is said to have received the demands from Mr Wikeley which gave rise to Kea's

³⁴ Stephen Todd (ed) *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at [13.4.03(1)].

³⁵ *Wagner v Gill* [2014] NZCA 336, [2015] 3 NZLR 157 at [90]; Stephen Todd (ed) *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at [13.4.03(1)].

³⁶ *British Motor Trade Association v Salvadori* [1949] Ch 556.

liability under the Coal Agreement. However, none of Kea's directors since February 2013 have ever received any such demand or heard anything about the Coal Agreement. WFTL has produced in the Kentucky litigation documents bearing unique ID numbers from discovery in the English Spartan litigation that could only have come from Mr Watson. The involvement of Mr Hussain in the attempt to create a fraudulent settlement agreement and then to create a paper trail to permit WFTL to pay money out of its recoveries to companies connected with Mr Hussain and Mr Watson can only have come about through Mr Watson. The English High Court has accepted that Kea has "good grounds" for thinking that Mr Watson and Mr Hussain were acting in concert in the proceedings that were struck out on 12 September 2022. Further support is not needed, but there are also the previous adverse findings of Nugee J concerning Mr Watson and (less directly relevant) of earlier New Zealand Courts concerning Mr Wikeley.³⁷

- (b) The defendants have used unlawful means to implement their scheme: the use of an allegedly forged document, and/or fraudulent claims made under that document, to procure a financial benefit to which they are not entitled. That would constitute criminal offences under New Zealand law, including dishonest use of a document and obtaining by deception.³⁸
- (c) The necessary inference would be that the defendants intended, and continue to intend, to harm Kea. The defendants' conduct – the attempt to enforce the Coal Agreement and the default judgment, to obtain information by subpoenas and the issue of a statutory demand – is directed against Kea.

³⁷ *Jacomb v Wikeley* [2013] NZHC 707 and *Wikeley v Jacomb* [2014] NZCA 146.

³⁸ Crimes Act 1961, ss 228 and 240.

- (d) Kea has and continues to suffer loss, not least the costs associated with exposing the fraud and defending and bringing proceedings and actions in multiple jurisdictions.

Declaration

[55] Kea's second cause of action seeks a declaration that the default judgment is not recognised or enforceable as a matter of New Zealand law in order to forestall attempts to deploy the default judgment either in New Zealand or in other jurisdictions.

[56] This Court may grant a declaration that a foreign judgment is not entitled to recognition, even where enforcement proceedings have not yet been commenced. In *Pocket Kings Ltd v Safenames Ltd*, the English High Court was satisfied that a pre-emptive declaration was appropriate in a case relating to Kentucky.³⁹

[57] The Reciprocal Enforcement of Judgments Act 1934 does not apply to judgments from the United States so the question whether the default judgment should be recognised or enforced is governed by the common law. For a foreign judgment to be recognised, the following requirements must be met:⁴⁰

- (a) The parties must be the same (or be privies);
- (b) The foreign court must have had jurisdiction, based on either the presence of the judgment debtor in the foreign jurisdiction at the time of the proceedings or its submission to the jurisdiction (either in advance in writing, or by appearing without protest);
- (c) The judgment must be final and on the merits;
- (d) The judgment must not have been procured by fraud or a breach of natural justice or give rise to a breach of New Zealand public policy.

³⁹ *Pocket Kings Ltd v Safenames Ltd* [2009] EWHC 2529 (Ch), [2010] Ch 438. See also *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [125]-[126].

⁴⁰ *Ross v Ross* [2010] NZCA 447, [2011] NZAR 30 at [13] citing *Kemp v Kemp* [1996] 2 NZLR 454 (HC) at 458.

[58] If those requirements are met, then the judgment is entitled to recognition and may be relied on to establish *res judicata* or issue estoppel that prevents the judgment debtor from relitigating the matters decided.

[59] I accept there is a serious question to be tried that the default judgment is not entitled to recognition in New Zealand on the ground that the default judgment was procured by fraud and recognition of the judgment would be contrary to public policy:

- (a) Fraud in this context includes where the judgment creditor procured the judgment by misrepresentations made in bad faith,⁴¹ although recklessness is also sufficient.⁴² The presence of fraud is sufficient on its own to establish that the judgment is not entitled to recognition.
- (b) A judgment debtor is entitled to raise allegations of fraud in recognition proceedings even if those arguments were or could have been run in the foreign proceedings.⁴³ In any case, I accept that Kea could not have raised its fraud defence before judgment in the Kentucky proceedings because it was not aware of them.
- (c) Kea requires a declaration to protect it against the use of the default judgment in New Zealand and/or in other jurisdictions where the New Zealand determination will be recognised and will itself give rise to an issue estoppel.

Tort of abuse of process

[60] A person is liable for the tort of abuse of process where they use legal process (even in its proper form) in order to accomplish an ulterior purpose, such as oppression or extortion.⁴⁴

⁴¹ *Gordhan v Keremelidis* HC Christchurch CIV-2010-409-2982, 20 December 2011.

⁴² *Johnson v Johnson* [2016] NZHC 890, [2016] 3 NZLR 227 at [41].

⁴³ *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 (CA). While that rule has been criticised, it remains the law in New Zealand: Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, 2020) at [5.241]-[5.251].

⁴⁴ *Grainger v Hill* (1838) 4 Bing NC 212, 132 ER 769 (Exch Ch); *Waterfall Park Developments Ltd v Hadley* [2022] NZHC 2221 at [183]-[195].

[61] Kea submits the only reasonable inference is that WFTL (with Mr Wikeley and Mr Watson) is using the Kentucky proceedings and associated actions for the purpose of obtaining money from Kea, taking control of Kea for the purpose of fraudulently obtaining its assets, obtaining a settlement with Kea or Kea's registered agent, frustrating the enforcement of orders arising from the Project Spartan judgments, illegitimately obtaining information about Kea and related parties, and/or causing loss and damage to Kea in wasted legal costs, and vexing Kea and Sir Owen Glenn. These purposes are not legitimate uses of a lawful proceeding, but an ulterior purpose that is oppressive.

[62] I accept this raises a serious question to be tried for the reasons already given in relation to the other causes of action.

Oppressive or vexatious

[63] Kea submits the defendants' attempts to enforce the Coal Agreement and act on the default judgment are oppressive and vexatious, and that perpetuating a fraud is inherently unconscionable.

[64] Having concluded there is an arguable if not strong prima facie case of tortious conspiracy, I accept that seeking to enforce the default judgment would be unconscionable, meeting the oppressive and vexatious requirement.

[65] Counsel submit this is one of the rare cases where an anti-enforcement injunction is justified, because of the circumstances in which the judgment was obtained and the inability or unwillingness of the Kentucky court to intervene. They submit that the evidence available to Kea supports a compelling inference that the Coal Agreement is a forgery or fabrication, that WFTL has no legitimate claims under it, and that the default judgment was procured by a fraudulent conspiracy.

[66] Counsel are rightly conscious that this Court is particularly cautious in relation to granting relief that intersects with ongoing Court proceedings in Kentucky or elsewhere. This is necessary because of the requirements of comity. Like the English

Court,⁴⁵ the New Zealand Court has great respect for the work of foreign courts, particularly those in countries such as the United States with which we share common traditions and fundamental principles, and which have a high regard for the rule of law. To grant an injunction which will interfere, even indirectly, with the process of a foreign court is therefore a strong step for which a clear justification is required.

[67] As the English Court of Appeal has said,⁴⁶ in some cases the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers without occasioning a breach of customary international law or manifest injustice, and that in such circumstances, it is not for this court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

[68] This is a very unusual case. Without commenting in any way on the proceedings of the Kentucky Court, absent the allegedly fraudulent Coal Agreement Kea would not have been subject to proceedings in Kentucky at all. Kea has no presence or business in Kentucky. It is there only because the allegedly fabricated Coal Agreement states the parties have agreed the jurisdiction shall be the USA and the contract will be governed by the laws in Lexington, Kentucky and any applicable Federal law. If the Coal Agreement is a fraud, WFTL is abusing the process of the Kentucky Court. If a New Zealand company, as trustee of a New Zealand trust, is abusing the process of the Kentucky Court to perpetuate a fraud, the New Zealand Court's intervention to restrain that New Zealand company may even be seen as consistent with the requirements of comity.

[69] Further, insofar as the relief sought restrains the defendants' enforcement of the default judgment, it is limited to restraining the defendants' opposition to any application from Kea for an adjournment pending the return date – that is, for a short

⁴⁵ *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 at [101].

⁴⁶ *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725, [2010] 1 WLR 1023, quoted in *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 at [102].

period of time to enable (interim) consideration of the alleged fraud. Kea is not seeking to restrain enforcement indefinitely or against assets in Kentucky. Similarly, any restraint on the defendants' enforcement of subpoenas in Kentucky and elsewhere is limited in time, again for a short period to enable (interim) consideration of the alleged fraud. In the unusual circumstances of this case involving the pattern of allegedly fraudulent interference referred to above, Kea's concern about misuse of confidential financial and other information is understandable.

[70] While I understand that Kea has not yet exhausted its recourse in the Kentucky Courts, I do not consider that is a reason for this Court to decline the limited relief sought on the ground it is unnecessary.

[71] I turn next to the related issue of delay.

Delay

[72] There is a relationship between comity and delay. In general, the greater the delay in seeking relief, the further the foreign proceedings will have advanced, and the more justifiable will be the foreign court's objection to an order by the court which is liable to frustrate what has gone before and waste the resources which have been expended on the foreign proceedings.⁴⁷

[73] As already mentioned, I accept the evidence indicates that Kea had no actual notice of the Kentucky proceedings until after the default judgment was obtained, and therefore had no opportunity to seek injunctive relief until after the fact. This is not a case where Kea could or should have sought anti-suit injunctive relief at an earlier stage.

[74] I also accept that, since becoming aware of the default judgment, Kea has acted expeditiously. As counsel submit, the evidence indicates that it has been seeking to deal with what is *prima facie* an unfolding sophisticated fraud. Kea has been acting in multiple jurisdictions, including Kentucky, BVI and England, to try and defend itself against the assault being orchestrated by the defendants from, and in, multiple

⁴⁷ *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 at [104].

jurisdictions, at no doubt considerable cost. Over that period, further details have emerged about the nature and extent of the allegedly fraudulent scheme – such as Mr Hussain’s attempts to take over Kea after it filed a motion to set aside the default judgment. Kea has sought to have the default judgment set aside in Kentucky under protest to jurisdiction. Any appeal will take time and it seems that Kea cannot obtain a stay for the reasons explained. Kea is therefore exposed to enforcement measures such as subpoenas on the basis of a judgment allegedly procured by fraud.

Other balance of convenience factors and overall justice

[75] Kea submits that its evidence demonstrates the harm of permitting apparent fraudsters to enforce an illegitimate judgment. Because the Kentucky Court has not considered whether the default judgment was obtained by fraud, there is little standing in the way of enforcing the usual (and extensive) post-judgment enforcement measures available under that jurisdiction’s law. As a result, Kea could be forced to answer intrusive requests that would require disclosure of extensive confidential financial information to people with a known history of fraudulent conduct, as well as the prospect of WFTL being able to frustrate Kea’s legitimate enforcement of the English judgment and obtain financial benefits from third parties. In particular, Kea is very concerned about Mr Hussain’s willingness falsely to represent the existence of documents and obligations to third parties. If Kea is ordered to answer interrogatories and does not do so, it would be in contempt in Kentucky. Kea cannot control what the banks will do in answer to WFTL’s subpoenas. Counsel submit it is grossly unjust that Kea should be put in this position.

[76] Counsel also submit that circumstance is all the more egregious given the involvement of Mr Wikeley and Mr Watson given their respective histories. If Kea’s claim is made out on the merits, its prospects of getting effective relief by way of damages against either person are remote: Mr Watson is believed to be a fugitive from justice and has not satisfied his existing judgment, while Mr Wikeley was adjudged bankrupt in 2014 and Kea knows nothing about his current assets (but he evidently uses trusts).

[77] Against that, Kea submits that a short delay in permitting WFTL to pursue enforcement steps – even assuming that enforcement were legitimate – will cause little harm to WFTL, and Kea is responsible for any losses incurred under its undertaking as to damages provided to this Court, supported (to some extent) by an undertaking from Sir Owen Glenn.

[78] I consider that the balance of convenience between the parties weighs strongly in favour of relief. The risk of irreparable harm to Kea outweighs the harm caused by a delay in the enforcement of WFTL’s default judgment. Damages are much more likely to be an adequate remedy for that.

[79] Finally, Kea submits that the interests of justice overwhelmingly favour the grant of interim relief, and that it seeks only the minimum relief necessary to hold the position pending a hearing on notice.

[80] Standing back, having regard to the extensive material filed under urgency,⁴⁸ including the memoranda of counsel addressing the issues and incorporating disclosure of any defence that might be relied on and any facts that will support the position of any other party, I conclude that the interests of justice favour the grant of limited interim relief to pause the defendants’ position pending a hearing on notice.

Form of relief

[81] I accept that the relief sought in the application has been carefully framed in an effort to go no further than necessary. I consider it should be narrowed further still both as to the scope and timing of the relief.⁴⁹ The orders should include provision for the defendants to be notified of the orders and this judgment as soon as possible (even before service can be effected) and reserving leave to the defendants to apply to set aside or vary these orders on short notice.

⁴⁸ This includes the further memorandum filed this afternoon.

⁴⁹ As to scope, narrowing (d)(i) by including the words “consent to”, and narrowing (d)(v).

Result

[82] I make the following orders:

Pending the return date on **Friday, 11 November 2022 at 10:00 am:**

- (a) the first defendant (WFTL) and the second defendant (Mr Wikeley) shall not take any steps, and shall not cause or permit any other person, to appoint an additional or replacement trustee of the Wikeley Family Trust;
- (b) WFTL shall not bring or pursue any litigation, or take any steps, to enforce or otherwise act on:
 - (i) the purported Coal Funding and JV Investment Agreement dated 23 October 2012 between Kea Investments Ltd (Kea) and Mr Wikeley (Coal Agreement);
 - (ii) the Order for Default Judgment (Default Judgment) dated on or about 31 January 2022 in proceedings *Wikeley Family Trustee Ltd v Kea Investments Ltd* (Commonwealth of Kentucky, Fayette Circuit Court, 9th Division (Kentucky Court), Civil Action No. 21-CI-02508 (Kentucky Proceedings);
 - (iii) the statutory demand purportedly made by WFTL, by its solicitors Mourant Ozannes, to Kea, dated 28 June 2022, for the sum of USD136,240,994 pursuant to s 155 of the Insolvency Act 2003 (BVI) (Statutory Demand);
- (c) without limiting order (b), WFTL shall not oppose any application from Kea for orders from the Kentucky Court and any other court in which proceedings have been brought in reliance on the Default Judgment for a continuance or adjournment of any application or hearing pending at the date of these orders or a hearing of such an application pending the return date;

- (d) without limiting orders (b) or (c), WFTL shall and Mr Wikeley shall procure that WFTL shall:
- (i) inform any person who has been served with a subpoena that relies on the Coal Agreement or the Default Judgment (WFTL subpoena)⁵⁰ that WFTL consents to the time for complying with any such subpoena being extended until five working days after the return date;
 - (ii) not take any step to enforce compliance with any WFTL subpoena which would result in documents being provided under that subpoena before five working days after the return date;
 - (iii) not take any step to obtain documents from any other person whether under any WFTL subpoena or otherwise in reliance on the Coal Agreement or Default Judgment;
 - (iv) not read any document which it receives under any WFTL subpoena or provide any such document or any information contained in any such document to any other person and specifically not to the third defendant (Mr Watson) or Mr Rizwan Hussain (Mr Hussain) or any company, person or other entity with which either of them is associated;
 - (v) not directly or indirectly (or by any agent including a lawyer or attorney) provide any document it receives under any WFTL subpoena or any information contained in any such document to any other person and specifically not to Mr Watson or

⁵⁰ Including without limitation subpoenas duces tecum issued out of the Fayette Circuit Court to Bank of America, NA, Bank of New York Mellon, Citibank, NA, The Clearing House Payments Company LLC (CHIPS), Credit Suisse, Deutsche Bank Trust Company Americas, HSBC Bank USA, ING Financial Services, JPMorgan Chase Bank, N.A., Standard Chartered Bank, UBS AG, and Wells Fargo Bank, NA and a subpoena duces tecum issued out of the Superior Court of New Jersey Law Division to Northern Trust International Banking Corp provided under cover of notice dated 10 October 2022, or any subpoenas to the same parties.

Mr Hussain or any company, person or other entity with which either of them is associated;

- (vi) not take any step to obtain an order which compels Kea to answer any interrogatories or to provide any disclosure⁵¹ on a date earlier than 5 working days after the return date;
- (e) WFTL and Mr Wikeley shall not take any steps to bring forward the hearing of Kea's application to set aside WFTL's statutory demand in the BVI, currently set for 5 December 2022;
- (f) for the avoidance of doubt, if this order results in WFTL withdrawing the WFTL subpoenas or WFTL's Discovery Application in the Kentucky Court, WFTL is permitted to do so in a manner which preserves WFTL's right to re-file in the event that this Court declines Kea's application after the return date;
- (g) Mr Wikeley and Mr Watson shall not take any steps to procure, encourage, assist or otherwise cause WFTL or the Wikeley Family Trust to take steps in violation of the above orders;
- (h) without limiting order (g), none of the defendants shall sell, assign, gift, grant any security interest in or over, or otherwise in any way whatsoever transfer or encumber any interest any of them may have, directly or indirectly, in any rights any of them may have under or in connection with the Coal Agreement and/or the Default Judgment;
- (i) pending service of this proceeding, Kea is to provide these orders and a copy of this judgment to the defendants as soon as possible, by email where Kea has email addresses for the defendants or their lawyers;

⁵¹ Including without limitation the Post-Judgment Discovery Requests to Defendant dated 1 September 2022 issued in the Kentucky Court.

- (j) if service has not been effected by 8 November 2022, the return date may proceed on a *Pickwick* basis;
- (k) leave is reserved to the defendants to apply to set aside or vary these orders on not less than two working days' notice.

[83] The costs of this application are reserved.

Gault J