

**IN THE SUPREME COURT OF NEW ZEALAND
I TE KŌTI MANA NUI O AOTEAROA**

SC 166/2025

BETWEEN JINXING LIU

Appellant

AND HUA WU also known as DANNY WU

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

Dated: 5 August 2026

Publication certification: Counsel certify that, to the best of their knowledge, these submissions are suitable for publication and do not contain suppressed information.

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COURT OF APPEAL ERRED IN APPLYING ILLEGALITY PRINCIPLES

1. HC found (A Subs [57]-[63]; HC [65]-[74] **[101.0113]-[101.0115]**):
 - (a) Illegitimate pressure induced Deed (*Pharm. Care* [87], [104] **[BoA 351]**; *Haines* [49] **[BoA 114]**).
 - (b) Pressure not “overt” but “in all likelihood” involved threats of prosecution.
2. HC did not find formation of agreement not to prosecute (A Subs [62]-[65]; HC [68]-[70], [74] **[101.0114]**; c/f *Osborne* [92] **[BoA 262]**; *Mall Finance* 686 **[BoA 171]**). *Polymer* [5]-[22] **[BoA 358]**).
3. Broader record consistent with such a finding (A Subs [66]-[73]):
 - (a) No theft finding, denial by R (Wu XXM **[201.0061]**; HC [61] **[101.0112]**).
 - (b) No evidence of agreement not to prosecute, c/f threat (advice **[301.1138]**).
4. CA erred in finding agreement not to prosecute (A Subs [74]-[83]; CA [32] **[101.0155]**):
 - (a) Contrary to HC factual findings.
 - (b) Conflated underlying blackmail conduct with terms of agreement that resulted.
 - (c) Conflated likely threat to prosecute with agreement not to prosecute.
5. Important distinction between threat to prosecute and agreement not to prosecute:
 - (a) Illegality concerned only with terms of agreement and how they are performed (A Subs [30]-[36]; CCLA s 71 **[BoA 444]**; *Carey* 279 **[BoA 18]**).
 - (b) As HC found, capacity to enter into and perform terms of agreement engages duress analysis (A Subs [37]-[45]; *Pharm. Care* [92]-[105] **[BoA 352]**).
6. Present case properly approached through contractual duress, not illegality.

HIGH COURT WAS CORRECT TO FIND DEED AFFIRMED

7. Property found to be transferred under Deed, so contractual duress principles apply (A Further Subs [15]-[24] HC [78] **[101.0117]**).

8. Duress finding gave R election to avoid or affirm Deed. Principles of election well established (A Subs [84]-[86]; *Pharm. Care* [97]-[98] **[BoA 353]** HC [78] **[101.0117]**):
- (a) Election may be communicated through words or conduct (HC [79] **[101.0117]**).
 - (b) Avoidance must be communicated timeously; delay may amount to affirmation (A Subs [87]-[98]; HC [78], [88] **[101.0117]**; *Pharm. Care* [98], [112], [114] **[BoA 353]**; *Haines* [118] **[BoA 129]**; *Clough* 651 **[BoA 28]**; *Tamblyn* 22 **[BoA 618]**).
 - (c) Conduct consistent with affirmation supports intent to affirm (Bigwood 83 **[BoA 494]**; *Allcard* 102 **[BoA 11]**; *Hobbs* [111] **[BoA 161]**).
9. HC correct to find that R's delay of 3.5 years evidenced intent to affirm (A Subs [99]-[103]; HC [88]-[89] **[101.0121]**):
- (a) Similar to *Pharm. Care*, longer than *Hobbs*, *Haines*, *Atlantic Baron*, *Foster*.
 - (b) HC did not accept "*amalgam of complex circumstances that developed over time*" evidence as excuse for delay (HC [87]-[89] **[101.0121]**; A Subs [112]).
10. R's conduct beyond "delay only" case; reinforces intent to affirm (A Subs [104]-[112]):
- (a) HC assessed R's conduct and established he was free of coercion and affirmed.
 - (b) R had legal advice at all times, including as to possibility of blackmail, but continued to execute and perform Deed; indicator of affirmation (*Hobbs* [111] **[BoA 161]**; *Ottow* [57] **[BoA 392]**; *Allcard* 104 **[BoA 14]**; *Pao On* 12 **[BoA 337]**).
 - (c) During and after performance of Deed, R regularly asked to meet A, met him on several occasions and sent hundreds of messages. R never sought to avoid Deed or otherwise protested on any occasion (HC [86] **[101.0121]**).
 - (d) During and after performance of Deed, R told A that he wished to continue doing business and discuss "future matters" and a "building material business" with him (WeChats **[301.1688]**, **[301.0729]**; see *Hobbs* [111] **[BoA 164]**).
 - (e) After all obligations performed, R continued to seek out contact and meetings with A. The two met nearly a year after the Deed was signed, after which A blocked further contact with R (HC [86] **[101.0121]**).