In the Supreme Court of New Zealand
I Te Kōti Mana Nui o Aotearoa

SC 166/2025
CA 723/2024
CIV 2022-404-447

Between

Jinxing Liu

appellant

and

Hua Wu (also known as Danny Wu)

respondent

Outline of oral argument of respondent

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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May it please the Court:

Illegality / extortion

1. In this Court, Mr Liu accepts that he blackmailed Mr Wu thus: transfer the assets or I will report your alleged malfeasance to the authorities. An agreement to stifle prosecution is unlawful because it undermines the rule of law; allows a public interest to be subverted for private profit; and risks abetting extortion.[1] Nevertheless, Mr Liu seeks to retain the transferred assets because Mr Wu was too slow to sue for their return. That is a curious position. The appellant's argument fails for two related reasons.

2. First, any objective view leads to an inference that the quid pro quo for the transfers was an ongoing promise not to report. That was the true agreement, as the Court of Appeal held – otherwise the transfers of assets are irrational. There could be no lawful arrangement found because there was no other genuine reason for the transfers. In many other cases there is a genuine debt owed or otherwise *bona fide* contract underlying a payment.[2] Not so here. The Deed and the loan it evidenced were fictitious. They are irrelevant. The facts are simply an extortion of assets by threats to report unrelated behaviour to the authorities. The inference of a quid pro quo agreement to stifle a prosecution if the transfers are made is irresistible in that context.

3. There is no policy or other reason to draw a bright line between duress cases and illegal contract cases as the appellant urges because: (a) the legislative provisions cannot be ignored, even if the facts may also be conceptualised as duress;[3] and (b) the two doctrines have limited

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1 *Osborne v Worksafe New Zealand* [2017] NZSC 175, [2018] 1 NZLR 447 at [70] – [76] and [105] [[ABOA page 234 at 257-259 and 266]].

2 For example: *Haines v Carter* [2001] 2 NZLR 167 (CA), *Hobbs v Gilbert* HC Nelson CIV-1999-442-002, 21 September 2004, *Polymer Developments Group Ltd v Tilialo* [2002] 3 NZLR 258 (HC), *Pharmacy Care Systems Ltd v Attorney-General* (2004) 2 NZCCLR 187 (CA), *Jones v Merionethshire Permanent Benefit Building Society* [1892] 1 Ch. 173, *Williams v Bayly* (1866) LR 1 HL 200, *Seear v Cohen* (1881) 45 LT 589 (QBD), *McClatchie v Haslam* (1891) 65 LT 691 (CA).

3 Court of Appeal Judgment at [50].

overlap, and coexist happily, particularly given the flexibility of remedy in Subpart 5 of the CCLA.[4]

4. Secondly, the facts as now advanced by the appellant cannot assist him. If the blackmail was an inducement to make the transfers, but forbearance from reporting was not a term of the resulting contract: what then were the terms of the contract entered under duress?

5. The appellant says only that the contract was "*a common intention, reflected in the Deed, that Mr Wu had an obligation to transfer the Property to Mr Liu*."[5] But the parties' agreement is not captured in the Deed; it was a fiction to cover up blackmail.[6] There was no true obligation on the respondent per the Deed because there was no loan to be repaid.

6. If the respondent agreed to pay, and paid, without any quid pro quo promise not to report in the future, and no other terms, then the appellant has simply extorted the payments and dressed them up with the sham Deed. The payments were involuntary and recoverable as money had and received/unjust enrichment.[7]

7. There is no unfairness to the appellant in the respondent's reliance on a "no contract/extortion" argument. The respondent cannot be disqualified from directly responding to an argument the appellant makes for the first time in this Court.

Affirmation

8. The respondent relies on the need for certainty of contract to submit that the respondent lost his right to avoid the Deed by inaction.

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[4] See Charles Mitchell, Paul Mitchell and Stephen Watterson (eds) *Goff and Jones: The Law of Unjust Enrichment* (10th ed, Sweet & Maxwell, London, 2023) at [10]-[26] [[RBOA page 533 at 547]] and W G G A Young "Duress and Threats of Lawful Action" (1980) 1 Canterbury L Rev 55 at 61 [[ABOA page 628 at 634]].

[5] Memorandum of further submissions for the appellant, 15 July 2026 at [23].

[6] The Court of Appeal found at [29] that "… *as the High Court held, the Deed was a sham. There was never an agreement as its terms recorded*."

[7] *De Cadaval v Collins* (1836) 4 Ad & E 858, 111 ER 1006 (KB) [[ABOA page 30]]; *Woolwich Equitable Building Society v Inland Revenue Commissioners (No 2)* [1993] AC 70 (CA). [[RBOA page 334]]; *Moses v Macferlan* (1760) 2 Burr 1005 at 1012; [1558–1774] All ER Rep 581 at 585 [[RBOA page 223]]; *Dandoroff v Rogozinoff* [1988] 2 NZLR 588 (HC) [[RBOA page 014]].

9. This is an important policy consideration in general, but has no relevance on these facts. The authorities involve otherwise legal and substantive agreements resulting from the duress. Not so here: the loan is fictitious and the repayment of it per the Deed is a sham. The respondent's submission amounts to a plea that the blackmailer is entitled to certainty that he has escaped with his ill-gotten gain.

10. Even allowing that imputed affirmation of a sham agreement is feasible, there was no unequivocal conduct from which the Court should infer an election.

11. All conduct before the payments (and arguably for some time after) is irrelevant because of the continued effect of duress. There was nothing more for Mr Wu to do following payment, so his inaction /delay is inherently equivocal. The cases support that delay is rarely if ever enough, and there is no rule about how much delay is too much.[8]

12. Finally, it is inherently unlikely that a person extorted would affirm the blackmail arrangement. The Court should be careful to impute an election to affirm a contract procured by blackmail, to the benefit of the blackmailer.

DATED at Wellington this 5th day of August 2026

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[8] *Mir Abdul Rehman v Mir Heena* [2013] HKCA 144. [[RBOA page 134]]*; Clough v London and North Western Railway Co* [1861-73] All ER Rep 646 at 651 [[ABOA page 23]]. *Pharmacy Care Systems Ltd v Attorney-General* (2004) 2 NZCCLR 187 (CA) [[ABOA page 340]]. *Morley (t/a Morley Estates) v Royal Bank of Scotland plc [*2021] EWCA Civ 338 [[ABOA page 199]]. *Haines v Carter* [2001] 2 NZLR 167 [[ABOA page 103]]. *Foster v Phillips* HC Auckland CP2845/89, 5 September 1990. [[ABOA page 035]]. *Hobbs v Gilbert* HC Nelson CIV-1999-442-002, 21 September 2004 [[ABOA page 133]]. *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (The Atlantic Baron)* [1979] QB 705, [1978] 3 All ER 1170 (The Atlantic Baron) [[ABOA page 219]].