

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA736/2024
[2026] NZCA 297**

BETWEEN	MING LIM-YIP AND JOSEPH DA HONG LIM-YIP Appellants
AND	STEVEN YIP LIM AND SUEY YIP WONG First Respondents
	SELINA YIP LIM Second Respondent

Hearing: 20 May 2026

Court: Katz, Peters and Radich JJ

Counsel: V T M Bruton KC and P A Brown for Appellants
M C Harris and M C Smith for Respondents

Judgment: 6 July 2026 at 11.00 am

JUDGMENT OF THE COURT

- A The appeal against the judgment in [2024] NZHC 3012 is dismissed.**
- B The appeal against the judgment in [2025] NZHC 227 is allowed.**
- C Costs in the High Court are to lie where they fall.**
- D In respect of the appeal, the appellants must pay the respondents one set of costs for a standard appeal on a band A basis, reduced by 20 per cent, together with usual disbursements.**
-

REASONS OF THE COURT

(Given by Radich J)

[1] The appellants, Ming and Hong,¹ say that Blanchard J erred when he found that their appointment of themselves as trustees of their family trust — in place of their brother and sister, Steven and Suey — was invalid.²

[2] On appeal, they seek decisions to the contrary — that their appointment was, in fact, valid. And they seek to overturn an uplifted costs award made against them in a separate decision.³

[3] There is only limited utility in the outcome that is sought on appeal. In the High Court, the parties agreed that an independent trustee should be appointed, and it was.⁴ Costs aside, this appeal, as was the case with the High Court trial, raises points that are moot but which are the product of ongoing differences between the siblings.

Factual background⁵

[4] In 2003, the parties' mother, Shue Wah Lim, settled the Shue Wah Lim Trust (the Trust) for the benefit of her eight children.⁶ The original trustees were Mrs Lim, Suey and Liston Trustee Services Ltd, an independent trustee company.

[5] In 2006, the Trust agreed to make a \$450,000 loan to Ming's family trust, the MY-BT Family Trust (Ming's Trust), to enable Ming to buy a business. The loan, as documented, was repayable on six months' notice and interest was not payable unless notice was given to the contrary.⁷

¹ We will refer to the parties by their given names, as the High Court Judge did and as the parties have in their submissions. Accordingly, we will refer to the appellants as Ming and Hong, to the respondents as Steven, Suey and Selina and to their other siblings as Mary, Sumy and Susanne.

² *Lim v Lim-Yip* [2024] NZHC 3012 [substantive judgment].

³ *Lim v Lim-Yip* [2025] NZHC 227 [costs judgment].

⁴ Substantive judgment, above n 2, at [2] and [60]. The parties agreed that Comac Trustees Ltd (Comac) would be appointed in place of Ming and Hong but did not agree on whether co-trustees or trust advisers should be appointed also. Since Comac's appointment, further litigation has ensued between the parties following which another independent trustee has been appointed. See *Lim v Comac Trustees Ltd* [2026] NZHC 740.

⁵ The chronology in the proceeding is lengthy and the case on appeal is large. We refer only to the facts that have a bearing on the issues on appeal.

⁶ One of her children was not included as a beneficiary of the trust until 2015. Steven, Suey and Selina contest that this appointment was valid, we make no comment on that issue.

⁷ The loan was varied in 2013 to enable Ming to sell the business property it had financed and to buy another property.

[6] In December 2007, Liston Trustee Services Ltd retired as a trustee. Another independent trustee company, Shue-Wah Lim Trustees Ltd, took its place. In 2009, Steven was appointed as a trustee of the Trust.

[7] Ming's Trust repaid \$100,000 of the loan to the Trust in 2014.

[8] In May 2015, Ming took his mother to a new lawyer, Ms Chan, to prepare a new will. The will, among other things:

- (a) transferred the power to appoint the trustees of the Trust after Mrs Lim's death from Steven and Ming to Ming and Hong; and
- (b) gifted to Ming all debt owed by the Trust to Mrs Lim personally — totalling \$340,471 at the time.

[9] Mrs Lim passed away on 20 February 2019. The remaining trustees, from that time, were Steven, Suey and Shue-Wah Lim Trustees Ltd.⁸

[10] On 26 March 2019, the trustees demanded repayment of the loan made to Ming's Trust. The demand was for \$450,000, not the correct figure of \$350,000. Payment was sought by 30 September 2019 and the payment of interest was sought from 1 April 2019.

[11] When, in mid-2019, Steven and Suey found out about the terms of Mrs Lim's 2015 will, they challenged it in a probate proceeding, saying that Mrs Lim did not have capacity when she executed it and was subject to undue influence from Ming.

[12] Also in mid-2019, solicitors instructed by Ming, Mary, Sumy and Susanne sought an audit of the Trust under s 83B of the Trustee Act 1956. The audit did not occur as the Public Trust could not obtain the information it needed. In December 2019, Mary asked Suey for the Trust's 2009 to 2019 financial statements. They were not provided either.

⁸ Documents had been prepared in August 2015 for Ming and Mary to take over as trustees but matters were not concluded and are the subject of another set of High Court proceedings.

[13] A debt collector, engaged by the trustees to recover the loan, wrote to Ming's Trust in December 2019, and again in January 2020, demanding payment of \$450,000 and interest and recovery costs. The debt collector said in the letters that the credit rating of the trustees of Ming's Trust (which include Ming) would be damaged if payment was not made.

[14] Payment was not made. Instead, on 21 February 2020, Ming and Hong — using the power referred to in [8(a)] above — removed Steven and Suey and Shue-Wah Lim Trustees Ltd as trustees, and appointed themselves in their place.

[15] Ming and Hong's solicitors wrote to Steven, Suey and Shue-Wah Lim Trustees Ltd on 24 February 2020 advising of their removal and asking that all Trust documents be delivered to them. On the next day, 25 February 2020, the solicitors wrote to the trustees of Ming's Trust.⁹ The letter is an important part of the narrative. It shows that the demand for repayment of the loan was a central concern for Ming and Hong, upon taking over as trustees. The letter refers to the demand for repayment of the \$450,000 loan, and to the appointment, by the previous trustees, of the debt collectors to collect it. It provides that the "new trustees" had resolved to revoke the demand for payment of the loan and interest on the basis that:

- (a) the amount outstanding under the loan is \$350,000;
- (b) concerns were held about the appointment of Shue-Wah Lim Trustees Ltd and, therefore, the validity of the notice of demand; and
- (c) Funds to be distributed to Ming from the Trust (under the gift described in [8(b)] above) were to be advanced to Ming for repayment by the Ming Trust of its loan to the Trust.

[16] Also on 25 February 2020, the solicitors wrote to the debt collector, terminating its engagement and to the Trust's bank to advise of the change of trustees.

⁹ Essentially, the solicitors for Ming in his capacity as trustee of the Trust were writing to Ming (and his two fellow trustees) in their capacity as trustees of the Ming Family Trust.

[17] The siblings had by this time divided into two camps — Steven, Suey and Selina in one and Ming, Hong, Mary, Sumy and Susanne in the other. They are divided over numerous issues. Of the multiple exchanges on the issues between them, a letter from Ming and Hong’s solicitor on 7 October 2021 has assumed some significance. In it, a global proposal was made to resolve this proceeding and other proceedings between the siblings. An outcome was not achieved. We return to the letter later in this decision.

[18] In November 2021, the hearing of the probate proceeding began in the High Court. On the fourth day of the seven day hearing, Steven, Suey and Selina discontinued their claim. Probate of Mrs Lim’s will was, as a result, granted to Ming and Hong.

[19] On 8 December 2021, soon after the order granting probate to Ming and Hong was sealed, they executed a further deed confirming their appointment as trustees of the Trust. While the parties all agree that Ming and Hong could exercise the power of appointment without probate being confirmed, they did so out of an abundance of caution.

[20] In June 2022, Steven and Suey brought the proceeding to which this appeal relates. As pleaded originally, it sought an order removing Ming and Hong as trustees and an order re-appointing Steven, Suey and Shue-Wah Lim Trustees Ltd as trustees. However, on the first day of trial, Steven and Suey filed an amended statement of claim which, instead of seeking their re-appointment, sought the appointment as trustees of either:

- (a) Comac Trustees Ltd (Comac) — an independent trustee company — plus one person nominated by each side; or
- (b) Comac and another named individual.

[21] A perplexing feature of this case is that, from the beginning of the trial, Steven, Suey and Shue-Wah Lim Trustees Ltd agreed to abandon their claim to reinstatement and supported the appointment of Comac. And that was the outcome of

the trial.¹⁰ However, Ming and Hong insisted on the trial proceeding so that they could obtain a decision on the issue of whether they had acted with an improper purpose in appointing themselves as trustees. Five days of hearing proceeded as a consequence. As has this appeal.

The High Court judgment

The substantive judgment

[22] The Judge referred to s 94 of the Trusts Act 2019, under which a person with the power to remove or appoint trustees must exercise the power honestly and in good faith and for a proper purpose. Accordingly, as the Judge said, the Court must determine the purpose of the appointer — if the primary purpose was to benefit the appointer or a third person, then the appointment will be invalid. If that was not the primary purpose, and any benefit to the appointer or a third person was incidental, then it will be valid.¹¹

[23] The Judge found there to be no doubt that Ming and Hong were entitled to remove Steven, Suey and Shue-Wah Lim Trustees Ltd and the issue was whether appointment of themselves as replacements was valid. As the Judge said, Ming plainly had a conflict but that, in and of itself, was not the primary issue.¹² The issue was one of purpose.

[24] Ming and Hong said that the reason they appointed themselves as trustees was to obtain the financial information on the Trust that Ming, Mary, Sumy and Susanne had been seeking and that they were seeking to “steady the ship”; not to resolve matters in Ming’s favour. However, the Judge found that, while obtaining information was a consideration, it was not Ming and Hong’s primary purpose. The timing of the change of trustees did not, the Judge found, support that. They gained the power of

¹⁰ The only real issue was whether another individual or individuals should be appointed alongside Comac Trustees Ltd (Comac) but ultimately that was a subsidiary point, which counsel for Steven and Suey had submitted could be dealt with on the papers after the primary issues had been determined. In the event, Blanchard J appointed Comac alone. See substantive judgment, above n 2, at [62].

¹¹ Substantive judgment, above n 2, at [40], referring to *Kain v Hutton* [2008] NZSC 61, [2008] 3 NZLR 589 at [19]–[21] and *Wong v Burt* [2005] 1 NZLR 91 (CA) at [30].

¹² At [43]–[44].

appointment when Mrs Lim died in February 2019 but took steps only when the debt collector made demand in December 2019 and January 2020.¹³ On the date of Ming and Hong's appointment, repayment was overdue. If steadying the ship was what was sought then they could have achieved that objective, the Judge thought, by appointing someone other than Ming or an independent trustee.¹⁴

[25] Accordingly, the Judge's conclusion was that Ming and Hong's primary purpose was to benefit Ming by halting the calling-in of the loan and by revoking the demand for payment. The delayed obligation to pay, the Judge found, prevented interest from continuing to accrue.¹⁵ Accordingly, it was found that their purpose was improper and their appointment invalid.¹⁶

[26] The Judge appointed Comac as trustee, as the parties had in any event agreed.¹⁷

The costs judgment

[27] The Judge awarded costs to Steven and Suey. He did so for two reasons. First, he did not see the 7 October 2021 proposal as amounting to a settlement offer that might have offset Ming and Hong's costs liability. He saw it more as an option with contingencies attached.¹⁸

[28] Secondly, he did not see previous proposals by Ming and Hong as working in their favour. He saw their positions on the appointment of independent trustees as being inconsistent — particularly when they insisted that, despite agreement on the appointment of Comac as an independent trustee, the trial continue.¹⁹

[29] The second reason saw the Judge concluding, not only that costs should be awarded to Steven and Suey, but that scale costs payable by Ming and Hong should be uplifted by 50 per cent. In the circumstances, the Judge found it to have been unreasonable for Ming and Hong to have insisted on five days of evidence to

¹³ At [45].

¹⁴ At [47].

¹⁵ At [54].

¹⁶ At [58].

¹⁷ At [60] and [65]. The Judge did not appoint co-trustees.

¹⁸ Costs judgment, above n 3, at [15].

¹⁹ At [18]–[19].

determine whether they had acted wrongly when they appointed themselves as trustees.²⁰

[30] The Judge awarded costs of \$61,901 to Steven, Suey and Selina together with costs on the costs application of \$3,585 — a total of \$74,448.50 once the costs associated with the appearance of counsel at trial were uplifted by 50 per cent — plus disbursements of \$12,809.32.²¹

The sole issue

[31] The submissions for Ming and Hong cover a wide range of matters with which they are concerned.²² However, the sole issue on appeal (aside from costs) is whether the Judge was wrong to conclude that Ming and Hong’s purpose in appointing themselves was improper.

Legal principles

[32] There is no real issue about the correct legal test for determining the validity of the appointment of trustees. While Ming and Hong had advanced as a ground of appeal an alleged error on the part of the Judge in “overlaying a ‘primary purpose’ test on the exercise of the power of appointment”, the parties were at one on the relevant test during the hearing.

[33] The Supreme Court put it this way in *Kain v Hutton*:²³

What that party must establish is that the real purpose of the appointor, without which the appointment would not have been made, was to benefit the appointor or a non-object (stranger) rather than benefiting an object ...

[34] Recently, the Supreme Court emphasised the point that an appointment power must be exercised for a proper purpose by reference to the terms on which it was conferred and the intentions of the donor; a principle which applies whether the power

²⁰ At [22].

²¹ At [23]–[26].

²² They include the alleged appointment of Ming and Mary as trustees in 2015, aspects of separate proceedings in the Family Court over the powers of attorney signed by Mrs Lim for her personal care and welfare, and the validity of the loan repayment demands.

²³ *Kain v Hutton*, above n 11, at [19] (footnote omitted).

is fiduciary or not.²⁴ However, as the Supreme Court said, the power to appoint or remove trustees is also presumptively a fiduciary power and, accordingly, it must be exercised in the best interests of the beneficiaries and not for a collateral purpose.²⁵

[35] The combination of these considerations led the Supreme Court in *Cooper v Pinney* to conclude that the fiduciary power to appoint must be exercised in good faith and in the interests of the beneficiaries and not for any improper purpose.²⁶

[36] The application of the proper purpose test involves a two-step inquiry. First, it is a question of determining, objectively, the purposes permitted by the settlor in granting the power.²⁷ Secondly, it is a question of whether the exercisers of the power acted in accordance with those purposes and not for an improper reason. This part of the test is necessarily subjective.²⁸

[37] The parties agree that the power of appointment in this case, interpreted objectively at the date the power of appointment was made, did not permit the exercisers of the power to exercise it for their self-benefit. Therefore, the focus shifts to Ming and Hong's purposes in exercising the power.

[38] The question is not whether the appointment could be justified on some rational basis, but whether the appointor's real purpose was to benefit an object of the power or to confer an impermissible benefit on themselves or a third party. The point in time at which that assessment is to be made is the date on which the power was exercised.²⁹

[39] The Judge summarised the relevant principles appropriately.³⁰ We uphold that summary of the principles and turn now to consider their application.

²⁴ *Cooper v Pinney* [2024] NZSC 181, [2024] 1 NZLR 935 at [106].

²⁵ At [111] and [112].

²⁶ At [115].

²⁷ See *Wong v Grand View Private Trust Co Ltd* [2022] UKPC 47, [2023] 2 LRC 559 at [61].

²⁸ *Eclairs Group Ltd v JKN Oil and Gas plc* [2015] UKSC 71, [2016] 3 All ER 641 at [15]; and see generally Andrew S Butler (ed) *Equity and Trusts in New Zealand* (3rd ed, Thomson Reuters; Wellington, 2025) at [7.5.3].

²⁹ *Legler v Formannoj* [2022] NZCA 607 at [29].

³⁰ Substantive judgment, above n 2, at [39]–[40].

The case for Ming and Hong

[40] Ming and Hong say that they appointed themselves for two reasons. First to obtain the Trust's financial information that they (together with Mary, Susanne and Sumy) had been seeking and that Steven and Suey had not provided. Secondly, to "steady the ship".³¹ In using that phrase, Ming and Hong emphasise that Mrs Lim had given them the power of appointment and had wanted them to manage their affairs and that they had been seeking to achieve a resolution of all issues.

[41] On appeal, Ming and Hong focus on the December 2021 Deed of Discharge and appointment of trustees, rather than on the earlier, February 2020, deed. December 2021 is the point in time at which, they say, their intentions should be assessed. They say that the Judge was wrong to find that the December 2021 deed was merely to confirm the February 2020 deed.

[42] By December 2021, they say, consent orders had been made in the probate proceeding putting on hold the administration of the Trust and the making of demands;³² Suey and Steven had continued to withhold financial information; and probate of Mrs Lim's 2015 will had been granted. This set of circumstances, they say, shows that any benefit to Ming from his position as trustee was incidental. Moreover, they say, the \$350,000 remained payable on demand and the demands made by Steven and Suey in early 2018 were invalid and issued unreasonably.

[43] Accordingly, they say, it was in order for them to have appointed themselves as trustees.

[44] Costs, Ming and Hong say, should not have been awarded against them. They say that Steven and Suey did not receive the relief they sought. And they refer to proposals they had made for resolution since 2021.

³¹ A phrase used frequently by Ming and Hong in the case, the meaning of which is opaque.

³² *Re Lim* HC Auckland CIV-2020-404-514, 10 July 2020.

Discussion

The substantive judgment

[45] We think the Judge was right to focus on Ming and Hong's purpose when they signed the February 2020 deed. While the statements of claim pleaded that Ming and Hong had executed the December 2021 deed for an improper purpose, the submissions for Ming and Hong in the High Court focused on the February 2020 deed, saying that the 2021 deed was a "re-exercise" of the February 2020 appointment, was "confirmatory" and, therefore, was "unnecessary".³³

[46] The evidence leads us to agree with the Judge that the self-appointment was driven by Ming's personal interest. The timing of the change is a central consideration.

[47] Ming and Hong's power of appointment arose when Mrs Lim died in 2019. While they had made requests for information, it was only when the debt collector made demand in December 2019 and January 2020 that they used the power. As soon as they used it, they put in train a sequence of events. The notice was served on 24 February, the next working day. The day after that, the bank was notified, the debt collector's services were terminated and the demand was revoked. Further, as mentioned above, at [15], the focus in the letter from the solicitors for the Trust to Ming's Trust in February 2020, advising of the change in trustees, was on the revocation of the demand for the loan.

[48] Ming confirmed that to be the case in oral evidence in saying that it was when he received the letter of demand that "everything went pear shaped for me" and that he was at that point of the view that "we just had to stop this, to nail it".

[49] Ming accepted in evidence that his conflict of interest in appointing himself was "pretty obvious" and that he appointed himself to ensure that any subsequent trustee would not have a basis to claim interest from him. He went on to accept that the "whole reason" he made the appointment was his view that it was wrong for the previous trustees to have sought repayment of the loan when his mother had made a

³³ Ming confirmed in evidence in the High Court that the December 2021 deed was entered in to for "essentially the same reasons as the February 2020 deed".

substantial gift to him in her will which would have covered almost all of the outstanding \$350,000 debt.³⁴ Hong gave evidence to much the same effect.

[50] We agree with the submission made for Steven and Suey that there is no logical connection between wanting financial information and needing to install Ming and Hong as trustees. An independent trustee could have obtained information, as was in fact the case once Comac was appointed. But it is not clear that an independent trustee would have revoked the demand made of Ming's Trust immediately upon assuming office.

[51] Further, as the Judge observed, the 24 February 2020 letter to Steven and Suey contained only a general request for Trust documents. Moreover, while subsequent requests for information were made, they do not assist in determining the purpose in the trustee appointments and many of them comprised litigation or pre-action correspondence between solicitors.

[52] We cannot accept the proposition that, in appointing themselves, Ming and Hong were endeavouring to "steady the ship". Amid the ongoing issues and litigation between the parties, the appointments could only have had the opposite effect.

[53] For these reasons we are satisfied that the Judge was right to find that Ming and Hong's primary purpose in appointing themselves in February 2020 was to benefit Ming by stopping the loan from being called in and to prevent interest from accruing. Their purpose was improper and their appointment was invalid.

[54] Equally, we are satisfied that Ming and Hong's purpose in executing the December 2021 deed was to confirm the February 2020 deed, for good measure, after probate of Mrs Lim's will was obtained. By that stage, the demand had been revoked for nearly two years, yet no steps had been taken to investigate the loan position and Ming had received a \$2 million distribution from his mother's estate 18 months earlier but still had not repaid the loan. Factors such as these serve to confirm Ming and

³⁴ It is noteworthy that, in the respondents' recent application for review of Comac's trustee decisions, Lang J doubted that the Trust would be able to set-off funds received by Ming as a beneficiary against funds owed by Ming's Trust. See *Yip Lim v Comac Trustees Ltd*, above n 4, at [37].

Hong's primary purpose and events that transpired between the dates on which the two deeds were signed do not change that.

[55] It is sufficiently clear to us that the purpose in executing both deeds was the same. In both cases, the purpose was improper and the Judge was right to have found the appointment of Ming and Hong to be invalid as a consequence.

[56] The appeal against the substantive judgment does not succeed.

The costs judgment

[57] Because an appeal against the costs decision is an appeal against the exercise of a discretion, an appellant must show that the judge below acted on a wrong principle, and failed to take into account a relevant matter, took account of an irrelevant matter or was plainly wrong.³⁵

[58] We will discuss the issues in a little detail in order to explain why it is that we have reached the view that the appeal on the costs judgment should succeed.

[59] There were two distinct phases in the proceeding where each side drove up costs unnecessarily.

The pre-trial period

[60] Before the proceeding was filed by Steven and Suey in June 2022, Ming and Hong had made endeavours to resolve the dispute. As mentioned in [17] above, on 7 October 2021 Ming and Hong had made a global proposal to resolve the proceeding (and other proceedings between the siblings). As is relevant here, the proposal was to the effect that, if Steven and Suey provided certain information, Ming's indebtedness to the Trust would be forgiven in return for him not receiving the bequest made to him of the debts due from the Trust to Mrs Lim.³⁶

³⁵ *May v May* (1982) 1 NZFLR 165 (CA) at 169–170; and *Cullen v Pa'u* [2026] NZCA 30 at [69].

³⁶ A range of other terms were proposed in the form of a deed of family arrangement.

[61] There is something to be said for the Judge’s view that the letter did not contain an offer of settlement as such but was, rather, an attempt to secure an option, given its heavily conditional terms. However, it was a genuine attempt to find a pathway to resolution.

[62] That said, for the purpose of considering costs in the High Court since the proceeding was filed, we see it as being appropriate to focus on the behaviour of the parties during the course of the litigation. Since the proceeding was filed, Ming and Hong made repeated efforts to find a compromise, including by offering to step down in favour of a sole independent corporate trustee. They proposed Perpetual Trust in October 2023, Public Trust in August 2024 (neither of which were acceptable to Steven and Suey) and Comac in September 2024. Furthermore, they had in March 2023 proposed a judicial settlement conference³⁷ and mediation in July 2024.³⁸

[63] Steven and Suey refused, persistently, to accept a sole independent trustee and, instead, drove the litigation forward to seek their own reinstatement as trustees.³⁹ Their 17 September 2024 opening submissions (filed two weeks before the High Court trial) maintained that they should be reappointed, positioning Comac only as a “back-up”. It was not until the first day of trial (30 September 2024) that Steven and Suey relented, filing an amended statement of claim that dropped their bid for reinstatement and agreed to the appointment of Comac. Steven and Suey’s intransigence caused the parties to incur the significant costs of preparing for a trial to resolve an issue they ultimately conceded on day one.

[64] While the Judge referred to the proposals that Ming and Hong’s made during the course of the litigation, he was of the view that they were undermined because Ming and Hong were changeable on whether they wanted an independent trustee.⁴⁰

³⁷ The judicial settlement conference took place in August 2023 and an agreement in principle was reached but the settlement collapsed in September and October 2023.

³⁸ Alongside the mediation proposal made on 11 and 26 July 2024, Ming and Hong issued an open settlement offer mirroring the October 2021 terms. The offer was accepted by Mary, Susanne and Sumy in July 2024 but rejected by Steven, Suey and Selina in September 2024.

³⁹ They had for example made a settlement proposal in July 2022 but it involved them being reinstated as trustees.

⁴⁰ Costs judgment, above n 3, at [18].

[65] It is on this point that, in our view, the Judge failed to take into account a relevant matter, or was wrong. Ming and Hong made multiple endeavours to find a resolution for the proceedings. The proposals were changeable because, as we have explained, Steven and Suey refused persistently to engage with them, until the first day of the trial. Accordingly, as we see it, it would be reasonable for Steven and Suey to bear the pre-trial costs.

The trial period

[66] Once Steven and Suey relented on day one, the substantive future of the Trust was effectively resolved through the appointment of Comac, with only minor parameters left to determine. Furthermore, on 1 October 2024 (the second day of trial) Steven and Suey advised that they were prepared not to pursue their claim challenging Ming and Hong's past self-appointments.

[67] However, Ming and Hong refused to let the matter rest. They advised that, if Steven and Suey dropped their claim, they would seek leave to add a counterclaim for a declaration that their self-appointment was in order. Ming and Hong insisted on proceeding with a five day trial to seek vindication for their past actions, pursuing a largely moot point. Ultimately, they failed in this endeavour, as the High Court concluded that their primary purpose in appointing themselves was improper, a finding we have upheld.

[68] Because Ming and Hong forced a lengthy trial on an issue on which they were unsuccessful, it would be appropriate for them to bear the costs of the trial itself. We agree with the Judge on this point but, as we have said, the point on which we differ is the need for Steven and Suey to bear the pre-trial costs.

Conclusion on the costs judgment

[69] The litigation costs were heavily inflated by unreasonable conduct on the parts of both factions at different junctures. Because Steven and Suey are largely responsible for the unnecessary pre-trial costs and Ming and Hong are responsible for

the unnecessary trial costs, their respective liabilities offset each other and, in our view, the most appropriate outcome is for costs to lie where they fall.

[70] Because this conclusion results from the views we have expressed in [65] and [68] above, we are satisfied that the test to be applied, as described in [57] above, is met and, accordingly, we would allow the appeal against the costs judgment.

Costs in this Court

[71] In this Court, the primary focus in both the written and oral submissions for both parties was on the substantive appeal — whether Ming and Hong acted for an improper purpose in appointing themselves as trustees. Ming and Hong were unsuccessful on their substantive appeal — which was essentially moot in any event. They should, as a result, bear costs liability for that. However, they have succeeded on their appeal on the costs judgment and are entitled to recognition on costs for that. Given the disparate time involved in the two appeals, costs on the successful and unsuccessful aspects of the appeal do not cancel each other out. Accordingly, we make an order for costs in favour of Steven and Suey for a standard appeal with a 20 per cent reduction to make provision for Ming and Hong’s success on the costs appeal.

Result

[72] The appeal against the judgment in [2024] NZHC 3012 is dismissed.

[73] The appeal against the judgment in [2025] NZHC 227 is allowed.

[74] Costs in the High Court are to lie where they fall.

[75] In respect of this appeal, the appellants must pay the respondents one set of costs for a standard appeal on a band A basis, reduced by 20 per cent, together with usual disbursements.

Solicitors:
Russell McVeagh, Auckland for Appellants
Gilbert Walker, Auckland for First and Second Respondents