IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA278/2024
[2026] NZCA 28

BETWEEN	DASSAULT SYSTÈMES AUSTRALIA PTY LIMITED Appellant
AND	FUJITSU NEW ZEALAND LIMITED Respondent

Court: Campbell, Edwards and Collins JJ

Counsel: S M Hunter KC, D Nilsson and D A C Bullock for Appellant
C L Elliott KC, J L W Wass and H M Wiseman for Respondent

Judgment: (On the papers) 18 February 2026 at 4.00 pm

JUDGMENT OF THE COURT

A The application for leave to adduce further evidence is declined.

B The respondent must pay the appellant costs for a standard application on a band B basis together with usual disbursements.

REASONS OF THE COURT

(Given by Campbell J)

[1] Fujitsu New Zealand Ltd (Fujitsu) applies for leave to adduce further evidence. Dassault Systèmes Australia Pty Ltd (Dassault) opposes.

Background

[2] Dassault is an Australian company that supplied IT services to assist Fujitsu to deliver workforce management software to the New Zealand Department of Corrections. The Department sued Fujitsu, which joined Dassault.

[3] Cooke J delivered a reserved judgment after a four-week trial.[1] Fujitsu succeeded in part in its claims against Dassault. Dassault appealed and Fujitsu cross-appealed.

[4] The first ground of Fujitsu's cross-appeal concerned its claims against Dassault under the Australian Consumer Law (the ACL). The ACL is part of the Competition and Consumer Act 2010 (Cth) (the CCA), contained in sch 2 to the CCA. Section 138 of the CCA confers jurisdiction upon the Federal Court of Australia to hear any civil matter arising under the ACL. The Judge held that the effect of s 138 was that nobody could bring proceedings under the ACL or the CCA in any other Court, including the High Court of New Zealand. The Judge therefore dismissed Fujitsu's claims under the ACL.[2] Fujitsu says this was an error, "because, properly understood, s 138 only limits domestic jurisdiction in Australia (and therefore does not preclude the New Zealand High Court's jurisdiction)".

Application for leave to adduce further evidence

[5] Fujitsu applies for leave to adduce further evidence in the form of an affidavit of Dr Warwick Rothnie. Dr Rothnie is a barrister practising in Victoria. His affidavit provides his opinion on whether, under Australian law, s 138 prohibits foreign courts hearing claims alleging breaches of the ACL.

[6] Fujitsu says the evidence is fresh. It could not have been produced with reasonable diligence at trial. Dassault had not pleaded that s 138 prohibited the High Court from applying the ACL. That argument, and consequently the issue about the meaning and effect of s 138, arose only in closing argument. Although

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1 *Chief Executive of the Department of Corrections v Fujitsu New Zealand Ltd* [2023] NZHC 3598.
2 At [247]–[253].

Fujitsu had earlier in the trial produced an opinion from Dr Rothnie on the scope of the CCA, this did not address s 138 because that provision was not then in issue.

[7] Fujitsu says the proposed evidence is credible and cogent. Dr Rothnie is a qualified expert on Australian law whose opinion on other points was accepted by the Judge. The evidence goes to a point that both parties have raised on appeal and which may be dispositive of part of the case.

[8] Fujitsu says the Court will be better assisted by an expert rather than being confined to submissions on the s 138 issue from counsel. It says Dassault has ample time to file evidence in response, if it wishes, and so no prejudice to Dassault arises.

Should leave be granted?

[9] We consider it is not in the interests of justice to grant leave to Fujitsu to adduce this further evidence, because of a combination of three reasons.

[10] First, we consider the evidence is not as fresh as Fujitsu contends. The s 138 issue arose in Dassault's closing. Fujitsu responded to it in its closing. Fujitsu could, once the issue was raised, have applied for leave to adduce expert evidence on the meaning and effect of s 138. This was, after all, hard-fought litigation, with each party being represented by at least three counsel. Fujitsu had already, after the trial began, briefed Dr Rothnie and obtained expert evidence from him in short order. We therefore consider that the proposed evidence could with reasonable diligence have been produced at trial. From this observation we exclude that part of the evidence that addresses case law since the judgment under appeal.

[11] Secondly, while we do not doubt Dr Rothnie's expertise, the evidence is of limited cogency. As Fujitsu acknowledges, the meaning and effect of s 138 can be addressed by the parties by reference to the statute itself and to Australian judgments construing it.

[12] Thirdly, and most significantly, Fujitsu's application is much delayed. The appeal and cross-appeal were filed in May 2024. They are to be heard on 11 and 12 March 2026, dates that were scheduled almost a year ago. Fujitsu made its

application on 5 February 2026. Fujitsu filed an affidavit from its general counsel explaining that it was only in late 2025 or early 2026 that Fujitsu took the view that expert evidence might assist the Court on the s 138 issue. But this does not explain why Fujitsu took so long to form this view. Fujitsu's delay is causing prejudice to Dassault. Its application was filed just five working days before primary submissions were due to be filed. Dassault's submissions in response to the cross-appeal, which need to address the s 138 issue, are due on 23 February 2026. Dassault should not have been distracted by Fujitsu's application from the preparation of its submissions and its preparation for the hearing. It should not be further distracted by having to respond to the proposed further evidence.

Result

[13] The application for leave to adduce further evidence is declined.

[14] The respondent must pay the appellant costs for a standard application on a band B basis together with usual disbursements.

Solicitors:
Lee Salmon Long, Auckland for Appellant
Wigley and Company, Wellington for Respondent