

**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

FURTHER SUBMISSIONS FOR THE APPELLANT

Dated: 15 July 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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MAY IT PLEASE THE COURT:

1. In paragraphs 15 to 27 of Mr Wu's submissions on this appeal, he leads with an argument that he did not plead in the High Court, did not raise when amending his pleadings on appeal, and did not make before the Court of Appeal. His central argument before this Court is accordingly one raised for the first time on a second appeal. Given that last-minute shift, Mr Liu sought and was granted this Court's leave to file further submissions on Mr Wu's new argument (the **New Argument**).

Mr Wu's Shifting Case

2. It is first necessary to orientate the Court with the shifting nature of Mr Wu's case.

The High Court

a) Mr Wu's pleadings

3. In the High Court, Mr Wu pleaded¹ that he was subject to what he termed "*blackmail threats*", which were that Mr Liu "*threatened that [he] would have [Mr Wu's] family in China hurt*" if Mr Wu did not comply with the "*blackmail demands*" of transferring the Buckland Road property and \$600,000 (the **Property**). He then pleaded that he "*took steps to comply with the blackmail demands*", after which came a pleaded list of steps that included the following:

"23.10 On 4 July 2018 a deed of full and final settlement ("*settlement deed*"), a sale and purchase agreement for Lot 1, 185 Buckland Road ("*Lot 1 ASAP*") and a term loan agreement ("*term loan agreement*") were entered into between the plaintiff, the first defendant and Xuan Wang."

23.11 In essence the settlement deed provided:
[terms of the settlement deed]"

4. Accordingly, Mr Wu's pleaded case was that he executed and performed the Deed to "*comply*" with Mr Liu's alleged "*blackmail threats*" and "*blackmail demands*", the particulars of which included the transfer by Mr Wu of the Property.

5. Mr Wu then pleaded a claim in "unjust enrichment" against Mr Liu as follows:²

"46. [Mr Liu] has been enriched by the receipt of a benefit, namely the receipts and transfers from [Mr Wu's] compliance.

[...]

48. [Mr Wu's] compliance was incurred at [Mr Wu's] expense.

49. It is unjust to allow [Mr Liu] to retain the benefit of [Mr Wu's] compliance."

6. To summarise then, Mr Wu's statement of claim pleaded: (i) that he entered into the

¹ Second Amended Statement of Claim (Statement of Claim) at [21]–[23] [[101.0031]]; [23.1]–[23.15] [[101.0031]].

² Statement of Claim at [46], [48]–[49] [[101.0038]] (second cause of action in unjust enrichment).

Deed, and that the Deed obliged him to transfer the Property to Mr Liu; (ii) that his entry into, and performance of his obligations under, the Deed were “steps” he “took” to “comply with” Mr Liu’s demands; and (iii) that it was unjust for Mr Liu to retain Property transferred by Mr Wu under the Deed as part of that “compliance”.

b) Lang J’s judgment

7. Against that background, Lang J found that Mr Wu signed the Deed and did so as a result of improper threats from Mr Liu.³ His Honour then repeatedly (more than 10 times in the Judgment) found that Mr Wu made the transfers of Property to Mr Liu “under the Deed”,⁴ commenting that he did so as a means of “*t[aking] steps to implement the provisions of the Deed by complying with [his] obligations under it*”, and that his “*conduct demonstrates that he intended to make the dispositions under the Deed even though they had been induced by blackmail*”.⁵ Lang J concluded that Mr Wu signed and performed the Deed because Mr Liu applied “pressure” on him.⁶
8. Lang J accordingly accepted Mr Wu’s factual case as pleaded: that he had entered into and performed the Deed while subject to blackmail threats. His Honour therefore considered that Mr Wu’s “sparse” unjust enrichment cause of action must in reality be a pleading that Mr Wu entered into the Deed under duress, engaging the contractual duress principles in, for example, *Pharmacy Care*.⁷
9. It was accordingly Mr Wu’s own pleading that led Lang J to a contractual duress analysis, and Mr Liu to an affirmation defence in response. Tellingly, the treatment of the Deed in Mr Wu’s pleadings meant that neither the parties nor the Court ever raised or considered a no-contract cause of action in money had and received, and no evidence in defence to such a cause of action (such as change of position) was led.

The Court of Appeal

a) Mr Wu’s notice of appeal and amended pleading

10. Mr Wu’s argument to the Court of Appeal changed significantly. He claimed for the first time that he had transferred the Property to Mr Liu pursuant to an illegal agreement to stifle prosecution, an argument he now casts only in the alternative.

³ *Wu v Liu* [2024] NZHC 2903 [[101.0088]] (HC Judgment) at [65], [68]–[70] [[101.0113]]–[[101.0115]]; [78] [[101.0117]].

⁴ See, for example, HC Judgment at [65]–[66] [[101.0113]], [78] [[101.0117]] and [82]–[83] [[101.0119]].

⁵ HC Judgment at [82] [[101.0119]].

⁶ HC Judgment at [65] [[101.0113]]; see also [66] [[101.0113]] and [69]–[70] [[101.0114]]–[[101.0115]].

⁷ HC Judgment at [76], [78]–[82] [[101.0116]]; *Wu v Liu* [2025] NZCA 560 [[101.0145]] (CA Judgment) at [20] [[101.0151]].

11. In doing so, Mr Wu filed a notice of appeal but also sought to amend his pleadings by interlocutory application.⁸ He sought to update his statement of claim only by adding an illegality cause of action, but not to change his pleadings in respect of his execution and performance of the Deed or unjust enrichment cause of action. So, even in seeking fundamentally to change his argument on appeal, Mr Wu still did so on a “contract” theory and not under the “no-contract” theory he now advances.

b) The Court of Appeal’s judgment

12. The Court of Appeal endorsed the High Court’s findings that Mr Wu had entered into the Deed under improper pressure from Mr Liu. It agreed with Lang J that the transfers were made under, and in performance of, the Deed. Where the Court departed from the High Court was in finding that the true nature of the Deed was an agreement to stifle prosecution of Mr Wu, making the Deed an illegal contract.⁹
13. In other words, the Court of Appeal did not depart from Mr Wu’s High Court case that he had made the dispositions under the Deed. Just as had happened at trial, neither the parties in the Court of Appeal nor the Court itself in its judgment suggested at any stage that there existed a basis for restitution of the Property to Mr Wu on a “no-contract” basis. The only distinction between the approaches the Courts took was that the Court of Appeal considered the Deed in substance to be illegal.

The New Argument before this Court

14. Mr Wu now seeks to sidestep the Deed entirely. Contrary to everything said in the Courts below, he now submits that the Property was not transferred under the Deed at all, so no issue of contractual affirmation arises.¹⁰ He argues that Lang J found the Deed to be a “sham” (which His Honour did not), so the Property transferred is recoverable under as non-contractual money had and received. His recent memorandum concedes that this Argument is a new, “no-contract argument”.¹¹

This Court Should Either Not Consider or Not Accept the New Argument

The New Argument was not pleaded so should not be considered on a second appeal

15. Mr Liu’s primary submission in respect of the New Argument is that it is far too late

⁸ Amended Interlocutory Application to Amend Pleadings. Mr Wu’s notice of appeal and that application are appended to these submissions. See also CA Judgment at [17]–[18] [[101.0149]]–[[101.0150]] and [29] [[101.0154]].

⁹ CA Judgment at [19]–[21] [[101.0151]]–[[101.0152]]; [29]–[32] [[101.0154]]; [46]–[47] [[101.0161]]–[[101.0162]].

¹⁰ Respondent’s submissions at [8], [16]–[17] and [23]–[24], [27].

¹¹ Memorandum of Counsel for the Respondent dated 1 July 2026 at [1] and [5].

for Mr Wu to advance an argument that is inconsistent with his pleaded case. As the Court of Appeal held in *Blueskin Bay*, it is a “*fundamental...rule*” that a party must “*advance its available arguments at trial*” and “*cannot sensibly run*” an alternative argument on appeal that could have been run at trial but was not.¹²

16. To repeat, the factual foundations of Mr Wu’s pleaded case at trial were that improper pressure from Mr Liu had compelled him to enter into the Deed and to make the dispositions under it. Not surprisingly therefore, the analytical focus was on the Deed itself in both the High Court (as to whether it had been affirmed) and the Court of Appeal (as to whether it was in substance illegal or had been affirmed).
17. It is squarely inconsistent with that pleaded case for Mr Wu now to argue that the Court should cast aside the Deed in analysing whether the Property should be returned. As Mr Wu now contends that no affirmation question arises because the proper analysis is a “no-contract” one, that is exactly what the New Argument invites.
18. That Mr Wu’s High Court pleading advanced a cause of action in “unjust enrichment” does not mean that the New Argument has already been raised under that heading. The foundation of that cause of action as pleaded was that Mr Liu had been unjustly enriched by Mr Wu’s “*compliance*” with “*blackmail demands*” which included the execution and performance of the Deed. A “no-contract” claim in money had and received, making the Deed irrelevant altogether, is incompatible with that pleading.
19. Indeed, this latter point is borne out by comparing the change to his case Mr Wu seeks to make in this Court with the change he made in the Court of Appeal. In that Court, it was held that Mr Wu did not need to amend his statement of claim to include an illegality argument because he was relying on the same underlying facts – that he executed the Deed and performed it under illegitimate pressure from Mr Liu – in advancing the submission that the Deed was illegal.¹³ By contrast, the New Argument disavows the Deed’s relevance altogether. It relies on a different foundation.
20. The prejudice to Mr Liu of Mr Wu’s introduction of the New Argument is significant. Because Mr Wu pleaded the existence and performance of the Deed as part of his case at trial and again on appeal, the focus of Mr Liu’s evidence led at trial and of argument on appeal was the Deed. Mr Liu accordingly did not lead evidence that

¹² *Blueskin Bay Forest Heights Ltd v Paterson Pitts Partners Ltd* [2014] NZCA 268 at [18]–[23].

¹³ CA Judgment at [19]–[21] [[101.0151]]–[[101.0152]], [26] [[101.0153]] and [30] [[101.0154]].

properly responded to a “no-contract” cause of action in money had and received, such as evidence of change of position which forms a defence to that claim.¹⁴

21. Mr Liu accordingly submits that the Court should not consider the New Argument. Mr Wu should not be permitted at the eleventh hour to advance an argument on which no evidence has been led, in order to outflank consideration of a Deed on which he previously relied and invited two Courts below to do likewise.

In any event, the Court should not accept the New Argument

22. Even if the Court does consider the merits of the New Argument, Mr Liu submits it is misguided. The premise on which the New Argument is based, that the case is a “no-contract” one because Lang J found the Deed to be a “sham” and of no effect, is wrong. Lang J made no such finding: His Honour found that the Deed had been executed and performed by Mr Wu and so, subject to an analysis of whether it had been procured by duress, remained “*on foot and binding*”.¹⁵
23. That analysis flowed from the finding that the parties maintained a common intention, reflected in the Deed, that Mr Wu had an obligation to transfer the Property to Mr Liu.¹⁶ On the facts, the relevant questions then remained only whether that obligation had been procured by illegitimate pressure and if it had, whether Mr Wu had nonetheless affirmed his performance.
24. In a doctrinal sense, the Property was accordingly transferred pursuant to a (voidable) contractual arrangement and so under a “justifying ground” in the language of restitution law.¹⁷ Therefore, the proper course for Mr Wu was and is to ask the Court to set aside the contract under which the transfers were made on the basis of duress. That is precisely what happened before Lang J and led to an affirmation analysis. The Court should adopt the same approach here.

Dated: 15 July 2026

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¹⁴ See, e.g., *Lipkin Gorman (A Firm) v Karpnale Ltd* [1991] 2 AC 548 (HL); Goff & Jones: The Law of Unjust Enrichment (10th ed, Sweet & Maxwell, London, 2022) at [27-01], [27.08]: The onus of pleading and proving that defence lies on the defendant, who must raise it *fairly and squarely* so that its factual merits can be explored at the trial.

¹⁵ HC Judgment at [78] [[[101.0117](#)]] Lang J found the loan to be a sham, not the Deed itself: see [64]-[65] [[[101.0113](#)]].

¹⁶ HC Judgment at [65]-[66] [[[101.0113](#)]] and [78] [[[101.0117](#)]].

¹⁷ See Goff & Jones at [3-12]-[3-47], [[10-10](#)], [10.60]; also *Barton v Morris* [2023] UKSC 3 at [226].