

**IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
ŌTEPOTI ROHE**

**CIV-2024-412-110  
[2025] NZHC 2470**

BETWEEN ARTEMIS INDIGO DELILAH DAVIS  
Plaintiff  
AND EMMA JULIE HOGG  
Defendant

Hearing: On the papers  
Counsel: Applicant in person  
Judgment: 28 August 2025

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**JUDGMENT OF ASSOCIATE JUDGE PAULSEN  
(APPLICATIONS TO SET ASIDE AND TO RESCIND COSTS JUDGMENT)**

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This judgment was delivered by me on 28 August 2025 at 4.00 pm  
pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar  
Date:

[1] Ms Davis commenced this proceeding against Ms Hogg alleging she had been defamed and claiming both a declaration under s 24(1) of the Defamation Act 1992 and damages. The case was at various times case managed by Dunningham J, Associate Judge Lester and me. In a judgment of 4 July 2025, I granted summary judgment in favour of Ms Hogg.<sup>1</sup> In a subsequent judgment, I awarded Ms Hogg costs against Ms Davis.<sup>2</sup>

[2] Ms Davis has filed two without notice applications. The first seeks orders to set aside “every purported minute and judgment which has been issued by Associate Judge Paulsen and Associate Judge Lester in this proceeding”. The second seeks an order rescinding my costs judgment.

[3] The applications are made on the ground that Associate Judge Lester and I have no jurisdiction or powers in relation to any proceeding which seeks a declaration. Ms Davis relies upon s 22(4)(i) of the Senior Courts Act 2016 and r 2.1(3)(a) of the High Court Rules 2016. While she also refers to a range of other statutes, instruments and case law, they do not advance her application.

[4] As noted, the applications were made on a without notice basis. There was no justification for proceeding in that fashion.<sup>3</sup> Ms Hogg was entitled to be served with the applications and to be heard. The applications were also not accompanied by a memorandum under r 7.23(3). However, the applications cannot succeed and must be dismissed. For that reason I am not going to direct service upon Ms Hogg.<sup>4</sup>

[5] For present purposes, the relevant parts of the Senior Courts Act are as follows:

**20 Associate Judge may exercise certain powers of High Court**

(1) An Associate Judge has the jurisdiction and powers of the High Court in relation to the following matters:

(a) an application for summary judgment:

...

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<sup>1</sup> *Davis v Hogg* [2025] NZHC 1835.

<sup>2</sup> *Davis v Hogg* [2025] NZHC 2105.

<sup>3</sup> High Court Rules 2016, r 7.23(2).

<sup>4</sup> Rule 7.46(4).

- (3) An Associate Judge may adjourn a proceeding even though the Associate Judge does not have jurisdiction in relation to the proceeding.
- (4) An Associate Judge has the jurisdiction and powers of the court to deal with costs and other matters incidental to the matters over which the Associate Judge has jurisdiction under this section.
- (5) Rules made under section 148 or under any other Act in the same manner as rules under that section may contain any provisions that may be necessary to enable the proper exercise by Associate Judges of the jurisdiction and powers conferred by this section.

## **21 Ancillary powers of Associate Judge**

- (1) An Associate Judge has, in relation to a proceeding (including a proceeding on an interlocutory application) that is properly before the Associate Judge, the same jurisdiction and power to make an order or exercise an authority as a Judge of the High Court.
- (2) Despite subsection (1), an Associate Judge does not have the jurisdiction or powers referred to in section 22(4).

## **22 Rules conferring on Associate Judges specified jurisdiction and powers of High Court Judge in chambers**

- (1) Rules made under section 148 and rules made under any other Act in the manner provided in that section may confer on an Associate Judge the jurisdiction and powers of a High Court Judge in chambers specified in the rules.  
...
- (4) Despite subsection (1), no rules may be made that confer on Associate Judges jurisdiction and power in relation to any of the following:  
...
  - (i) a proceeding for a writ or an order in the nature of mandamus, prohibition, or certiorari, or for a declaration or an injunction:  
...

[6] Rule 2.1 of the High Court Rules provides:

### **2.1 Jurisdiction and powers**

- (1) An Associate Judge has the jurisdiction and powers of a Judge in chambers conferred by the Act or these rules or another enactment.

- (2) The jurisdiction and powers referred to in subclause (1) are in addition to the jurisdiction and powers conferred by section 20 of the Act.
- (3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers—
  - (a) in relation to the matters specified in section 22(4) of the Act;  
or
  - ...

[7] In entering summary judgment in favour of Ms Hogg, my jurisdiction and powers are conferred by s 20(1)(a) of the Senior Courts Act. The jurisdiction of Associate Judges to hear and determine summary judgment applications in proceedings seeking a declaration or an injunction is well-established and occurs commonly.

[8] The Supreme Court has recently addressed this issue. In *McConnor v Auckland Transport*, the applicant sought leave to appeal against a refusal of his application for waiver of security for costs in relation to his appeal against the striking out of his defamation claim by an Associate Judge.<sup>5</sup> On appeal, Mr McConnor wished to argue that the Associate Judge had no jurisdiction to preside over defamation proceedings. The Supreme Court declined leave to appeal the fee waiver decision as the proposed appeal lacked sufficient prospects of success. The Supreme Court agreed with the reasons of the Deputy Registrar, who said this:

[23] I consider Mr McConnor’s claim as to Associate Judge Brittain’s jurisdiction to determine the defamation proceedings and strike-out application has no merit. The Defamation Act 1992 does not prohibit an Associate Judge from presiding over proceedings. Similarly, section 20(1)(a) of the Senior Courts Act 2016 explicitly provides that an Associate Judge has jurisdiction and powers in the High Court with respect to applications for summary judgment, while section 21(1) affords a broader catch-all provision for judicial powers conferred. Associate Judge Brittain addressed this claim when issuing the decision on costs, noting he was satisfied he had jurisdiction to hear the proceeding under these sections. There is no relevant exception to these provisions elsewhere in the Senior Courts Act 2016.

[9] As to the jurisdiction of Associate Judges to determine summary judgment applications where a declaration or injunction is sought, a convenient starting point is *Cordova v Wenzel*.<sup>6</sup> While that case concerned the granting of an injunction in

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<sup>5</sup> *McConnor v Auckland Transport* [2025] NZSC 97.

<sup>6</sup> *Cordova v Wenzel* HC Auckland CIV-2005-404-3120, 22 December 2005.

summary judgment proceedings, as will be explained below, the position is the same when a declaration is sought.

[10] In *Cordova v Wenzel* summary judgment was entered by an Associate Judge against all defendants, granting injunctive relief.<sup>7</sup> The defendants then applied to set aside the summary judgment, and as a preliminary issue the Court determined whether an Associate Judge had jurisdiction in the matter.<sup>8</sup>

[11] The relevant statutory provisions at that time were ss 26I, 26IA and 26J of the Judicature Act 1908. The corresponding provisions are now ss 20, 21 and 22 of the Senior Courts Act. For present purposes, the provisions mentioned in the Judicature Act and Senior Courts Act are materially the same.<sup>9</sup> The Judicature Act provisions were set out in Venning J's judgment:<sup>10</sup>

[9] The particular sections from the Judicature Act 1908 that deal with the jurisdiction of Associate Judges in this area are ss 26I, 26IA and 26J. The relevant provisions of the sections are set out below:

**26I Associate Judge may exercise certain powers of the Court**

(1) An Associate Judge shall have and may exercise all the jurisdiction and powers of the Court in relation to the following matters:

(a) Any application for summary judgment: ...

...

(4) Rules made under section 51C of this Act or rules made under any other Act in the manner provided in that section may contain such provisions as may be necessary—

(a) to enable the proper exercise by [Associate Judges] of the jurisdiction and powers conferred by this section; and

(b) to regulate the practice and procedure of the Court on appeals against the exercise by Associate Judges of the jurisdiction and powers so conferred.

**26IA Ancillary powers of Associate Judge**

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<sup>7</sup> *Cordova v Wenzel* HC Auckland CIV-2005-404-3120, 21 November 2005.

<sup>8</sup> Above n 6.

<sup>9</sup> *Ingenious Asset Management Ltd v McCannon* [2024] NZHC 2982 at [36].

<sup>10</sup> *Cordova v Wenzel*, above n 6.

- (1) Subject to subsection (2) of this section, an Associate Judge shall have, in all proceedings (including proceedings on an interlocutory application) properly before the Associate Judge, jurisdiction to make any order or to exercise any authority or jurisdiction that might be made or exercised by a Judge of the High Court.
- (2) Nothing in subsection (1) of this section confers on an Associate Judge any jurisdiction or power of a kind described in subsection (3) or subsection (4) of section 26J of this Act.

**26J Power to make rules conferring specified jurisdiction and powers of Judge in Chambers on [Associate Judges]**

- (1) Notwithstanding anything contained in any other provision of this Act or of any other Act but subject to the provisions of this section, rules made under section 51C of this Act or rules made under any other Act in the manner provided in that section may confer on Associate Judges, subject to such limitations and restrictions as may be specified in the rules, such of the jurisdiction and powers of a Judge sitting in Chambers, conferred by this Act or any other Act, as may be specified in the rules.
- (2) Any such rules may contain such other provisions as may be necessary— ...  
...
- (4) Nothing in subsection (1) or subsection (2) of this section authorises the making of any rule which confers on Associate Judges any jurisdiction or power—  
...
  - (c) to grant any relief in any proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari, or for a declaration or injunction:  
...

[12] Venning J held that Associate Judges did have jurisdiction to grant injunctive relief when entering summary judgment, notwithstanding s 26J(4)(c).<sup>11</sup> The starting point was that s 26I(1)(a) provided Associate Judges with jurisdiction to “exercise all the jurisdiction and powers of the [High] Court in relation to .... [a]ny application for summary judgment”.<sup>12</sup>

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<sup>11</sup> At [22] and [24].

<sup>12</sup> The equivalent provision is now s 20(1)(a) of the Senior Courts Act 2016.

[13] Venning J then noted that what was then r 135 of the High Court Rules<sup>13</sup> provided for the summary judgment procedure and did not exclude injunctive relief.<sup>14</sup> He found “[p]rima facie then, Associate Judges have jurisdiction to make an order for injunction if such relief is sought in an application for summary judgment”.<sup>15</sup>

[14] Section s 26J did not affect the primary position.<sup>16</sup> Venning J said:

[14] ... Sections 26J(3) and (4) go on to clarify that the rule-making power conferred by s 26J does not authorise the making of any rule which confers jurisdiction or power on Associate Judges, inter alia, to grant an injunction (whether interlocutory or otherwise).

[15] Section 26J cannot itself derogate from the general jurisdiction or power conferred by s 26I. The Associate Judge’s jurisdiction in relation to summary judgment applications is not derived from any rules made providing for the jurisdiction of an Associate Judge sitting in chambers, but rather from the wording of 26I (1)(a). Further, and in any event, summary judgment applications are heard by the Associate Judge sitting in Court, not chambers: *Talyancich v Index Developments* [1992] 3 NZLR 28.

[15] Venning J then considered s 26IA (now s 21 of the Senior Courts Act), noting that it might be thought the section restricted the jurisdiction of Associate Judges to issue an order for injunction on a summary judgment application. He noted:<sup>17</sup>

Summary judgment is brought by way of an interlocutory application. Section 26IA (1) refers to inter alia interlocutory applications and s 26IA (2) provides, by reference to 26J (4) that there is no jurisdiction to grant injunctive relief given by s 26IA(1).

[16] However, Venning J considered s 26IA did not restrict the jurisdiction of Associate Judges in relation to summary judgment matters.<sup>18</sup> He noted that s 26IA concerned “Ancillary Powers” of Associate Judges. Venning J said by definition ancillary powers are subservient or subordinate powers and s 26IA “thus provides for a subservient or subordinate jurisdiction of Associate Judges as opposed to the specific jurisdiction which is dealt with and provided for in s 26I”.<sup>19</sup>

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<sup>13</sup> The High Court Rules were set out in Schedule 2 of the Judicature Act 1980.

<sup>14</sup> The equivalent provision is now r 12.1 of the High Court Rules 2016.

<sup>15</sup> At [13].

<sup>16</sup> The equivalent provision relied upon by Ms Davis is s 22(4) of the Senior Courts Act.

<sup>17</sup> At [16].

<sup>18</sup> At [17].

<sup>19</sup> At [18].

[17] Venning J said while the terms of s 26IA(2) restrict the jurisdiction of Associate Judges in relation to injunctions, the restriction is only to be read back to s 26IA(1) and not s 26I “by reason of the introductory words of s 26IA (2) itself”, and:<sup>20</sup>

Section 26IA (2) provides that nothing in subs (1) of s 26IA confers on an Associate Judge jurisdiction in relation to, inter alia, injunctions. However, as noted above the jurisdiction in relation to summary judgment is not founded in s 26IA but rather on s 26I (1)(a).

[18] Venning J also noted that the purpose of s26I generally is also important. It provides for Associate Judges to have the jurisdiction of the High Court in relation to a number of areas apart from summary judgment, and there was no reason to read down the general power provided by s 26I by reference to s 26IA as:<sup>21</sup>

The wording of s 26I (1)(a) is in broad terms. It conveys all the jurisdiction and powers of the Court in relation to summary judgment applications on Associate Judges. It cannot be suggested that injunctive relief is not available on an application for summary judgment. It follows that Associate Judges have the jurisdiction of the Court to grant injunctive relief in summary judgment applications.

[19] There are other decisions confirming Associate Judges’ jurisdiction to grant both declarations and injunctions. In *Nielsen v Nielsen*, Associate Judge Robinson called for submissions on the jurisdiction of an Associate Judge to grant relief by way of injunction or declaration.<sup>22</sup> Having received a comprehensive memorandum from the plaintiff, he was satisfied that Associate Judges had jurisdiction to do so in summary judgment proceedings and expressly adopted *Cordova v Wenzel*.<sup>23</sup>

[20] *Official Assignee v Israel* concerned an application by the Official Assignee for summary judgment.<sup>24</sup> Associate Judge Faire cited *Cordova v Wenzel*, and said an Associate Judge’s jurisdiction to consider an application for summary judgment was contained in s 26I(1)(a) and that “[t]his section does not provide any restriction on an Associate Judge’s jurisdiction in summary judgment matters”.<sup>25</sup>

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<sup>20</sup> At [21].

<sup>21</sup> At [22].

<sup>22</sup> *Nielsen v Nielsen* HC Auckland CIV-2007-404-5496, 7 August 2008.

<sup>23</sup> At [5].

<sup>24</sup> *Official Assignee v Israel* HC Hamilton CIV-2009-419-1065, 18 November 2009.

<sup>25</sup> At [5].

[21] *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* concerned an application for relief by way of declaration on a summary judgment application.<sup>26</sup> Associate Judge Matthews noted this raised a question of whether an Associate Judge may grant a declaration on a summary judgment application, and said:<sup>27</sup>

The point was determined in *Cordova v Wenzel*. His Honour analysed the sections, though in the context of an order by way of an injunction rather than a declaration. Both forms of relief are in the same category. The Court found that Associate Judges have jurisdiction to grant injunctive relief when entering summary judgment. There is no distinction between that position, and the position with a declaration. I respectfully adopt His Honour's reasoning.

[22] *Young v Stolten* was an appeal from a decision of an Associate Judge entering summary judgment enjoining the appellant from building or making any further preparation to build on certain land.<sup>28</sup> The Court of Appeal referred to *Cordova v Wenzel* and also *Mikitasov v Collins*,<sup>29</sup> and stated the Court had the ability to make an injunction in a summary judgment proceeding without any question as to the Associate Judge's power to make that order.<sup>30</sup>

[23] There are also numerous other cases in which Associate Judges have exercised summary jurisdiction in defamation proceedings and these decisions have either been upheld on appeal or leave to appeal refused.<sup>31</sup> Additionally, there are numerous cases in which Associate Judges have granted injunctions or issued declarations and these decisions have been upheld on appeal.<sup>32</sup>

[24] There is another related reason why Ms Davis's reliance upon s 22(4)(i) of the Senior Courts Act is misplaced. That section does not limit the jurisdiction of Associate Judges to hear proceedings for a declaration or an injunction generally but

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<sup>26</sup> *Simons Hill Station Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* [2013] NZHC 2262.

<sup>27</sup> At [8] (footnote omitted).

<sup>28</sup> *Young v Stolten* [2009] NZCA 264, (2009) 12 NZCPR 1.

<sup>29</sup> *Mikitasov v Collins* [2008] NZCA 390, (2008) 9 NZCPR 735 at [7].

<sup>30</sup> *Young v Stolten*, above n 28, at [33].

<sup>31</sup> See for example *Rafiq v Meredith Connell* [2015] NZCA 145; *Jindal v Daruwalla* [2024] NZCA 685; *Alkazaz v Deloitte Ltd* [2024] NZCA 194.

<sup>32</sup> See for example *D M Roberts Ltd v Mudgway* [2013] NZCA 187; *Justitia Trustee Company Ltd v AAL Holdings Ltd* [2021] NZCA 281, [2021] 3 NZLR 567.

only in respect to proceedings in a public context where a statutory power is in issue.<sup>33</sup>  
It is not concerned with a private law action in defamation.

[25] Insofar as Ms Davis challenges the costs judgment, my jurisdiction to determine costs is provided by s 20(4) of the Senior Courts Act.

[26] Insofar as Ms Davis challenges Associate Judge Lester's and my jurisdiction to case manage this proceeding, our jurisdiction is provided for by r 2.1(1) of the High Court Rules and ss 20(1), (3) and (4) of the Senior Courts Act.

### **Result**

[27] Ms Davis's applications are dismissed.

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O G Paulsen  
Associate Judge

Solicitors:  
Anderson Lloyd, Dunedin

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<sup>33</sup> *Clark v Governor-General (No 1)* HC Wellington CIV-2004-485-1902, 2 February 2006 at [22]; applied in *Secretary for Internal Affairs v Kilbirnie Tavern Ltd* HC Wellington CIV-2007-485-1988, 7 May 2008; and *Ingenious Asset Management Ltd v McCannon*, above n 9.