



## THE HIGH COURT AMENDMENT RULES (NO. 2) 1988

PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At Wellington this 7th day of November 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

#### ANALYSIS

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## RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules (No. 2) 1988, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) These rules shall come into force on the 1st day of January 1989.

**2. Subscription at foot of backing sheet**—Rule 40 of the High Court Rules is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) At the foot of the backing sheet of every document presented for filing there shall be subscribed—

“(a) The name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

“(b) Where the document is presented for filing by or on behalf of a solicitor or firm of solicitors—

“(i) The name and telephone number of the principal or employee dealing with the proceeding; and

“(ii) The address of any Post Office box or document exchange used by the solicitor or firm.”

**3. Third and subsequent parties**—Rule 75 of the High Court Rules is hereby amended by adding the following subclause:

“(5) Where—

“(a) An application for judgment in any proceeding is pending under rule 136 or rule 137; or

“(b) A proceeding is entered on a commercial list established under section 24A of the Act at an office of the Court,—

a notice under subclause (1) or subclause (2) of this rule to any person not already a party to the proceeding may be issued only with the leave of the Court.”

**4. Appearance under protest to jurisdiction**—Rule 131 of the High Court Rules is hereby amended by adding the following subclause:

“(8) Where the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 136 or rule 137, the Court—

“(a) Shall enlarge the time within which the defendant may file and serve—

“(i) A notice of opposition; and

“(ii) An affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and

“(b) May, under subclause (7), give such other directions as appear necessary regarding any further steps in the proceeding.”

**5. Application of summary judgment procedure**—Rule 135 of the High Court Rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Notwithstanding subclause (1) (c), a proceeding is not excluded from the application of rules 136 to 144 by reason only of the proceeding being—

- “(a) A proceeding in which a claim is made for specific performance of an agreement; or
- “(b) A proceeding in which a mortgagee applies for the leave of the Court to enter into possession of mortgaged land.”

**6. Judgment where no defence**—Rule 136 of the High Court Rules is hereby amended by adding, as subclauses (2) and (3), the following subclauses:

“(2) Subject to subclause (3), judgment may be entered under subclause (1) on a claim for the specific performance of an agreement.

“(3) Judgment entered under subclause (1) on a claim for the specific performance of an agreement may not award damages in substitution for, or in addition to, specific performance.”

**7. Time for filing statement of defence on dismissal of application**—The High Court Rules are hereby amended by inserting, after rule 142, the following rule:

“142A. Subject to any directions given under rule 142 (1), where an application for judgment under rule 136 or rule 137 is dismissed, the time within which the statement of defence in the proceeding is required to be filed shall be within 30 days after the date on which the application is dismissed.”

**8. Service out of New Zealand**—The High Court Rules are hereby amended by inserting, after rule 138, the following rule:

“138A. (1) Where an application under rule 136 or rule 137 is to be served out of New Zealand, the Court shall, on the application of the plaintiff,—

- “(a) Fix the date for hearing of the application under rule 136 or rule 137; and
- “(b) Fix the time within which a defendant who wishes to oppose the application must file and serve—
  - “(i) The defendant’s notice of opposition; and
  - “(ii) The affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and
  - “(iii) Any statement of defence filed in addition to the notice of opposition and the affidavit; and
- “(c) Direct that the necessary modifications be made to the notice of proceeding in form 13.

“(2) Nothing in subclause (1) prevents the date of hearing fixed by the Court being enlarged under rule 140A.”

**9. New rules substituted**—The High Court Rules are hereby amended by revoking rule 141, and substituting the following rules:

“141. **Notice of opposition and affidavit setting out defence**—(1) A defendant who intends to oppose an application for judgment under rule

136 or rule 137 will not be heard in opposition to the application without the leave of the Court unless, at least 3 days before the date for hearing the application, that defendant files in the Court and serves on the plaintiff—

“(a) A notice of opposition; and

“(b) An affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff.

“(2) Rule 244 shall apply, with all necessary modifications, in relation to a notice of opposition filed under subclause (1) (a) of this rule.

“141A. **Statement of defence**—(1) A defendant who has filed both a notice of opposition and an affidavit under rule 141 may, in addition, file a statement of defence in the office of the Court in which the notice of opposition and the affidavit were filed.

“(2) Where a defendant files a statement of defence under subclause (1), the defendant shall serve a copy of the statement of defence on the plaintiff.

“(3) Every statement of defence filed pursuant to subclause (1) shall be filed and served at least 3 days before the date for the hearing of the application.

“141B. **Plaintiff's affidavits in reply**—(1) An affidavit may be filed by or on behalf of the plaintiff in reply to an affidavit filed by or on behalf of the defendant.

“(2) Every affidavit filed under subclause (1)—

“(a) Shall be limited to new matters in the defendant's affidavit; and

“(b) Shall be filed in the Court and served on the defendant not later than 1 p.m. on the last working day before the date for hearing the application.”

**10. Disposal of application**—Rule 142 (1) of the High Court Rules is hereby amended by inserting, after the words “those powers” the words “or if it is satisfied that the payment by the defendant of any sum of money into Court or into a trust account makes the exercise of those powers inappropriate”.

**11. Discontinuance**—(1) The High Court Rules are hereby amended by inserting, after rule 143, the following rule:

“143A. (1) The plaintiff may, at any time before an application for judgment under rule 136 or rule 137 is heard, discontinue the application—

“(a) By filing in the office of the Court in which the application is filed a memorandum to that effect; and

“(b) By serving a copy of the memorandum on the defendant.

“(2) Where an application for judgment under rule 136 or rule 137 is discontinued, the Court may give directions as to the future conduct of the proceeding.”

(2) Rule 144 is hereby consequentially amended by omitting the expression “143”, and substituting the expression “143A”.

**12. New rules inserted**—The High Court Rules are hereby amended by inserting, after rule 236, the following rules:

“236A. **Application for injunction**—(1) An application for an interlocutory injunction may be made by any party before or after the

commencement of the trial of the proceeding, whether or not a claim for an injunction was included in that party's statement of claim, counterclaim, or third party notice, as the case may be.

"(2) The plaintiff may not make an application under subclause (1) before the commencement of the proceeding except in case of urgency, and in that case the injunction may be granted on terms providing for the commencement of the proceeding and on such other terms, if any, as the Court thinks fit.

"(3) With every application made under subclause (1), the applicant shall give an undertaking of the kind described in rule 630 (1); and rule 630 (2) shall, with all necessary modifications, apply in relation to every undertaking required by this subclause.

**"236B. Interim injunction in relation to party's assets—**(1) Without limiting the generality of the Court's powers in relation to the granting of injunctions, it is hereby declared that the Court may grant an interlocutory injunction restraining a party from removing from New Zealand, or otherwise dealing with, assets in New Zealand whether or not the party is domiciled, resident, or present in New Zealand.

"(2) Where a party makes an application for an interlocutory injunction of the kind described in subclause (1), that party shall, in making that application, identify any person who is not a party to the proceeding but who would be detrimentally affected by the granting of the injunction."

**13. Review of orders—**Rule 264 (1) of the High Court Rules is hereby amended by inserting, after the words "interlocutory application", the words "(other than an interlocutory application for judgment under rule 136 or rule 137)".

**14. Drawing up and sealing orders—**Rule 267 of the High Court Rules is hereby amended by revoking subclause (3), and substituting the following subclause:

"(3) The order shall specify both the date on which it was made and the date on which it was sealed."

**15. Interlocutory applications—**Rule 446G (4) is hereby amended by inserting, after the words "commercial list", the words "(other than an order or decision made *ex parte*)".

**16. Application of Part IVA of High Court Rules—**(1) Rule 458D (1)(a) of the High Court Rules (as inserted by rule 12 of the High Court Amendment Rules (No. 2) 1987) is hereby amended by revoking subparagraphs (vi) and (vii), and substituting the following subparagraphs:

"(vi) Sections 108 and 205 of the Companies Act 1955:

"(vii) Sections 43 (6) and 73 (1) of the District Courts Act 1947:".

(2) Section 458D (1) of the High Court Rules (as so inserted) is hereby amended by inserting, after paragraph (b), the following paragraph:

"(ba) Any originating proceeding for relief against forfeiture for non-payment of rent:".

(3) Rule 458D (2) of the High Court Rules (as so inserted) is hereby amended by inserting, after the word "Rotorua,", the word "Napier,".

**17. Judgments to be sealed and dated**—Rule 541 of the High Court Rules is hereby amended by adding the following subclause:

“(4) The judgment shall specify both its date and the date on which it was sealed.”

**18. Registration of satisfaction**—Rule 577 of the High Court Rules is hereby amended by omitting the words “that effect”, and substituting the words “the effect that the land shall be discharged”.

**19. Undertakings in relation to interim orders**—Rule 630 (1) of the High Court Rules is hereby amended by omitting the words “there shall be filed an undertaking by the applicant”, and substituting the words “the applicant shall give an undertaking”.

**20. Powers of certain Registrars to make grant, etc.**—Rule 651 (1) of the High Court Rules is hereby amended by inserting, after the word “Rotorua,”, the word “Napier,”.

**21. Power to appoint provisional liquidator**—Rule 700w of the High Court Rules (as inserted by rule 5 of the High Court Rules 1988) is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) Where a proceeding for the winding up of a company has been commenced by the filing of a statement of claim under rule 700c (1),—

“(a) The plaintiff; or

“(b) That company; or

“(c) A majority of directors of that company; or

“(d) Any creditor of that company; or

“(e) Any contributory (including any legal personal representative of a deceased contributory and the Official Assignee of a bankrupt contributory); or

“(f) The Registrar within the meaning of the Companies Act 1955; or

“(g) All or any of the parties specified in paragraphs (a) to (f) of this subclause,—

may apply to the Court for the appointment of a provisional liquidator.”

**22. Mode of application for registration**—Rule 729 (1) of the High Court Rules is hereby amended by inserting, before the words “Every application”, the words “Subject to rule 458E,”.

**23. Notice of proceeding where summary judgment sought**—The First Schedule to the High Court Rules is hereby amended by revoking form 13, and substituting the form 13 set out in the Schedule to these rules.

**24. Notice of opposition**—Form 21 in the First Schedule to the High Court Rules is hereby amended by inserting at the end of the first paragraph, after the words “dated the            day of            19    ”, the words “and for hearing on the            day of            19    ”.

**25. Sealing of orders and judgments**—The First Schedule to the High Court Rules is hereby amended by adding to each of forms 22, 36, 37, 38, and 39, below the words “(Deputy) Registrar”, the following sentence:

“Sealed this            day of            19    .”

SCHEDULE

Rule 23

NEW FORM 13 SUBSTITUTED IN FIRST SCHEDULE TO HIGH COURT RULES

Form 13

Rule 139

NOTICE OF PROCEEDING WHEN SUMMARY JUDGMENT SOUGHT

(General heading—Form 1)

To the above-named defendant(s)

Take notice—

- (a) That a claim, a copy of which is served herewith, has been filed in this Court by the plaintiff; and
- (b) That the plaintiff has also applied to this Court for immediate judgment against you (thereon *or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served herewith*) on the ground that you have no defence (to the plaintiff's claim *or to the plaintiff's claim to the extent stated in the application*).

*Notice of Opposition and Affidavit Setting Out Defence*

If you have a defence to the plaintiff's claim, you should, not less than 3 days before the date of hearing shown in the notice of application for summary judgment also served herewith,—

- (a) File in the office of this Court at [Place]—
  - (i) A notice of opposition; and
  - (ii) An affidavit sworn by you or on your behalf setting out your defence to the plaintiff's claim; and
- (b) Serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.

If you fail—

- (a) To file both a notice of opposition and such an affidavit and to serve copies of them on the plaintiff; or
- (b) To appear personally or by counsel on the date of hearing in opposition to the plaintiff's application,—

the Court may give such judgment on the plaintiff's claim against you as may be just.

*Statement of Defence*

You may, in addition to filing a notice of opposition and such an affidavit, file a statement of defence.

If you wish to file a statement of defence,—

- (a) You must file it in the office of this Court in which your notice of opposition and your affidavit were filed; and
- (b) You must serve a copy of it on the plaintiff; and
- (c) You must so file it and so serve it not less than 3 days before the date for the hearing of the application.

Dated this                    day of                    19 .

.....  
(Solicitor for) Plaintiff

SCHEDULE—continued

Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

MEMORANDUM

Advice

- 1. [As in form 6.]

Legal Aid

- 2. } [As in form 6.]
- 3. }

Appearance objecting to jurisdiction of Court

4. If you object to the jurisdiction of the Court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—

- (a) File in the office of the Court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds thereof; and
- (b) Serve a copy of the appearance on the plaintiff.

5. Such an appearance will not be deemed to be a submission to the jurisdiction of the Court.

Office hours

6. The office hours of the Court are from 9.30 a.m. to 4 p.m. except on Court holidays.

Dated this                    day of                    19

.....  
(Deputy) Registrar

[Where the defendant is to be served overseas add the following notice:]

NOTICE TO DEFENDANT SERVED OVERSEAS

The foregoing memorandum is the usual memorandum given to every defendant against whom summary judgment is sought but as you are resident out of New Zealand you are further notified as follows:

- 1. These documents are documents by which the above-named plaintiff has commenced a proceeding against you in the High Court of New Zealand. In that proceeding the plaintiff claims against you the relief specified in the attached statement of claim.
- 2. Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the High Court of New Zealand.
- 3. By New Zealand law the High Court may exercise jurisdiction in a case even though the defendant is resident outside New Zealand, if the case comes within the class or classes in which that Court has jurisdiction.



SCHEDULE—continued

4. One (two, etc.) of the classes of case in which the High Court may exercise jurisdiction is (or are) where:

*[Having regard to rule 135, here specify the particular provision of rule 219 on which the plaintiff relies to serve the proceeding overseas.]*

5. In this case the plaintiff claims:

*[Having regard to rule 135, here specify the facts alleged by the plaintiff to confer jurisdiction.]*

6. Notwithstanding that the Court may have jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied—

(a) That in all the circumstances some country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

(b) That the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive proper justice in that other country.

7. If you desire to protest at the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Dated this                    day of                    19 .

.....  
(Deputy) Registrar.

C. J. HILL,  
Acting for Clerk of the Executive Council.



## EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 1 January 1989, amend the High Court Rules.

*Rule 2* provides that the backing sheet on a document is to show, in addition to the name of the solicitor or firm of solicitors presenting it for filing,—

- (a) The name and telephone number of the principal or employee dealing with the proceeding; and
- (b) The address of any Post Office box or document exchange used by the solicitor or firm.

*Rule 3* provides that where—

- (a) An application for summary judgment in any proceeding is pending; or
- (b) A proceeding is entered on a commercial list,—

a third party notice to any person not already a party to the proceeding may be issued only with the leave of the Court.

*Rule 4* provides that where an appearance under protest to jurisdiction is set aside by the Court in relation to a proceeding in which the plaintiff has applied for summary judgment, the Court will be required to enlarge the time within which the defendant may file and serve—

- (a) A notice of opposition; and
- (b) An affidavit in answer to the plaintiff's affidavit.

*Rule 5* provides that a proceeding is not excluded from the summary judgment procedure by reason only of the proceeding being—

- (a) A proceeding in which a claim is made for specific performance of an agreement; or
- (b) A proceeding in which a mortgagee applies for the leave of the Court to enter into possession of mortgaged land.

*Rule 6* provides that judgment on a claim for specific performance may be entered under the summary judgment procedure.

This provision is subject to the qualification that judgment entered under the summary judgment procedure on a claim for the specific performance of an agreement may not award damages in substitution for, or in addition to, specific performance.

*Rule 7* provides that where an application for summary judgment is dismissed, the time within which the statement of defence is required to be filed shall, unless the Court otherwise directs, be within 30 days after the date on which the application is dismissed.

*Rule 8* inserts a *new rule 138A* into the High Court Rules. The new rule makes special provision in relation to the service out of New Zealand of any application for summary judgment.

*Rule 9* revokes rule 141 of the High Court Rules, and substitutes *new rules 141, 141A, and 141B*.

The *new rule 141* provides that a defendant who intends to oppose an application for summary judgment must file and serve both a notice of opposition and an affidavit in answer to the plaintiff's affidavit. Under the existing rule a notice of opposition is not required.

The *new rule 141A* provides that where the plaintiff has applied for summary judgment, the defendant may file, in addition to a notice of opposition and an affidavit, a statement of defence.

The *new rule 141B* provides that a plaintiff who has filed an application for summary judgment may file an affidavit in reply to the defendant's affidavit.

Any such affidavit in reply—

- (a) Shall be limited to new matters in the defendant's affidavit; and
- (b) Shall be filed in the Court and served on the defendant not later than 1 p.m. on the last working day before the date for hearing the application.

*Rule 10* provides that the Court may dismiss an application for summary judgment if it is satisfied that the payment by the defendant of any sum of money into Court or into a trust account makes it inappropriate to enter summary judgment.

*Rule 11* inserts a *new rule 143A* into the High Court Rules. The new rule provides for the discontinuance of an application for summary judgment.

*Rule 12* inserts 2 new rules into the High Court Rules.

The *new rule 236A* relates to the making of applications for interlocutory injunctions.

The *new rule 236B* relates to the granting of the type of interlocutory injunctions commonly known as Mareva injunctions.

*Rule 13* amends rule 264 (1) of the High Court Rules (which provides for the review of orders). The amendment provides that an order or decision made on an application for summary judgment may not be varied or rescinded under rule 264 (1).

*Rule 14* is new to the extent that it requires every order to specify the date on which it is sealed.

*Rule 15* amends rule 446C (4) of the High Court Rules. Rule 446C (4) provides that no order made or decision given on an interlocutory application in a proceeding entered on a commercial list may be varied or rescinded under rule 264. The amendment provides that this prohibition does not apply to an order or decision made *ex parte*.

*Rule 16* amends rule 458D of the High Court Rules (which relates to originating applications).

*Subclause (1)* revokes subparagraphs (vi) and (vii) of rule 458D (1), and substitutes two new subparagraphs.

The new subparagraph (vi) is new to the extent that it provides that an application to the Court under section 205 of the Companies Act 1955 may be made by filing an originating application under Part IVA of the High Court Rules. Section 205 of the Companies Act relates to the power to compromise with creditors and members and to the power of the Court to order a meeting of the creditors of a company or of any class of them or of the members of a company or of any class of them.

The new subparagraph (vii) is new to the extent that it provides that an application under section 73 (1) of the District Courts Act 1947 for further time within which to appeal to the High Court may be made by filing an originating application under Part IVA of the High Court Rules.

*Subclause (2)* provides that any originating proceeding for relief against forfeiture for non-payment of rent may be commenced by filing an originating application under Part IVA of the High Court Rules.

*Subclause (3)* confers on the Registrar of the High Court at Napier jurisdiction to extend, under section 13 (1) of the Chattels Transfer Act 1924, the time for the registration of an instrument or of an affidavit for renewal of an instrument.

*Rule 17* is new to the extent that it requires every judgment to specify the date on which it is sealed.

*Rule 18* amends rule 577 of the High Court Rules (which relates to the registration of orders discharging charging orders on land). The amendment recognises that the order will usually be to the effect that the land be discharged from the charging order.

*Rule 19* amends rule 630 (1) of the High Court Rules (which relates to undertakings in relation to interim orders). The rule (as enacted in 1985) requires that the undertaking be filed. The rule (as now amended) requires instead that the undertaking be given.

*Rule 20* amends rule 651 (1) of the High Court Rules. Under that rule the Registrars at Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, and Dunedin have the jurisdiction and powers of the Court in Chambers in respect of certain specified matters. The amendment confers on the Registrar at Napier the same jurisdiction and powers in respect of those matters.

*Rule 21* revokes subclause (1) of rule 700w of the High Court Rules, and substitutes a new subclause. The subclause lists the persons who may apply to the Court for the appointment of a provisional liquidator. Those listed are all persons who may, under section 219 of the Companies Act 1955, apply for the winding up of a company.

*Rule 22* amends rule 729 (1) of the High Court Rules (which relates to applications for registration of foreign judgments). The amendment makes it clear that any such application may be made by originating application.

*Rule 23* is consequential on the amendments made to the summary judgment procedure by rules 7 and 9 of these rules. This rule revokes form 13 (notice of proceeding when summary judgment sought), and substitutes a new form.

*Rule 24* amends form 21 (notice of opposition). This form must now show the date appointed for the hearing of the application in respect of which the notice of opposition is filed.

*Rule 25* amends forms 22, 36, 37, 38, and 39. The amendments are consequential on the amendments made by rules 14 and 17 of these rules. The amendments require every order and every judgment to specify the date on which it is sealed.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 10 November 1988.

These rules are administered in the Department of Justice.