

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA588/2017
[2018] NZCA 528**

BETWEEN

YUE LI
First Appellant

JING CHEN
Second Appellant

YUHUA LU
Third Appellant

XIAOAN CHEN
Fourth Appellant

AND

PING LIU
First Respondent

XING LI
Second Respondent

Hearing: 12 September 2018 (further submissions received
17 and 18 September 2018)

Court: Kós P, Asher and Williams JJ

Counsel: W G C Templeton and J M Matheson for First, Second, Third and
Fourth Appellant
N J Scampion for First and Second Respondent

Judgment: 26 November 2018 at 3.00 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

**B Ms Reed and Prestige Lawyers Ltd are disqualified from continuing to act
in this proceeding.**

C There is no order for costs.

REASONS OF THE COURT

(Given by Williams J)

Introduction

[1] The first and second appellants (Yue Li and Jing Chen) are married and are living in Auckland. Yue Li's mother, Ping Liu, and stepfather, Xing Li, (the Lis) are the first and second respondents. They paid for the house in which Yue and Jing reside but formal ownership is in the names of Yue and Jing. The Lis have fallen out with Yue and Jing over beneficial ownership of the house, and over certain household goods and personal items, all of which are in the possession of Yue and Jing. For their part, the Lis say Yue and Jing were only ever intended to be trustees over the house. They say beneficial ownership is with the stepfather, Xing Li. And they say the household and personal items in the possession of the young couple in fact belong to the Lis. The Lis have issued proceedings seeking declarations of constructive or resulting trust, breach of trust/fiduciary duties, unjust enrichment and deceit in relation to the house, and relief for conversion and detinue in relation to the household and personal goods.

[2] Yue and Jing respond that the house, household goods and personal items were all gifts given to assist them in setting themselves up and that the Lis were never intended to retain any rights in them.

[3] It is in the context of that litigation that Yue and Jing applied to the High Court to disqualify the Lis' counsel, Ms Reed and her firm, Prestige Lawyers Ltd (Prestige Law), from continuing to act in the matter, and to prevent Ms Reed from giving evidence. Muir J declined the application. Muir J's decision was appealed to this Court.

Relevant factual background

[4] Although the Lis are resident overseas, they purchased a home in Christchurch to provide accommodation for Yue while he was a student there. After

the Christchurch earthquakes, they received a substantial insurance pay out in relation to the home. They resolved to use the proceeds to purchase a new home in Auckland for their son and Jing to live in (the Auckland house). As noted, there is a dispute over the terms of that arrangement.

[5] After the Auckland house was purchased there were still funds left over from the insurance payment. Yue and Jing began to look for an investment property for which the remaining funds might provide a substantial deposit. Soon after the Auckland house purchase settled, Jing's parents, Yuhua Lu and Xiaoan Chen (the Chens) who also lived in Auckland, made contact with a real estate agent involved in the proposed auction of a commercial property situated next door to the Chen's home (the investment property). The Chens are the third and fourth appellants. They asked the real estate agent for the name of a lawyer who could assist with the proposed transaction if their bid was successful. The real estate agent referred them to Ms Reed at Prestige Law.

[6] In the event, the bid was unsuccessful and the purchase did not proceed, but what happened in the period between 18 and 22 September 2015 is central both to the primary proceedings and the application that is the subject of this appeal.

[7] On 18 September, the Lis and the Chens visited Ms Reed's offices. Yue and Jing were unable to attend as they were both working. Their respective parents attended in their stead. There were preliminary discussions about the proposed investment property purchase. According to the Chens, the possibility of vesting the Auckland house in a family trust to protect it if used as security for the purchase of the investment property was raised but "did not go any further". Ms Reed's evidence is the possibility of a family trust or company was discussed as the purchase vehicle for the investment property. Ms Reed said that she understood the Lis to be the client and the Chens said very little at this meeting.

[8] There was then a further meeting on 22 September. This meeting was between Ms Reed and the Lis. Neither the Chens nor Yue and Jing attended. The remainder of

the relevant narrative is succinctly set out by Muir J in his judgment and we gratefully adopt his description:¹

[5] On 22 September 2015, the Lis met with Ms Reed at her offices alone. Ms Reed says that at this meeting she was engaged as their lawyer and that she was instructed to prepare documents to establish a family trust in relation to 2B Hauraki Road [Yue and Jing's residence]. Ms Reed's firm accordingly prepared:

- (a) a Deed of Trust establishing the Yue Li family trust;
- (b) a client authority and instruction for the electronic transaction for the transfer of 2B Hauraki Road;
- (c) a sale and purchase agreement for 2B Hauraki Road identifying Yue Li and Jing Chen as vendors and the trustees of the Yue Li Family Trust (again Yue L[i] and Jing Chen) as purchasers; and
- (d) a waiver of independent legal advice.

[6] The waiver was in terms which recorded:

1. We are the proprietors of 2B Hauraki Road, Hauraki, Auckland.
2. We have different interests from Ping Liu and Xing Li.
3. We are entitled to independent legal advice and it is advisable for me (sic) to employ my (sic) own lawyers.
4. We are under no obligation to sign any documents.
5. We have agreed to authroise (sic) PRESTIGE LAWYERS LIMITED to transfer the property to the YUE LI FAMILY TRUST as per family arrangement with Ping Liu and Xing Li.
6. In addition, we indemnify PRESTIGE LAWYERS LIMITED from any claims or proceedings which may arise from the carrying out of my (sic) instructions and I (sic) agree not to lodge any claims or proceedings against PRESTIGE LAWYERS LIMITED for carrying out our instructions.

It provided for signature by Yue Li and Jing Chen.

[7] On the evening of 22 September 2015, the Practice Manager of Prestige Lawyers, Kanako Shinde, brought the documents to the Chens' address, where the Lis were staying. Ms Reed deposes that she did not brief Ms Shinde on the contents of the documents as it was not necessary for Ms Shinde to discuss them with the Lis. She says that Ms Shinde was instructed "to explain to our clients [the Lis] where to sign". That is consistent

¹ *Liu v Lv* [2017] NZHC 2277, [2017] NZAR 1419.

with Ms Shinde's evidence that "I showed Liu Ping and the man [who had let her into the house and who is accepted as having been Mr [Yue] Li] where they needed to sign the documents and told them they would need to find a witness". She says that she told them if they had any questions they were to contact Ms Reed and then left.

[8] Yue Li and Jing Chen in turn depose that the plaintiffs tried to get them to sign the documents by the front door and then renewed their request inside the house in front of Ms Shinde. They say they knew nothing of the intended trust arrangements and were totally surprised by the visit. They say that they were taken aback because the documents provided for the sale of their own house to a family trust which had purportedly been drafted on their instructions. They noted that the trust deed identified the Lis as settlors and reserved to them a power to appoint and remove trustees.

[9] As a result, they declined to sign the documents. An argument then broke out and the Lis arranged immediately to return to the United States. The families have been at loggerheads since.

High Court decision

[9] In the High Court, the Chens and Yue and Jing's challenge raised multiple grounds to disqualify Ms Reed and Prestige Law. By way of summary they argued that (in breach of obligations owed under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) Ms Reed and/or Prestige Law:

- (a) purported to act for Yue and Jing without their consent, acted for both the Lis and Yue and Jing when their respective interests were in conflict, and now acts as the advocate for one against the other side;
- (b) is acting as counsel in a proceeding where her own advice and conduct is directly in issue;
- (c) breached obligations of confidentiality to Yue and Jing including using confidential information to benefit the Lis; and
- (d) engaged in misleading and deceptive conduct toward Yue and Jing.

[10] In a carefully reasoned and succinct judgment, the Judge found on the facts that the grounds for the application were not made out.² The Judge found that

² *Liu v Lv*, above n 1.

the Conduct and Client Care Rules, while relevant, were not determinative of the application.³ Rather the test was whether Ms Reed’s representation created an appearance of injustice such that neither she nor her firm should be permitted to act further.⁴ The Judge concluded that it did not.⁵ On the facts, Ms Reed had never been retained by Yue and Jing and she possessed no confidential information that was not already well-known to the Lis.⁶ Finally, it was a matter of concern that without explanation or caution, Ms Reed’s assistant tendered documents to Yue and Jing, the execution of which could well have prejudiced their interests.⁷ But, the Judge noted, the fact is those documents were never executed.⁸

[11] The Judge concluded that reasonable members of the public would not consider that the integrity of the judicial process would be undermined if Ms Reed continued to act for the Lis.⁹ To this, however, Muir J added two cautionary notes. First, he invited Ms Reed to “reflect carefully” on whether, as a result of the ill-feeling that had developed over her actions, her continued involvement might be an unnecessary obstacle to constructive discussions between the parties.¹⁰ The second was as follows:

[66] In the event the defendants choose to subpoena Ms Reed to give evidence and such subpoena survives any application to set it aside, I reserve the right for them to re-apply for orders barring Ms Reed in the unlikely event that was necessary.

[12] In light of the way in which arguments developed on appeal, the last point has become important.

The issues

[13] On appeal, the case boiled down to three issues:

- (a) Were Yue and Jing clients of Ms Reed and Prestige Law?

³ At [62].

⁴ At [62].

⁵ At [64].

⁶ At [63].

⁷ At [63].

⁸ At [63].

⁹ At [64].

¹⁰ At [65].

- (b) Did Ms Reed possess confidential information to the detriment of Yue and Jing?
- (c) Is there any other reason that the “integrity of the judicial process would be impaired” if Ms Reed were permitted to continue to act for the Lis against Yue and Jing?¹¹

[14] During the hearing, it quickly became clear that, on the evidence, the answer to the first two questions was no, and that the true focus in the case is on the third issue.

[15] At the hearing, Mr Templeton, for the Chens and Yue and Jing, clarified his position in relation to the first issue. Yue and Jing never accepted they were Ms Reed’s clients. The problem was rather that Ms Reed claimed them as such in the documents that arrived at their home on the evening of 22 September 2015. That may well be so, but it does not create the sort of conflict referred to in *Black v Taylor*. As Muir J noted:¹²

[37] ... I consider that Ms Reed was acting for the Lis throughout and not for Yue Li and Jing Chen. Although she offered to act for Yue Li and Jing Chen, the trust documents were never actually signed and the arrangements never actually finalised. Consequently, I do not consider that Ms Reed is in a position of conflict which would prevent her for acting for the plaintiffs.

[16] As to the second issue, the confidential information in question was, Mr Templeton submitted, Yue and Jing’s ownership of their Auckland home, their family financial background, personal information and future property plans including their intention to purchase a commercial property.

[17] As Muir J pointed out, all of this information was well-known to the Lis — their funds were used for the Auckland house purchase and intended for the investment property purchase.¹³ And even if some confidential information had come from

¹¹ *Black v Taylor* [1993] 3 NZLR 403 (CA) at 412 per Richardson J.

¹² At [37].

¹³ At [43].

the Chens at the 18 September meeting with Ms Reed, it had been imparted in the presence of the Lis and so could not be confidential in the necessary sense.¹⁴

“Any other reason”

Submissions

[18] Mr Templeton essentially made two points under this head. First that Ms Reed’s own advice and conduct was in issue in the proceeding and that this would undermine her objectivity; and second, she could herself be required to give relevant evidence and in any event, could not avoid the “character of a witness” while acting as counsel.

[19] As to the first point, the argument was as follows:

The inconsistent nature of the legal documents and the attempt to reconstitute the prior gift is highly relevant to the credibility of the respondents’ late denial of the gift being a primary issue at trial. Ms Reed will also be in a position where she if acting as counsel, is having to defend her and her firm’s advice and conduct over documentation which materially contributed to the cause of the family dispute, with the litigation against her former “claimed” clients based on pleadings she drafted and in which she is to appear as counsel against them.

[20] Relevant to this argument, Mr Templeton argues, is the further point that Ms Shinde of Ms Reed’s office behaved deceptively when on instruction from Ms Reed, she presented Yue and Jing with documents that covertly prejudiced their interests. Ms Reed offered no warning or advice to them that this was their effect.

[21] As to the second point, Mr Templeton referred to r 13.5.3 of the Conduct and Client Care Rules. He accepted that the rules could not be determinative of the issue before this Court but he argued:

It would be difficult for Ms Reed to avoid the character of a witness when acting as counsel conveying a version of events reflective of her knowledge from her clients given her role throughout the events giving rise to this proceeding.

¹⁴ At [44].

[22] In rejoinder Mr Scampion, for the Lis, argued that Ms Reed's conduct is not central to the issue of whether the Lis intended that Yue and Jing would hold the house as mere trustees. Nor, it was argued, is she a necessary witness in relation to that issue. Tellingly, no party indicated a wish to call her as a witness in the substantive proceeding. This is because the Lis instructed Ms Reed to prepare the documents that reflected a position that obtained long before Ms Reed herself was instructed.

Analysis

[23] The essential applicable principles are not in debate. The court has inherent jurisdiction to disqualify counsel or solicitors from acting where to allow them to do so would impair the integrity of the judicial process.¹⁵ That said, the court should not lightly interfere in a party's fundamental right to counsel of their choice, particularly where considerations of delay in the application, inconvenience, or sunk cost favour the affected party.¹⁶ Further, the court should be vigilant in preventing objections whose purpose is only to disrupt or inconvenience the other side.¹⁷ To allow the judicial process to be played in this tactical fashion would itself be an unacceptable impairment.

[24] One area where it may be necessary to protect the integrity of the judicial process was addressed by the Supreme Court in *Vector Gas Ltd v Bay of Plenty Energy Ltd*.¹⁸ In that case the meaning of a clause in a gas supply contract was in issue. Counsel appearing for the parties to the dispute had each played a role in the negotiation of the clause. Wilson J (with whom, on this point, the other members of the Bench expressly agreed), recorded his concern at the position in which counsel had put themselves:¹⁹

[147] Whatever the court or tribunal in which they are appearing, it is undesirable for practitioners to appear as counsel in litigation where they have been personally involved in the matters which are being litigated. In that situation, counsel are at risk of acting as witnesses and of losing objectivity.

¹⁵ *Black v Taylor*, above n 11, at 412 per Richardson J.

¹⁶ At 412 per Richardson J.

¹⁷ *Russell McVeagh McKenzie Bartleet & Co v Tower Corp* [1998] 3 NZLR 641 (CA) at 676 per Blanchard J; and *Black v Taylor*, above n 11, at 420 per McKay J.

¹⁸ *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444.

¹⁹ See at [51] per Tipping J and at [99] per McGrath J.

[25] A second area is where counsel or a solicitor may be required to give relevant evidence of a contentious nature in the proceeding. The courts will generally step in to prevent counsel from performing both roles in the same case. Rule 13.5.1 of the Conduct and Client Care Rules reflects this well-established common law principle although it is not the source of it.²⁰

Independence in litigation

...

13.5.1 A lawyer must not act in a proceeding if the lawyer may be required to give evidence of a contentious nature (whether in person or by affidavit) in the matter.

[26] In our view, Ms Reed is exposed in both of these areas.

[27] The issue at trial will be on what basis the Lis funded the purchase of the Auckland house. Their instructions to Ms Reed and her advice to them on that question is likely to be relevant given the conflicting evidence of the Lis, and Yue and Jing on why the family trust model was adopted.

[28] Although Mr Templeton indicated at the outset that he had no intention to call Ms Reed (the uncontradicted evidence, he said, spoke for itself) he soon came to the view that he should reserve his position on the question. The Lis indicated that they had no wish to call Ms Reed but they too may have cause to change their minds if the impression likely to be left by defence evidence demands an effective response.

[29] An affidavit sworn by Fuk Kit Ho, filed in support of the Chens and Yue and Jing, is relevant in this respect. It appears that he knew the Lis socially. He deposed that on the evening of 22 September 2015 he met and spoke with the Lis at the Chens' home. His evidence is that the Lis originally intended the Auckland house to be a gift but belatedly discovered they would incur gift tax at up to half the value of the house. The family trust proposal was a response to that problem. He said:

4. This is what they told me: During their visit to NZ this time, Mr and Mrs Li bought their son and daughter-in-law a house with their EQC pay out, which is around \$2 million. The house is under the children's

²⁰ As to the common law position see, for example in the New Zealand context, the discussion and survey of authorities in *Beggs v Attorney-General* [2006] 2 NZLR 129 (HC).

name. They came to know later that they had to pay a gifting tax up to 50% of the house purchase price to US Government, according to US law, if they gift the house bought with [the] EQC pay out to the children.

5. In order to avoid paying the tax, their lawyer had suggested them to set up a family trust to own this house, for technical reasons. They said this proposal of theirs had been rejected by Mr and Mrs Chen. That was why they were so angry. They wanted me to be the judge.

[30] In light of these allegations Ms Reed's evidence will be highly relevant. If, as Mr Ho deposes, the Lis had told Ms Reed that they had gifted the money to Yue and Jing and then changed their minds, they may wish to call Ms Reed to confirm that. If believed, it would show the Lis to be lying. On the other hand, to rebut Mr Ho, the Lis may wish to call Ms Reed to prove that they never said to her that this money was a gift.

[31] But is Ms Reed compellable if the Lis choose not to call her? Ordinarily, of course, she would have the protection of legal advice privilege.²¹ But two matters suggest she may have lost it.

[32] Section 65 of the Evidence Act 2006 provides that privilege can be waived by the privilege holder if the privilege holder or a person with their authority voluntarily discloses any significant part of the privileged communication in circumstances inconsistent with a continued claim of confidentiality.²² Section 65(3) provides further that the privilege holder waives privilege if they put the privileged communication "in issue" in the proceeding.

[33] The Lis statement of claim dated 20 January 2016 provides as follows:

33. The plaintiff and his wife consequently sought legal advice from a lawyer that was independent from the third and fourth defendants [the Chens]. *The plaintiffs new lawyer advised the plaintiff that he should have trust documentation in place for the Auckland Property to reflect the fact that the first and second defendants [Yue and Jing] hold the property in trust for the plaintiff.*

34. *Upon receipt of the above legal advice, the plaintiff instructed his lawyers to set up a family trust and prepare documents for the transfer of*

²¹ Evidence Act 2006, s 54.

²² Section 65(2); and see Elisabeth McDonald and Scott Optican (eds) *Mahoney on evidence: Act & analysis* (Thomson Reuters, Wellington, 2018) at [65.01]–[65.03].

the Auckland Property to the family trust. The third and fourth defendants agreed verbally to the set up of the family trust and to the transfer.

(Emphasis added.)

[34] While it is unnecessary for us to come to any concluded view on the question (that will be for the trial court) it is plainly arguable that the effect of the Lis' disclosures was to waive privilege in terms of s 65. Ms Reed must have filed the statement of claim with the consent of the Lis including its references in paragraph 33, and in any event, if Mr Ho is believed, the Lis personally divulged what he claimed was the gravamen of the advice in their communication to him on 22 September 2015.

[35] It is therefore arguable that, if needed, Ms Reed will be a compellable witness able to give the sort of relevant and contentious evidence referred to in r 13.5.1.

[36] Mr Scampion then suggested that issues of delay, inconvenience and cost needed to be weighed against questions of integrity. We do not consider that is the correct approach. Rather the authorities suggest that where the affected respondent is faced with a late and prejudicial application, the obligation on the court is to be quite satisfied that the serious step of disqualification from appearing as counsel is required in the particular circumstances of the case to protect the integrity of the judicial process. The court must be sure that the threat is real and the intervention is the only appropriate response. If the integrity of the judicial process will be impaired, the court has a positive duty to intervene.

[37] Mr Scampion cannot be criticised for complaining of the appellants' delay in bringing the application, but for the reasons we have discussed, we consider that the threat is real. We do not see how the way in which the trust was constructed and discussed and the proposed manner of its execution by Yue and Jing can be anything other than relevant to the question of whether the Auckland house was gifted to Yue and Jing or not. As we have said, that issue brings into focus both *Vector Gas Ltd* and the protection reflected in r 13.5.1 of the Conduct and Client Care Rules. It is unnecessary to establish that Ms Reed will be a necessary witness. A reasonable likelihood that Ms Reed will be called as a witness will be sufficient to make the possibility more than mere speculation and the threat to integrity real. Further, we see no basis upon which it can be argued that the application is merely tactical. Viewed

objectively therefore, there is no viable alternative to Ms Reed's removal, despite the delay and inconvenience.

[38] It is to be noted though that Mr Templeton's case evolved on appeal. It was not put in this Court in the same way it was put to the Judge in the High Court. In particular, the appeal eventually, and with some encouragement, came to focus on the areas in which the Judge offered cautionary notes at the end of his judgment. This difference in focus and emphasis has led us to come to a different view to that of the Judge.

[39] Finally, we note that Mr Scampion filed a memorandum after the hearing of this appeal in which he expressed concern that at the hearing, the Chens, and Yue and Jing had signalled an intention to allege that Ms Reed had actively attempted to deceive Yue and Jing in a manner that was both unethical (and in effect) fraudulent. He suggested (following communications with Mr Templeton) that if the trial was likely to shift direction in such a significant way, then amended pleadings will be required and such amendment would be opposed. For his part Mr Templeton disclaimed any suggestion that his case had changed into an allegation that Ms Reed had retrofitted the trust scheme knowing it was never the original intention of the Lis. It will be for Mr Templeton to make an application if he chooses to. This will be a matter for the future conduct of the case in the High Court.

Prestige Law

[40] The Chens and Yue and Jing also sought an order disqualifying Prestige Law from continuing to act for the Lis in this proceeding. Our reasons for disqualifying Ms Reed from continuing to act personally relate to the real likelihood that she will be called as a witness in the substantive proceeding. Such eventuality would impair the integrity of the judicial process.

[41] The same reasoning does not apply to Prestige Law. We are nonetheless of the view that Prestige Law too must be removed as solicitors on the record. The present case is not quite of the ilk of *Kooky Garments Ltd v Charlton* where the firm representing the plaintiff had written a letter, the effect of which was the issue

in the litigation.²³ Thomas J took the view the firm could not advise and represent its client independently while its own actions were in question.²⁴ Here, although Ms Reed can give relevant evidence, neither her nor her firm's advice is the matter in dispute. At least not yet. But the Conduct and Client Care Rules point to the inherent difficulty Ms Reed's firm now finds itself in. Rule 13.5.2 provides as follows:

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13.5.2 If, after a lawyer has commenced acting in a proceeding, it becomes apparent that the lawyer or a member of the lawyer's practice is to give evidence of a contentious nature, the lawyer must immediately inform the court and, unless the court directs otherwise, cease acting.

[42] Unless the court directs otherwise, Prestige Law effectively cannot act in the proceeding if someone else from the firm is to give evidence. The rule does not bind the court in this application but it highlights the dilemma. If Ms Reed is called it will be to give important and contentious evidence. If a member of her staff is instructed to appear as counsel for the Lis, he or she will be required either to lead Ms Reed's evidence, or (worse) cross-examine her. Even if independent senior counsel takes charge, he or she is likely to be assisted by a junior from the firm in that task. More generally, employees of the firm will be required to provide assistance out of court. For example, employees of the firm will be required to provide discovery of file notes, memoranda, emails relevant to the issue upon which Ms Reed may well give evidence. Solicitors facilitating discovery may face conflicting duties to the court, the Lis and their employer. This is to be avoided.

[43] Once again we acknowledge removal will cause the Lis further inconvenience, as well as wasted cost and time. They will also lose the firm's institutional knowledge of the case. And importantly, the Lis are ethnically Chinese and Mandarin speaking. It seems they chose Prestige Law for the cultural and linguistic fit as well as for its legal acumen. For litigants trying to navigate an unfamiliar legal system, that choice will have been of some moment.

²³ *Kooky Garments Ltd v Charlton* [1994] 1 NZLR 587 (HC).

²⁴ At 590–591.

[44] That said, Prestige Law simply cannot be allowed to be placed in a position where it could well owe conflicting obligations in the conduct of this proceeding. The only proper course is for Prestige Law to step aside.

[45] We accept that these issues did not truly crystallise until the hearing before us. The case in the High Court was pitched slightly differently. Nonetheless, there will, as we have said, be wasted costs for the Lis as a result. It will be in order for Prestige Law to now consider its responsibilities to the Lis in that respect.

Result

[46] The appeal is therefore allowed.

[47] An order is made disqualifying Ms Reed and Prestige Law from continuing to act for the Lis in this proceeding.

[48] In light of the lateness of the application to remove counsel, and the late change in the way the Chens and Yue and Jing argued their appeal, we make no order for costs in this Court.

Solicitors:

Dyer Whitechurch, Auckland for First, Second, Third and Fourth Appellants
Prestige Lawyers Ltd, Auckland for First and Second Respondents