IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 65/2024

BETWEEN	**BARTHOLOMAEUS ROLAND LASSNIG** Appellant
AND	**QIAN ZHOU** First Respondent
AND	**QIAN ZHOU and BARTHOLOMAEUS ROLAND LASSNIG as TRUSTEES OF THE LASSNIG FAMILY TRUST** Second Respondents

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SUMMARY OF ORAL ARGUMENT FOR RESPONDENT

Dated 3 March 2025

This document is filed by:	**Counsel acting**
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MAY IT PLEASE THE COURT:

Oral Argument for counsel for respondent
Structure of Oral Submissions Ms Crawshaw, KC • Summary of argument. • Core facts. • Overview of s 182 FPA / Stage 2 test and reasonableness of expectations in assessing the gap. • CA decision, *Preston, Clayton v Clayton* and *Ward v Ward* on approach to expectations. • CA's assessment of reasonable expectations. • What is the gap? Ms La Mantia • Stage 2 considerations - Sharing of losses and bank lending. • Stage 3 considerations – Contribution by way of bank loan. Ms Crawshaw • The Stage 3 test and exercise of the discretion. • Post-separation distributions/benefits.

Ms Crawshaw KC - Summary of argument	**Respondent's reference**
• *Preston v Preston* applicable despite timing of the trust's settlement and acquisition of assets. • Distinguishing *Clayton* and *Ward* based on length of the marriages and the parties' joint contributions to the enhancement of assets before and after being settled on trusts (absent in this case). • Preston highlights the importance of considerations of: o *Source and character of the trust's assets;* o *Short length of the marriage;* o *Marriage and whether or not it functioned as a family unit, and if not, the approach to the settlement.* • Comparison with s 14 PRA.	Subs at [3] – [6], [7] Subs at [6] Subs at [8], [9] Subs at [12] Subs at [13]-[16]
Ms Crawshaw KC - Core facts	**Decision reference**
• Marriage of less than three years, no children. • Over 9 ½ years since separation on 27 July 2015. • Trust settled during the marriage. • Trust's assets funded by separate property advances, $1,211,000 from respondent and $167,000 from appellant. • Parties made further financial contributions from income during marriage, bringing the respondent's total to	CA [75]. [55] CA [7] HC [28] CA [37], [38], [58], [112]

$1,256,000 and the appellant's total to $290,000. • At separation the trust owned 3 properties, East Coast Road, Jack Barry Rd and Young Access with very high bank debt. • By 2021 bank debt had reduced to $658,000.	CA [8]-[12] CA [58] CA [78]
Ms Crawshaw KC - Overview of s 182 FPA / Stage 2 test and reasonableness of expectations in assessing the gap	**Respondent's reference**
• The three-stage test set out in *Preston*. • CA correctly approached "reasonable expectations" and particularly financial contributions at Stage 2 test. • Financial contributions relevant at both Stages 2 and 3. • CA correctly drew from *Clayton v Clayton* and *Ward v Ward* establishing that "expectations" is objective concept • CA also took account of various considerations at Stage 2, other than financial contributions. • Return proportionate to contributions expected.	[18] [22]-[31] [88] [23]-[24] [23] [29]
Ms Crawshaw KC - CA's assessment of reasonable expectations	**Respondent's reference**
• Weight to be given to subjective expectations. • CA's assessment that living in a Trust property in marriage required parties to contribute to its upkeep and costs. Abrupt ending of marriage - purpose failed. • Expectations of / arising from distributions and wider benefits during the marriage (versus the "mere possibility" of distributions) and from trust's purpose - retirement. • Opportunity cost to respondent. • Degree of financial separation, the meaning of "joint benefit" and detailed recording of financial contributions in trust ledger. • Difference in financial contributions and relevance to assessment of the gap.	[32] [33]–[39] [40]-[51] [57]-[62] [63]-[73] [74]-[76], [79]-[82]
Ms Crawshaw KC – Stage 2 Assessment of the gap	**Respondent's reference**
• Difference between position B and position C negligible. • CA properly had regard to overall circumstances, including that the appellant cannot expect to live in a mortgage-free home, his call on income or capital from the trust being contingent on the parties' marriage enduring until retirement, the appellant's position after his return of his financial contributions and a pro rata share of the trust's equity.	[83]-[87] [86]

Ms La Mantia - Responsibility for bank lending raised as considerations under Stage 2 and Stage 3 of the s 182 test	**Respondent's reference**
• **Stage 2** – o Respondent's position regarding joint bank lending and sharing of losses proportionately. - Respondent's significant financial contributions and taking on of external debt through FPL means unlikely mortgage debt could not be repaid. - "Joint liability" only arises in this context - Appellant is asking the Court to apply risk of loss and benefits differently. o Argument that joint bank lending reduces the disparity of contribution overlooks other crucial financial contributions by respondent. • **Stage 3** - The appellant focuses joint liability for bank lending, citing s14A PRA cases to establish it as a financial contribution. o Cases cited by appellant (discussion): - *TN v AK* (HC) - *Illingworth v Illingworth* (CA) - *H v O* (HC) o Other cases, not cited by appellant - *Bradford v Te Hei* (HC)	[52]-[56] [77]-[78] [92]-[102]
Ms Crawshaw KC - The Stage 3 test and exercise of the discretion	**Respondent's reference**
<u>Financial contributions</u> • Generally. • Weight to be given to lending money to the trust. • Interest not sufficient remedy. • Without respondent's contributions, trust unaffordable. • Appellant's argument that the parties' respective financial contributions should be treated as joint borrowings totalling $1.546M. <u>Post-separation distributions/benefits</u> • Respondent's occupation of trust property not previously argued. Had it been countervailing circumstances here.	[89]-[90] [91] [103] [104]- [105]
CA decision should stand	**Respondent's reference**
Taking account of the overall circumstances at time of separation, parties had reasonable expectation of dividing trust's assets proportionately, being division on 80/20 basis.	[106] – [107]

I, **VIVIENNE ANNE CRAWSHAW, KC**, certify that the outline of Oral argument on behalf of the respondent is suitable for publication.

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Counsel for respondent