IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA663/2024
[2025] NZCA 59

BETWEEN	RAINE & HORNE NEW ZEALAND PTY LIMITED Appellant
AND	NORMANS ROAD REAL ESTATE LIMITED First Respondent
	KRISTINA JANICE BRIGGS Second Respondent
	TINA & CO REAL ESTATE LIMITED Third Respondent

Court:	Ellis and Hinton JJ
Counsel:	S A Grant for Appellant N Burley and C Mo for First, Second and Third Respondents
Judgment: (On the papers)	19 March 2025 at 10.00 am

JUDGMENT OF THE COURT

The appeal is struck out for want of jurisdiction.

REASONS OF THE COURT

(Given by Ellis J)

[1] On 28 March 2024, Mike Pero Real Estate was acquired by Australian-based multinational realtors, Raine & Horne.

[2] Some Mike Pero franchisees were not happy with this merger; they did not want to rebrand. One of the disgruntled franchisees was Normans Road Real Estate (Normans Road). Its director, Kristina Briggs, said the rebranding requirement was a repudiation of the franchise agreement. She cancelled that agreement and continued to work as a real estate agent through a new company.

[3] But Raine & Horne said they were entitled to require the rebranding and the refusal to rebrand was a breach of the franchise agreement. Raine & Horne also said Normans Road and Ms Briggs had used confidential Mike Pero/Raine & Horne information while continuing to operate.

[4] The dispute has culminated in litigation. On 19 September 2024, the High Court declined Raine & Horne's application for an interim injunction.[1] The injunction sought would have effectively applied the restraint of trade provisions in the franchise agreement to Normans Road and Ms Briggs and required the return of company information until the substantive dispute was resolved. Dunningham J concluded the "overall justice of the case" favoured Normans Road and Ms Briggs; an interim injunction would have prevented them from trading pending the determination of the repudiation dispute.[2]

[5] Raine & Horne filed a notice of appeal against Dunningham J's decision. The Registry raised an issue of whether Raine & Horne was required first to obtain leave to appeal under s 56(3) of the Senior Courts Act 2016 (SCA). Raine & Horne's position is that leave is not required because (they say) an interim injunction application is not an interlocutory application which falls within the requirement for leave under s 56(3).

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1 *Raine & Horne New Zealand Pty Ltd v Normans Road Real Estate Ltd* [2024] NZHC 2706 [judgment under appeal] at [133].

2 At [116].

[6] The matter was referred to Cooke J for directions. On 1 October 2024, the Judge issued a minute in which he said:[3]

> [2] I accept that there is an issue whether leave to appeal is required under s 56(3) of the Senior Courts Act 2016 given the definition of "interlocutory application" contained in s 3. I note, however, that there are a number of authorities that have proceeded on the basis that leave to appeal is required for appeals from interim injunction decisions, although the points made by the applicant have not been substantively addressed. The recognised exception is decisions on interlocutory applications that are dispositive and which fall within s 56(4).

[7] Cooke J cited several authorities.[4] Cooke J directed that (unless Raine & Horne sought leave from the High Court) the issue of whether this Court has jurisdiction to hear the appeal without leave was to be heard and determined on the papers.[5] Raine & Horne did not seek leave from the High Court and so the jurisdictional issue is now before us.

Law

[8] This Court has jurisdiction to hear all appeals from a judgment of the High Court subject to any statutory requirements for the prior grant of leave,[6] which include s 56(3) of the Senior Courts Act 2016 (the SCA):

> (3) No appeal, except an appeal under subsection (4),[7] lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.

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3 *Raine & Horne New Zealand Pty Ltd v Normans Road Real Estate Ltd* CA Nil, 1 October 2024 (Minute of Cooke J) (footnotes omitted).

4 *Bank of New Zealand v Christian Community Trust* [2024] NZCA 246; *Solicitor-General v Newsroom* [2021] NZHC 2229; *Mad Butcher Holdings v Standard 730 Ltd* [2019] NZHC 699; *Croser v Focus Genetics Ltd Partnership (2548500)* [2019] NZHC 3087; *New Zealand Health Trust First v Attorney-General* [2020] NZHC 500; *CSR Pokeno Ltd v Yes Investments NZ Ltd* [2023] NZHC 598; *NZ Fintech Ltd v Credit Corp Financial Solutions Pty Ltd* [2019] NZHC 1210; and *Finewood Upholstery Ltd v Vaughan* [2017] NZHC 1679.

5 Minute of Cooke J, above n 3, at [3] and [6].

6 Senior Courts Act 2016, s 56(1)(a) and (2).

7 Subsection 4 provides for a right of appeal against strike out, summary judgment and dismissal decisions, as well as against decisions which are in any other way finally dispositive of proceedings: see *Waterhouse v Contractors Bonding Ltd* [2013] NZCA 151, [2013] 3 NZLR 361.

[9] "Interlocutory application" is defined in s 4 of the SCA as:

> (a) … any application to the High Court in any civil proceedings or criminal proceedings, or intended civil proceedings or intended criminal proceedings, for—
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> (i) an order or a direction relating to a matter of procedure; or
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> (ii) in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
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> (b) includes an application to review an order made, or a direction given, on any application to which paragraph (a) applies.

Positions of the parties

[10] There is no dispute that an interim injunction is not an order "relating to a matter of procedure" under s 4(a)(i). The question is whether it is an application "for some relief ancillary to that claimed in a pleading" under s 4(a)(ii).

[11] Raine & Horne say an interim injunction application is not ancillary because it is not subordinate to the relief claimed in a proceeding.[8] Dunningham J's decision was a judgment making final orders, rather than an interlocutory step taken on the path to final relief. They seek to support this interpretation by reference to the powers of Associate Judges,[9] the nature of costs awards,[10] the fact the application was not phrased as an interlocutory application,[11] the fact s 56(3) is concerned with an "order or decision" rather than something which weighs up evidence and law, and various of the High Court Rules 2016 which treat interim relief differently from interlocutory applications.[12]

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8 Relying on *Trotter v Telfer Electrical Nelson Ltd* [2018] NZCA 231, [2019] NZAC 476; and *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309.

9 Citing Senior Courts Act, s 20 and *Trotter v Telfer Electrical Nelson Ltd*, above n 8, at [21].

10 Citing *Trotter v Telfer Electrical Nelson Ltd*, above n 8 and High Court Rules 2016, r 5.50.

11 Citing r 7.53.

12 Citing pt 7, sub-pt 1 "Case management", sub-pt 2 "Interlocutory applications and interlocutory orders", and sub-pt 3 "Interim relief".

[12] Raine & Horne also say that, as a matter of policy, a decision relating to interim relief ought not to be subject to the leave requirement in s 56(3) because:

(a) The purpose of the leave requirement is to limit procedural appeals which do not seriously affect the substantive rights of the parties. By comparison, the consequences of an interim injunction decision can be fundamental. For less important issues, it makes sense that the High Court should act as a filter by applying the high threshold for granting leave.

(b) The jurisdiction to grant an interim injunction is equitable. It is unlikely the legislature intended to constrain appeals from the grant (or otherwise) of equitable relief.

(c) Injunctive relief will often be a matter of urgency. It would cause delay that would defeat the purpose of the interim injunction regime to require a litigant to obtain leave from the High Court or the Court of Appeal.

[13] Raine & Horne also say the cases referred to by Cooke J in his minute proceeded on the assumption leave was required rather than on any analysis. They also refer to *Dew v Discovery New Zealand*, where an appeal against an interim injunction proceeded without the granting of leave.[13]

[14] Normans Road supports the contention that the application for the injunction was an interlocutory application by reference to r 7.53 of the High Court Rules. That rule refers specifically to such an injunction as an "interlocutory injunction" and the filing fee in this case was calculated in accordance with the fee for filing an interlocutory application. The injunction application was for relief ancillary to that claimed in a pleading, and so leave is required to appeal the determination of that

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[13] *Dew v Discovery NZ Ltd* [2023] NZHC 2105 [*Dew* High Court decision]; *[R] v Discovery NZ Ltd* [2023] NZHC 2533; and *Dew v Discovery New Zealand* [2023] NZCA 589, [2024] 2 NZLR 153.

application. Normans Road submits this position is supported by the cases and not disturbed by Raine & Horne's "semantic" arguments about terminology.[14]

Discussion

[15] In our view the question turns largely on a straightforward interpretation of s 56(3) itself, and the associated s 4 definition. It would be a strained reading of the s 4 definition to exclude interim (or interlocutory) injunctions. An application for an interim injunction is, undoubtedly, an "application to the High Court in … civil proceedings …, for some relief ancillary to that claimed in a pleading".[15] In the context of civil proceedings, the word "interim" and "interlocutory" might be seen as virtually synonymous; both words mean "provisional" or "not final or definitive".

[16] Although we accept that the issue may not have been squarely confronted by the courts before, the sheer number of cases in which it has been "assumed" that leave to appeal is required, underscores the obviousness of the point.[16]

[17] In our view, no meaningful analogy with interlocutory decisions that are dispositive can be made. An interim injunction is not dispositive in that way — it does not finally determine the proceeding. Moreover, the carve-out for interlocutory decisions of that kind is expressly recognised in s 56 of the SCA itself. Subsection (4) provides:

> Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—
>
> (a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or
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> (b) granting summary judgment.

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[14] As well as the cases referred to in Cooke J's minute, Normans Road refers to *Commerce Commission v Viagogo AG* [2019] NZHC 776; *Fugle v Vance* [2023] NZCA 21; *Christian Church Community Trust v Bank of New Zealand* [2023] NZHC 3465; and *100 Investments Ltd v PVG Securities Trustee Ltd* [2020] NZCA 458.

[15] Senior Courts Act, s 4 definition of "interlocutory application".

[16] As well as the authority filed by Normans Road, see, for example, *Finewood Upholstery Ltd v Vaughan,* above n 4; *G v Commissioner of Police* [2023] NZHC 19; *Rau Paenga Ltd v CPB Contractors Pty Ltd* [2023] NZHC 3329; and *Toailoa v Eliu* [2024] NZHC 1621.

[18] The fact that the grant or refusal of an interim injunction is not specifically excluded from the requirement for leave is, in our view, telling. Moreover, as this Court said in *Dokad Trustees Ltd v Auckland Council*:[17]

> [10] The scheme of s 56 is that appeals as of right are reserved for final determinations in respect of a proceeding. A leave filter applies to appeals from decisions on interlocutory applications in order to avoid delay and unnecessary cost. The underlying assumption is that such decisions are made in the course of a proceeding, and appeal rights should be exercised when the proceeding comes to an end. If a procedural decision has affected the ultimate outcome, that issue can be raised in an appeal against the substantive High Court decision that concludes the proceeding: see s 56(6). I consider that s 56(4) must be interpreted purposively, to apply to decisions that have the effect of bringing to an end the whole of a proceeding. Such a decision is, for the purposes of s 56(4), a decision that dismisses the proceeding.

[19] Lastly, while we accept Raine & Horne's point that the grant or refusal of an interim injunction may have a significant impact on the rights and interests of the parties, the courts are equipped to take steps to protect those interests, even if leave to appeal is required. In one sense, *Dew v Discovery New Zealand* is an example. Palmer J declined Mr Dew's application for an interim injunction preventing the screening of a news item on television concerning allegations that, many years before, Mr Dew had engaged in serious criminal sexual misconduct at St Joseph's Orphanage.[18] Having done so, however, the Judge was concerned to protect Mr Dew's interests in light of a clearly signalled appeal, so granted an interim injunction pending that appeal.[19] It is quite clear from the tenor of Palmer J's decision that either:

(a) it is implicit in his grant of an interim injunction pending appeal that he was granting leave to appeal; or

(b) the need for leave had not been raised at all but, if it had been, the Judge would have granted it.

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17 *Dokad Trustees Ltd v Auckland Council* [2022] NZCA 177.
18 See *Dew* High Court decision, above n 13, at [1]–[3].
19 At [36].

[20] Another example can be found in the recent decision in *Agam v Moon*.[20] There, in the course of a decision in which the High Court extended an interim injunction preventing the respondent from selling prints of the plaintiff's artwork, Becroft J granted the respondent leave to appeal that decision to this Court, saying:

> [4] Leave to appeal is required pursuant to s 56(3) of the Senior Courts Act 2016.
>
> [5] I grant leave to appeal. I do so because the consequences to each party flowing from the interim injunction are very significant, as set out in my decision. There is also considerable time pressure given the impending shutdown period.

[21] It follows we are unpersuaded by Raine & Horne's arguments to the contrary. They will need to apply for and obtain leave to appeal from the High Court or, failing that, this Court, in order to pursue their appeal. Without the prior grant of leave, this Court has no jurisdiction to hear the appeal.

[22] In our view, costs should follow the event in the usual way.[21] Although the present matter does not fit neatly within the costs regime set out in pt 4A of the Court of Appeal (Civil) Rules 2005, this Court has previously awarded costs in a similar case.[22] Given the parties did not address costs in their submissions, Raine & Horne may, if they wish to be heard further, file a memorandum (no longer than two pages in length) withing five working days. Normans Road would then have a further five days to respond, with the same page limit.

Result

[23] The appeal is struck out for want of jurisdiction.

Solicitors:
Stewart Germann Law Office, Auckland for Appellant
Saunders & Co, Christchurch for Respondents

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20 *Agam v Moon* [2024] NZHC 3916.
21 Court of Appeal (Civil) Rules 2005, rr 53A(1)(a) and 53G(1).
22 *Mills v Dalzell* [2024] NZCA 675 at [35].