IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA262/2025
[2026] NZCA 129

BETWEEN	DAVID ARTHUR JAQUES Appellant
AND	WILSON PARKING NEW ZEALAND LIMITED Respondent

Hearing:	16 March 2026
Court:	French P, Jagose and McQueen JJ
Counsel:	Appellant in person R B Hucker and R A Lakhan for Respondent
Judgment:	16 April 2026 at 3 pm

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellant must pay the respondent costs and disbursements on an indemnity basis. Reasonable quantum is to be fixed by the Registrar in the event that the parties do not agree.

REASONS OF THE COURT

(Given by Jagose J)

[1] David Arthur Jaques appeals against the High Court decision of Associate Judge Cogswell,[1] granting the respondent, Wilson Parking New Zealand

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1 *Wilson Parking New Zealand Ltd v Jaques* [2025] NZHC 757 [judgment under appeal].

Ltd (Wilson Parking), summary judgment in the amount of $456,000 plus interest and costs against Mr Jaques.[2]

Background

[2] Wilson Parking agreed to advance a total of $570,000 to Digital Advertising Ltd (Digital Advertising) under the terms of two loan agreements dated 28 March 2024 (the agreements). Mr Jaques was the sole director of Digital Advertising. The loans were for the purpose of assisting with the construction of two advertising billboards to be erected on car park sites owned by Wilson Parking. The agreement was that Wilson Parking would receive a licence fee for the billboard licensed area while the advertising and other revenue would remain with entities associated with Mr Jaques.

[3] The advance was to be drawn down in tranches on 28 March 2024 ($285,000), 31 May 2024 ($171,000) and 28 September 2024 ($114,000). The advance was secured by both a general security agreement over Digital Advertising's assets, and an "all-obligations unlimited personal guarantee" from Mr Jaques. The latter took the form of an Auckland District Law Society standard form deed of guarantee and indemnity dated 28 March 2024 (the guarantee). The guarantee referred to Digital Advertising's "formation and installation of two Digital Billboards" at Wilson Parking's premises in Christchurch.

[4] The agreements each required Digital Advertising to pay Wilson Parking 60 monthly instalments of principal and interest, payable on the first day of each month, commencing 1 August 2024. Mr Jaques guaranteed Digital Advertising's "due performance" of the agreements by:

> … unconditionally and irrevocably undertak[ing] that if, for any reason, [Digital Advertising] does not pay when due any guaranteed indebtedness, [Mr Jaques] will pay such amount to [Wilson Parking], as a debt due upon demand.

[5] After the first two tranches (totalling $456,000) were paid to Digital Advertising, Mr Jaques emailed Wilson Parking at about 8.00 am on 22 July 2024,

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2 At [102].

saying “it does not look like we can complete our contracts with you” and expressing a preference “to manage the breach if possible”. He observed Wilson Parking to have “3 options (unless you can think of more)”:

> a. Seek to enforce your current legal rights (in which case we’ll probably stop communicating)
>
> b. Have us continue to erect the billboards, but cancel both leases
>
> c. Cancel both finance and lease contracts and we will return your money

[6] He asked Wilson Parking to “please consider your position and come back to me when you are ready”. Mr Jaques’ email was headed “Without Prejudice”.

[7] Wilson Parking’s chief executive officer, Ryan Orchard, rang Mr Jaques at about 11.30 am that same day and the two men spoke for six minutes, on an expressly “without prejudice” basis. Mr Orchard made a file note of the conversation in which he recorded notes from the meeting, and his subsequent reflections. Wilson Parking’s in-house counsel, Yolinda Freimond, also made contact with Mr Jaques by email that afternoon, asking for “a bit more information” to enable her to make a recommendation to Wilson Parking’s management. Email correspondence between Mr Jaques and Ms Freimond continued. On 31 July 2024, Ms Freimond emailed Mr Jaques to say, “pending management’s decision”, the 1 August 2024 payments remained due.

[8] On 13 August 2024, and in reliance on the general security agreement, Wilson Parking appointed receivers to Digital Advertising. On 20 August 2024, Wilson Parking made demands of Digital Advertising and Mr Jaques for repayment of the $456,000 advanced. It also suspended payment of the third tranche.

[9] On 17 September 2024, further demand was made of Mr Jaques under the guarantee. When not met, Wilson Parking commenced proceedings in the High Court, seeking summary judgment in the sum of $456,000 against Mr Jaques.

Judgment under appeal

[10] The Judge identified the "well-established" summary judgment principles summarised by this Court in *Krukziener v Hanover Finance Ltd*.[3]

[11] After outlining the contractual matrix between the parties,[4] and recording Mr Jaques' admission that "he is bound as a guarantor and indemnifier under the guarantee",[5] the Judge turned to Mr Jaques' contention that his 22 July 2024 telephone conversation with Mr Orchard "concluded with [Wilson Parking] agreeing to pause performance of the contract whilst the options [Mr Jaques] had proposed were considered".[6]

[12] Having reviewed the contemporaneous evidence surrounding that conversation, and the subsequent exchange with Mr Jaques, the Judge found that "[Wilson Parking] was not pausing performance of the loan agreements based on one telephone call with [Mr Jaques]".[7] He went on to say:

> [44] No part of that [subsequent] exchange could be interpreted as a representation by [Wilson Parking] that performance under the loan agreements was no longer required. Rather, further information was being sought.

[13] The Judge recorded Mr Jaques' concession that the discussions with Wilson Parking were "non-binding".[8] He rejected Mr Jaques' contention that Wilson Parking's 31 July 2024 correspondence was "just a 'process' communication" and found it immaterial that it had come from Ms Freimond, rather than Mr Orchard.[9]

[14] The Judge reinforced his analysis by noting that "[Wilson Parking]'s conduct is consistent with it insisting on its rights whilst trying to retrieve the difficult situation [Digital Advertising] had placed it in".[10] He noted that the agreements expressly

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3 At [5], referring to *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, [2010] NZAR 307 at [26].
4 Judgment under appeal, above n 1, at [7]–[30].
5 At [31].
6 At [38].
7 At [42].
8 At [46].
9 At [49].
10 At [66].

required any variations to be in writing (which had not occurred),[11] and that the agreements also required payments to be made on demand in the absence of agreement to the contrary.[12]

[15] The Judge considered Mr Jaques' position to be "inherently improbable".[13] He found that Wilson Parking "did not agree to pause performance of the loan agreements", and held that Digital Advertising "was obligated to comply" with their terms, which it did not do from 1 August 2024.[14] The Judge accordingly rejected Mr Jaques' opposition to summary judgment.[15]

Arguments on appeal

[16] On appeal, Mr Jaques argued that, correctly analysed, the evidence demonstrated it was at least arguable there had been a "meeting of the minds" on 22 July 2024 that Mr Orchard would, on behalf of Wilson Parking, suspend performance of Digital Advertising's obligations under the agreements. Wilson Parking's subsequent demands for payment by Ms Freimond thus should have been disregarded as merely "keeping [its] powder dry". In answer to a question from the bench, Mr Jaques accepted that, if such demands had come directly from Mr Orchard, summary judgment could not be resisted.

Discussion

[17] The test for granting summary judgment is beyond argument. It is whether the defendant has no defence to the claim; that is, there is no real question to be tried:[16]

> [25] … The Court must be left without any real doubt or uncertainty. The onus is on the plaintiff, but where its evidence is sufficient to show there is no defence, the defendant will have to respond if the application is to be

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11 At [67].
12 At [73].
13 At [77].
14 At [78].
15 At [79]. The Judge also went on to reject Mr Jaques' other ground of opposition, namely that the receivers were invalidly appointed. That determination is not challenged on appeal.
16 *FCL CL Ltd (as trustee of the FCL CL Trust) v Lynch* [2025] NZCA 501 (footnotes omitted); affd [2026] NZSC 17 at [5]. See also *Pemberton v Chappell* [1987] 1 NZLR 1 (CA) at 3; *MacLean v Stewart* (1997) 11 PRNZ 66 (CA) at 69; and *Krukziener v Hanover Finance Ltd*, above n 3, at [26], citing *Bilbie Dymock Corp Ltd v Patel* (1987) 1 PRNZ 84 (CA) at 85–86.

defeated. The Court will "not normally resolve material conflicts of evidence or assess the credibility of deponents". But:

> … it need not accept uncritically evidence that is inherently lacking in credibility, as for example where the evidence is inconsistent with undisputed contemporary documents or other statements by the same deponent or is inherently improbable.

[26] In the end the Court's assessment of the evidence is a matter of [judgement]. The Court "may take a robust and realistic approach where the facts warrant it".

[18] Mr Jaques' argument on appeal is solely based on his understanding of what Mr Orchard and Ms Freimond meant in their communications.

[19] We have no real doubt or uncertainty that Mr Jaques' "meeting of the minds" contention is untenable. Mr Orchard's contemporaneous notes of his 22 July 2024 conversation with Mr Jaques make it plain that he was responding to Mr Jaques' identification of Wilson Parking's options, only to express a "prefer[ence]" "to negotiate a way forward", and to achieve an "amicable solution = workable options". He expressly stated he "will give it a think" and that Wilson Parking would "communicate in writing". Under the heading "Reflecting", Mr Orchard noted that Mr Jaques was "vague – not forthcoming", that Wilson Parking "Cannot assess without info", and he queried "Credibility? Transparency?". He also left the following note: "Email follow up". Ms Freimond's requests for information then followed.

[20] Mr Jaques' submission that, because of the conflict between his evidence and that of Mr Orchard, he is entitled to proceed to trial in order to be able to cross-examine Mr Orchard, assumes summary judgment must automatically be declined whenever there is a conflict in the affidavit evidence. However, as stated above, that is not the position where the evidence advanced on behalf of the defendant lacks any credibility, is demonstrably implausible and contrary to the contemporaneous documentary record, as in our view is the case here.

[21] The record illustrates Mr Jaques' detailed engagement in the drafting of the contractual documents, and him declining to meet with Ms Freimond to discuss the documents, despite her repeated requests. Relying on "the nature of his business and his experience as a lawyer", Mr Jaques preferred instead to consider and review

documents submitted to him, on "approximately 6 – 8 occasions", in order to reply with suggestions and comments. The resulting agreements each included cl 14.7, titled "Amendment", providing "This Agreement shall not be amended or varied except in writing signed by [Digital Advertising, Mr Jaques and Wilson Parking]". It was unlikely that the agreements were nonetheless intended to be open to informal variation.[17] Mr Jaques also titled his initial 22 July 2024 email "Without Prejudice", and so he could not have misunderstood Wilson Parking's reliance on the without prejudice nature of Mr Orchard's telephone conversation.

[22] The evidence also includes repeated examples of Mr Jaques:

(a) changing his account of the telephone conversation with Mr Orchard, initially representing:

> … [T]he CEO of Wilson Parking (Mr Ryan Orchard) advised he did not wish to enforce their rights, that he had a preference for either arranging the return of the loan funds or having the billboards they related to supplied, and that he would get back to [Digital Advertising] shortly, after they had decided which of those 2 options they would pursue.

and subsequently saying:

> … Mr [Orchard] indicated they might have a preference for continuing to take delivery of the billboards, and have another operator manage them (though this was only an indication, and non-binding).
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> … I understood the outcome of this phone call meant things were to go on hold until [Wilson Parking] made a decision as [to] what they would actually like. …

(b) taking uncontestable points against Wilson Parking, such as his contest to the receivers' appointment in the face of his clear acknowledgement to the receivers "Wilson Parking had the full right to place the company into receivership", complaining only:

> … [I]n doing so they have severely limited my ability to introduce funds to pay them (which is done by the fruits of my labour as we simply do not have the cash or assets to do this any other way).

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[17] See also *Ecolibrium Biologicals Ltd v Biotelliga Holdings Ltd* [2019] NZHC 2628 at [32]–[34], referring to *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2018] UKSC 24, [2019] AC 119 at [12] per Lord Sumption.

(c) not being forthcoming about how he applied Wilson Parking's advance, leading Wilson Parking to contemplate whether the funds may not have been applied to the construction of the billboards; and

(d) not responding to Wilson Parking's clear assertions of the agreements' continued operation.

[23] Given that context, particularly in relation to the last, it is improbable that Mr Jaques would not have pointed immediately and directly to his contended "meeting of the minds" that the agreements were suspended. That he did not originally do so indicates that his contention now, in opposition to summary judgment and on appeal, lacks veracity.

[24] Mr Jaques' characterisations of Ms Freimond's correspondence also make little sense. Ms Freimond, as Wilson Parking's in-house counsel, had the authority to make demand on its behalf.[18] It was not for Mr Jaques to pick and choose which of Wilson Parking's representatives he would acknowledge as having such authority. If Ms Freimond's demands were merely to keep Wilson Parking's "powder dry", as Mr Jaques proposed, then they were also capable of detonation, as transpired.

[25] The Judge did not err in holding Mr Jaques had no arguable defence to Wilson Parking's claim.

Costs

[26] Wilson Parking seeks costs in terms of the guarantee, which provides Mr Jaques will:

> … pay on demand all costs and expenses (including all taxes and legal expenses on a solicitor/client basis) sustained or incurred by [Wilson Parking] as a result of the exercise of, or in protecting or enforcing or otherwise in connection with, its rights under this guarantee.

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18 It is expected that corporate general counsel will have the authority to take steps in relation to demands, as was the case in *Telstra Corp Ltd v Ivory* [2008] QSC 123 at [81]–[89].

[27] Such a provision is construed to provide "indemnity with respect to legal expenses properly incurred … in relation to a recovery action under the guarantee", and is "enforceable unless contrary to public policy".[19] Further:[20]

> [35] … [O]nce it is established that the indemnity is applicable in the circumstances and that, properly construed, it includes solicitor-client costs, no discretion [whether or not to award indemnity costs] remains available other than on public policy grounds or as part of an assessment by the court as to whether the amount of the solicitor-client costs is objectively reasonable: …

[28] Wilson Parking is entitled to costs and disbursements as against the appellant on an indemnity basis. The parties are encouraged to use their best endeavours to agree to such costs. If costs cannot be agreed:

(a) Wilson Parking is to submit a memorandum as to costs (not to exceed three pages) within 10 working days of the date of this judgment.

(b) Mr Jaques is to file any reply (not to exceed three pages) within 10 working days of receipt.

(c) Reasonable quantum will be fixed by the Registrar.

Result

[29] The appeal is dismissed.

[30] The appellant must pay the respondent costs and disbursements on an indemnity basis. Reasonable quantum is to be fixed by the Registrar in the event that the parties do not agree.

Solicitors:
Pidgeon Judd, Auckland for Respondent

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19 *ANZ Banking Group (NZ) Ltd v Gibson* [1986] 1 NZLR 556 (CA) at 566.
20 *Watson & Son Ltd v Active Manuka Honey Assoc* [2009] NZCA 595 (citations omitted).