

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV 2018-409-361

UNDER Rule 12(3) of the Court of Appeal (Civil) Rules 2005

BETWEEN **BRENDAN MILES ROSS and COLLEEN ANNE ROSS**
Plaintiffs

AND **SOUTHERN RESPONSE EARTHQUAKE SERVICES
LIMITED**
Defendant

**NOTICE OF INTERLOCUTORY APPLICATION BY THE PLAINTIFFS
FOR A STAY OF EXECUTION AND FOR INTERIM RELIEF**

Dated: 8 October 2021

Judicial Officer: Justice Osborne

Next Event: N/A

Next Event Date: N/A

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settlement sum and retain that sum pending determination of the Plaintiffs' appeal and further order of this Court.

2. The grounds on which the orders for a stay and the other interim relief are sought are that:
 - (a) The Plaintiffs have applied to the High Court for leave to appeal the Communications No 2 Judgment, the Notification Judgment, and the Set Aside Judgment (together, the **Judgments**);
 - (b) There is fresh evidence casting doubt on the extent to which the Defendant's Settlement Package methodology follows the principles established in the *Dodds* litigation, a factor which expressly underpinned the Defendant's Communications application;
 - (c) If a stay is not granted, the next steps in the proceeding will be that:
 - (i) Court-approved communications will be sent to class members, informing them of the proceeding, their choice to participate in the proceeding or opt out, potential costs consequences of those options, and the Defendant's "Settlement Package" offer;
 - (ii) Class members will have until 5.00 pm, 20 December 2021 (the **opt-out deadline**) to elect whether to participate in the proceeding or opt out (including opting-out to accept the Settlement Package);
 - (d) If leave to appeal is granted, it is unlikely that the Court of Appeal will have both heard the appeal and issued judgment before the opt-out deadline;

- (e) In any event, it is likely that the Defendant might settle with some class members well before the opt-out deadline and thus it is virtually impossible for the Court of Appeal to hear and determine an appeal before the consequences of the Judgments begin to be felt;
- (f) Accordingly, if a stay is not granted, class members will make their election to participate in the proceeding or opt out based on information in the Court-approved communications and the High Court judgments and without the benefit of the Court of Appeal's judgment;
- (g) If the appeal is successful (in whole or in part), the likely consequences include some or all of the following:
 - (i) The contents of the approved communications will need to be changed;
 - (ii) If the communications have already been sent to class members, then corrective communications will need to be sent, resulting in additional cost to the parties and likely confusion to class members;
 - (iii) Class members will have made their election to remain in the proceeding or opt out based on information that turned out to be incorrect in some respects, or that ought not to have been communicated to them by the Defendant;
 - (iv) Class members would need to be given a fresh opportunity to opt out and/or to "opt back in", and to be notified of that opportunity, resulting in additional cost and delay;
- (h) If a stay is not granted:

- (i) Class members will suffer the potential prejudices identified at (f) above; and
 - (ii) If the appeal against the Setting Aside Judgment is allowed, the Plaintiffs and funded class members will have suffered permanent prejudice in that the outcome of that appeal is likely to be rendered nugatory either wholly or in large part;
- (i) The Defendant would not be injuriously affected by a stay:
- (i) If the proposed appeal is unsuccessful, the stay will merely have delayed the rollout of the Defendant's Settlement Package;
 - (ii) In contrast, if the appeal is successful, the stay will have prevented the Defendant from acting contrary to the Court of Appeal's judgment;
- (j) Similarly, class members who might wish to avail themselves of the Defendant's Settlement Package will not be injuriously affected by a stay. There will be a delay in their ability to enter into settlement with the Defendant, but the interest component of the Defendant's Settlement Package will still take effect and thus compensate for any delay;
- (k) The proposed appeal raises novel and important issues of procedure and substantive justice in a class action context, on which there is no previous authority in New Zealand;
- (l) If leave to appeal is granted, the Plaintiffs will request that the Court of Appeal accord urgency to the appeal, and will pursue the appeal with diligence; and
- (m) The overall balance of convenience favours granting a stay and the interim relief sought.

3. This application is made in reliance on r 12(3) of the Court of Appeal (Civil) Rules 2005; *Wootton v Wootton* [2020] NZCA 478; *Lange v Lange* [2020] NZCA 651; *Greymouth Petroleum Ltd v Empresa Nacional del Petroleo* [2017] NZCA 397 and the affidavit of Grant Ashley Cameron sworn on 8 October 2021 and filed in support.

Dated: 8 October 2021



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Philip Skelton QC / Kelly Quinn / Carter Pearce

Counsel for the Plaintiffs