Court of Appeal
Supreme Court

New South Wales

Case Name:	Koprivnjak v Koprivnjak
Medium Neutral Citation:	[2023] NSWCA 2
Hearing Date(s):	6 December 2022
Date of Orders:	02 February 2023
Decision Date:	2 February 2023
Before:	Leeming JA at [1] Mitchelmore JA at [5] Griffiths AJA at [6]
Decision:	(1) The appeal is dismissed, with costs. (2) Any party seeking a variation to the costs order in order (1) above may file and serve a brief outline of written submissions not exceeding two (2) pages in length within 28 days of the date of this judgment. Within a further 14 days thereof, the other party should file and serve a brief outline of written submissions in reply not exceeding two (2) pages in length.
Catchwords:	EQUITY – Trusts and trustees – Resulting trusts – Purchase money trusts – Presumption of advancement EQUITY – Trusts and trustees – Constructive trusts – Common intention
Cases Cited:	Amit Laundry Pty Ltd v Jain [2017] NSWSC 1495 Bassett v Bassett [2021] NSWCA 320 Bassett v Cameron [2021] NSWSC 207 Bijkerk Investments Pty Ltd Bikic [2020] NSWSC 133 Bosanac v Commissioner of Taxation [2022] HCA 34 Commissioner of Taxation v Bosanac (No 7) [2021] FCAFC 158 Green v Green (1989) 17 NSWLR 343

	Jain v Amit Laundry Pty Ltd [2019] NSWCA 20 Koprivnjak v Koprivnjak [2022] NSWSC 586 Koprivnjak v Koprivnjak (No 2) [2022] NSWSC 756 Massoud v Nationwide News Pty Ltd; Massoud v Fox Sports Australia Pty Ltd [2022] NSWCA 150 Nelson v Nelson (1995) 184 CLR 538; [1995] HCA 25 Trustees of the Property of Cummins (a bankrupt) v Cummins (2006) 227 CLR 278; [2006] HCA 6
Category:	Principal judgment
Parties:	John Koprivnjak (Appellant) Natalie Koprivnjak (Respondent)
Representation:	Counsel: F Corsaro SC (Appellant) C Bolger (Respondent) Solicitors: Avondale Lawyers (Appellant) Chatswood Law (Respondent)
File Number(s):	2022/00171716
Publication Restriction:	Nil
Decision under appeal:	
Court or Tribunal:	Supreme Court of NSW
Jurisdiction:	Equity
Citation:	[2022] NSWSC 586 [2022] NSWSC 756
Date of Decision:	16 May 2022
Before:	Peden J
File Number(s):	2020/00339514

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

HEADNOTE

[This headnote is not to be read as part of the judgment]

In November or December 2011, the respondent, Ms Natalie Koprivnjak, acquired in her name alone a property in Shoal Bay NSW for a purchase price of $300,000. The appellant, Mr John Koprivnjak, who is the respondent's father, assisted her financially with the purchase by providing the $15,000 deposit and transferring a further $60,000 into her bank account to apply towards the purchase price. Those sums derived from the bank account of the appellant's company, Titles Strata Management Pty Ltd (**TSM**). On 18 November 2011, the parties executed a mortgage referencing an advance of $75,000 to the respondent. The balance of the purchase price was paid by a loan taken out by the respondent which was secured by a mortgage in favour of the National Australia Bank (**NAB**).

In the years following the purchase, the appellant paid towards renovations and property maintenance and caused TSM to make monthly payments of $1,400 into the respondent's personal bank account, from which mortgage repayments were made.

The property was sold in December 2020 in the context of Family Court proceedings between the appellant and his then wife. By this time, there existed disagreement between the appellant and respondent as to the true beneficial ownership of the property. Whereas the appellant considered himself to be the beneficial owner, the respondent contended that the appellant merely assisted with her purchase of the property by providing a loan of $75,000. The proceeds of sale were paid into a controlled monies account pending determination of the appellant and respondent's competing claims.

On 8 February 2021, the appellant commenced proceedings claiming that the respondent held 25% of the property on resulting trust for him because he contributed to the purchase price. He also claimed that there was a common intention constructive trust as to the other 75% based on a common understanding between him and the respondent by reason of his contributions to the discharge of the mortgage in favour of the NAB and property

maintenance. The appellant alternatively sought to enforce the covenants in the mortgage document between him and the respondent together with a sum of money for the improvements that he said he made to the property. The respondent agreed that the appellant was entitled to repayment of the loan secured by the mortgage document.

The primary judge rejected each of these claims, finding that the $75,000 advanced by the appellant to the respondent was a loan. Her Honour was critical of the appellant's evidence and, where it conflicted with the respondent's or the objective evidence, preferred the latter. Her Honour was also unpersuaded by the documentary evidence upon which the appellant relied, including text messages exchanged between him and the respondent, and the evidence of a solicitor, Mr Mark Marando, who represented the respondent on the conveyance in 2011 to the effect that he informed her about the appellant's intention that she hold the property on trust for him. Much of this documentary evidence post-dated the purchase by a number of years and did not shed light on the parties' intention as at the time of purchase, did not constitute an admission by the respondent against interest as suggested by the appellant, did not support the appellant's case, or was equally consistent with the respondent's case as it was with the appellant's. Part of the proceeds of sale were distributed to the appellant in satisfaction of the mortgage covenants while the remainder was released to the respondent.

The appellant appealed from that decision. On the appeal, the appellant relied heavily for the first time on two sets of documents, a rental agreement and some insurance documents concerning the property, on which his name and contact details appeared to support his contentions regarding the true beneficial ownership of the property. The appellant otherwise broadly challenged the primary judge's fact finding.

The Court (Griffiths AJA, Leeming and Mitchelmore JJA agreeing), held, dismissing the appeal with costs:

The documentary material upon which the appellant relied on the appeal, which was not raised in any substantive fashion in the proceeding below, did not assist his case. These documents were prepared some time after the

purchase of the property and did not contain admissions against interest on the respondent's part. These documents were not determinative of the relevant issues, whether looked at in isolation or in conjunction with other relevant evidence: [69]–[76].

There were several notable lacunae in the evidence. For example, the evidence did not include copies of primary documents relating to the first home owner's grant and stamp duty exemption received by the respondent, land tax or copies of the settlement sheet and payment directions concerning the purchase of the property, such contemporaneous financial information presumably bearing directly upon the ultimate issue in the proceeding: [77]–[78].

The text messages upon which the appellant relied did not assist his case. In particular, there were a number of ambiguities evident in those exchanges, notably as to whether the property being discussed was that the subject of these proceedings. Additionally, the weight to be given to the text messages, which were exchanged in December 2016 or later, had to be considered in the context of the breakdown in the personal and family relationships at that time: [79]–[86]. There was also no substance in the appellant's complaint that the primary judge erred by not giving Mr Marando's evidence sufficient weight. It must be borne in mind that Mr Marando was recollecting a conversation which he claimed to have had with the respondent years prior to giving evidence in circumstances where he kept no detailed file notes and could not recall having a file note about the conversation, and it was notable that the primary judge gave several separate reasons for the limited weight she gave to his evidence: [87]–[91].

JUDGMENT

1 **LEEMING JA:** I have had the advantage of reading the reasons for judgment of Griffiths AJA in draft. I agree with his Honour that the appeal should be dismissed with costs, and I agree with his reasons. I wish to elaborate one point.

2 The appellant has established one error in the judgment at first instance, namely, that a text message sent by the respondent daughter to her appellant

father some five years after the event stating that “You bullied your 18yr old daughter to have her name on a house and mortgage so you could avoid tax” was not an admission. I agree with Griffiths AJA that the message was an admission against the respondent daughter's interest and therefore relevant to the evaluation of the ultimate question whether the father had established an intention that the property was held on trust for him. However, it does not follow that the appeal should succeed.

3 The appellant bears the onus of establishing that there has been some “substantial wrong or miscarriage”, absent which “th[is] Court must not order a new trial”: Uniform Civil Procedure Rules 2005 (NSW) r 51.53. The principles applicable to that rule are discussed in *Massoud v Nationwide News Pty Ltd; Massoud v Fox Sports Australia Pty Ltd* [2022] NSWCA 150 at [104]–[114]. In the circumstances of this case, where (a) the weight to be given to the text message is relatively slight having regard to its timing and the distress the respondent appears to have been suffering at the time, (b) the parties chose not to tender all of the contemporaneous documents bearing on their objectively manifested intentions (including the settlement sheet, the application for first home owner's grant and stamp duty relief, and the loan documents from the bank), (c) the contemporaneous documents which were tendered tell squarely against the appellant (notably, the executed mortgage recording a loan to his daughter), and (d) the primary judge regarded the appellant as a “generally unimpressive witness” with an “evasive demeanour”, I do not regard the appellant as having established any substantial wrong or miscarriage so as to warrant a new trial.

4 Finally, if I were wrong about those matters not establishing a substantial wrong or miscarriage, I would wish to hear further from the parties why any relief in equity to which the appellant might be entitled on a retrial ought not be qualified analogously to *Nelson v Nelson* (1995) 184 CLR 538; [1995] HCA 25, by reference to the federal and state taxation advantages seemingly obtained by the appellant on a basis which was inconsistent with his being the full beneficial owner of the property. Although the parties have not been fully heard on this point, it is difficult to see how the requirements of the first home owner's scheme would be satisfied on the appellant's primary case. There are also

difficulties with the payments made by him for the purpose of meeting mortgage repayments which were annotated as “car allowance” in the appellant's bank records. *Nelson v Nelson* establishes that relief may be ordered on terms, even if the terms involve making a payment to a non-party. If such relief is appropriate in the present case, such that any ultimate success by the appellant would be on terms, that would tend to confirm the absence of any substantial wrong or miscarriage.

5 **MITCHELMORE JA:** I have had the benefit of reading the draft reasons of Griffiths AJA and the additional reasons of Leeming JA. I agree with the orders proposed by Griffiths AJA for the reasons given by his Honour and the additional reasons of Leeming JA.

6 **GRIFFITHS AJA:** The appellant appeals against orders made by Peden J in *Koprivnjak v Koprivnjak* [2022] NSWSC 586 (**PJ1**) and *Koprivnjak v Koprivnjak (No 2)* [2022] NSWSC 756 (**PJ2**).

7 The appellant is the respondent’s father. It will also be necessary to refer to the respondent’s mother, who is now divorced from the appellant. For convenience, and without any disrespect, I will refer to these three family members as John, Natalie and Lena respectively (as they were also referred to below).

8 The appeal relates to a property at Lionel Avenue, Shoal Bay NSW (**property**). The property was bought in November or December 2011 (inexplicably, the evidence was unclear on this issue). Natalie was the registered proprietor of the property from that time until it was sold on 23 December 2020 in the context of Family Court proceedings relating to the breakdown of the marriage between John and Lena.

9 In brief, John appeals against the primary judge’s rejection of his claims that Natalie held the property on resulting trust by reason of the fact as between he and Natalie he contributed to the purchase price (namely $75,000 secured by a mortgage over the property in his favour). He also unsuccessfully claimed that there was a common intention constructive trust in relation to the property based on an alleged common understanding between he and Natalie by reason of his contributions to the discharge of another mortgage in favour of

the National Australia Bank (**NAB**) as well as expenses of renovating and improving the property. These claims were not presented with great clarity in the proceeding below. In these circumstances, it was open to the primary judge to characterise John's claim as one for 25% of the property being held on resulting trust by reason of John's $75,000 contribution to the purchase price and the remaining 75% being held on constructive trust (see at PJ1[6]).

10 John accepted that the presumption of advancement would assist Natalie, but he argued below that the presumption had been rebutted by the evidence which demonstrated the existence of a resulting and/or constructive trust.

11 For the following reasons, the appeal should be dismissed, with costs.

Summary of some undisputed background facts

12 It was common ground that:

(1) the property was acquired in Natalie's name for the purchase price of $300,000;

(2) a 5% deposit ($15,000) was required to be paid on the exchange of contracts on 21 October 2011;

(3) the deposit required to be paid on exchange was paid by:

(a) an amount of $750 paid to the vendor's agent by John using funds in the bank account of John's company, Titles Strata Management Pty Ltd (**TSM**) on 11 October 2011; and

(b) an amount of $14,250 paid by John to the vendor's agent using the TSM bank account on 20 October 2011;

(4) John transferred a further $60,000 into Natalie's bank account on 21 October 2011 to apply towards the purchase price of the property;

(5) completion of the purchase occurred in November or December 2011;

(6) the property was later sold as a result of orders made in the family law proceedings between John and Lena, in circumstances where John, Lena and Natalie agreed as part of the proceeding that the property should be sold and the money be held in a trust account pending the determination as to the true owner;

(7) the proceeds of the sale of the property (which amounted to $475,589.13) were paid into a controlled monies account in the name of the solicitor who acted for Natalie on the conveyance in 2020 (Fordham Lawyers), pending the final determination as to the competing claims; and

(8) the determination of the parties' respective interests in the property was also to determine the parties' respective interests and entitlements in the proceeds of sale.

13 There is and was no dispute that if the $75,000 paid by John was properly characterised as a contribution towards the purchase price of the property, the presumption of advancement placed the burden of proof on John to show a contrary intention.

Primary judge's reasons for judgment summarised

14 The primary judge noted that John carried the onus of satisfying the Court on the balance of probabilities that:

(1) he advanced money to the purchase price and costs of the property for the purpose of a resulting trust; and

(2) he and Natalie had the common intention that Natalie would hold the property on trust for him (PJ1[8]).

15 Her Honour then noted at PJ1[9] that John's alternative case (in the event that no trust was found) was that he was entitled to enforce the covenants in a mortgage document dated 18 November 2021 between him and Natalie (and was entitled to receive $75,000 plus interest as provided for in that document), together with a sum of money for the improvements that he said he made to the property.

16 The primary judge summarised Natalie's case in response as comprising the following principal elements:

(1) there was no intention that the property be held on trust;

(2) instead, the parties were bound by the mortgage and she had offered to pay John in accordance with that mortgage;

(3) John was not entitled to any sum for improvements to the property; and

(4) pursuant to her cross-claim, she was entitled to a set off against the money due under the mortgage by reason of John obtaining the benefit of an insurance payout in relation to the property (PJ1[10]).

17 In brief, the primary judge described the relevant factual background as follows (PJ1[11]ff):

(1) John is the sole director and shareholder of TSM, which operated a strata management business, in which Natalie worked from when she left school until some time in 2018;

(2) John claimed that he and Lena decided to purchase an investment property and holiday home and to put the property in Natalie's name (she was 19 years old at the time and John considered that this would help Natalie "start getting a good credit history");

(3) Natalie was named as purchaser on the contract for the sale of land and subsequently became the registered proprietor of the property;

(4) there was no contest that John helped Natalie with many aspects of the purchase of the property, including the matters described at [12(3)–(4)] and [13] above. It was also undisputed that John had introduced Natalie to a solicitor, Mr Mark Marando, for the purpose of him acting for Natalie in the conveyancing;

(5) it was also undisputed that John liaised with a mortgage broker and then with the NAB in relation to a $240,000 loan Natalie took out to fund the purchase;

(6) also undisputed was that John had organised various renovations of the property, which were carried out by his friends for free or at "mate's rates" and for which there were limited invoices or receipts;

(7) John denied any knowledge that Natalie received a first home owner's grant and a stamp duty exemption of approximately $9,000 (contentions which her Honour rejected);

(8) in December 2012, John and Natalie were named on a holiday rental management contract with Winning Real Estate Pty Ltd (trading as Winning Holidays) for the rental of the property; the primary judge found that Natalie did not handle all matters with Winning Holidays and that her parents had access to the online rental portal until they were removed from it by Natalie;

(9) it was common ground that the rental income was deposited directly into the mortgage account;

(10) the parties' family and friends regularly used the property without paying rent and Lena lived there for about a year without paying rent; and

(11) between May 2012 and May 2017, TSM made regular monthly payments of $1,400 into Natalie's personal bank account, from which mortgage repayments and expenses were deducted. Natalie also used the same account for some personal transactions.

18 The primary judge summarised at PJ1[20]–[28] some relevant principles concerning resulting trusts, the presumption of advancement and constructive trusts. Those principles need not be summarised at great length because, as will shortly emerge, the appeal is directed not to the correctness of the legal principles as described by the primary judge, but rather to their application in the particular circumstances of this case. Indeed, Mr Corsaro SC, who appeared for the appellant on the appeal but not below, submitted in opening

oral address on the appeal, that "when one cuts and slices the appeal, it really is predicated on having to demonstrate error in relation to the factual determinations …".

19 In brief, as to resulting trusts, the primary judge relied upon the statement of the relevant principles by Ward CJ in Eq (as her Honour then was) in ***Amit Laundry*** *Pty Ltd v Jain* [2017] NSWSC 1495 at [161]–[168] (from which an appeal was dismissed in *Jain v Amit Laundry Pty Ltd* [2019] NSWCA 20). The central points may be summarised as follows (without reference to relevant authorities):

(1) where two or more persons advance the purchase price of property in different shares, it is presumed that the person or persons to whom the legal title is transferred hold the property upon resulting trust in favour of those who provided the purchase price in the shares in which they provided it;

(2) once the primary fact giving rise to the presumption of a resulting trust is established, the burden falls on the party disputing the existence of a resulting trust to rebut the presumed fact on the balance of probabilities;

(3) consequently, the presumption of resulting trust is the starting point of a factual enquiry about the intention of the party (or parties) who provided the funds for the relevant purchase;

(4) the search for the intention of the relevant party (or parties) is as to proof of a "definite", and not "nebulous", intention, as opposed to a subjective uncommunicated intention;

(5) the relevant intention is to be found as at the date of purchase (or immediately thereafter), although evidence of later acts and declarations is admissible as admissions against interest; and

(6) for the presumption of resulting trust to apply, the purchase price must have been provided by the purchaser in their capacity as purchaser and not, for example, by way of loan.

20 The primary judge also identified some relevant legal principles referred to in the decision of the Full Court of the Federal Court in *Commissioner of Taxation v* ***Bosanac*** *(No 7)* [2021] FCAFC 158. Her Honour (who herself had raised the Full Court's decision below) noted at PJ1[22] that the High Court was to hear an appeal against that decision. In particular, with reference to the presumption of advancement, the primary judge cited at PJ1[23] the following passage from the Full Court's decision in *Bosanac* at [3]:

> … The second is the presumption of advancement. Where it applies, the presumption of advancement operates to prevent a resulting trust from arising because the relationship between the relevant parties provides a reason against presuming a trust. The presumption operates on the hypothesis that, because a certain relationship exists between two parties, a benefit provided by one party to the other at the cost of the first was intended to be provided by way of "advancement"; absent evidence to the contrary, the relationship supplies a reason for why a gift was intended.

21 It may be interpolated that, on 12 October 2022 (ie after the primary judge published her reasons for judgment in the present proceeding), the High Court allowed the appeal (see *Bosanac v Commissioner of Taxation* [2022] HCA 34 (***Bosanac High Court***)). Neither party suggested that the High Court's decision had any bearing on the outcome of this appeal (indeed, neither party referred to the decision in their respective pre-hearing written submissions notwithstanding that they were written after the High Court's decision was delivered). I will, however, later in these reasons for judgment refer to certain passages from *Bosanac High Court* which are relevant.

22 The primary judge stated at PJ1[26] that it was necessary to consider the intention of the relevant persons around the time of completion of the conveyance when all the purchase money had been provided, rather than confining that consideration to the time of exchange, citing *inter alia Trustees of the Property of Cummins (a bankrupt) v* ***Cummins*** (2006) 227 CLR 278; [2006] HCA 6 at [67] per Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ.

23 Her Honour also acknowledged at PJ1[27] that later admissions and subsequent dealings are admissible on the question of intention, citing *Cummins* at [65].

24 As to John's claim that there was a common intention constructive trust, the primary judge noted at PJ1[28] that this claim was not developed in any detailed way, but her Honour adopted as a correct statement of the legal principles the judgment of Ward CJ in Eq (as her Honour then was) in ***Bassett v Cameron*** [2021] NSWSC 207 (from which an appeal was allowed on other grounds in *Bassett v Bassett* [2021] NSWCA 320). In brief, those principles were identified as follows:

(1) equity may intervene to prevent the unconscientious denial by the legal owner of another party's rights where the parties agreed, or it was their common intention, that the claimant should have an interest in the

property owned by the other, and the claimant acted to his or her detriment on the basis of that agreement or common intention;

(2) it is sufficient that the parties intend that the claimant should have a beneficial interest or some form of proprietary interest (as opposed to there being a common intention that the parties have a specific share of the property);

(3) a less stringent test applies to the requirement of detriment once the common intention has been established, citing *Green v Green* (1989) 17 NSWLR 343 at 357 per Gleeson CJ (with whom Priestley JA agreed); and

(4) a common intention constructive trust may arise after the acquisition of the relevant property if the evidence establishes that the relevant common intention was formed at some later time.

25 As noted above, neither party in this appeal challenged the correctness of the primary judge's statement of the relevant legal principles. Nor did either of them refer to or rely upon the decision of Leeming JA in *Bijkerk Investments Pty Ltd Bikic* [2020] NSWSC 1336, where his Honour explained why a common intention constructive trust may no longer survive in Australian law separately from an entitlement in estoppel (see at [116]–[119]). It was unnecessary, however, for his Honour to express a concluded view on that issue in that case. The position is no different here because, as will emerge, I consider that the appellant's claim that the primary judge erred in fact in concluding that there was no such common intention should be rejected.

26 Returning to the summary of the reasons for judgment below, the primary judge found that the only money which John paid directly to the vendor for the purchase and/or mortgage was $15,000 by way of two transfers from TSM's bank account to the vendor's real estate agent. The balance of the purchase price was paid from the $60,000 John placed in Natalie's bank account and the NAB loan, for which Natalie was solely legally responsible (PJ1[29]–[30]).

27 Her Honour noted John's argument that, by causing TSM to make regular payments of $1,400 into Natalie's personal bank account, he contributed to the mortgage and that Natalie accepted that she used that money to make mortgage repayments and to cover other property expenses (PJ1[31]).

28 The primary judge turned her attention and made relevant findings on the issue of the parties' intention at PJ1[33]ff. The findings related to evidence given by various witnesses, as well as documentary material.

29 As to the former, her Honour described John as "a generally unimpressive witness" (PJ1[33]). Although Natalie's evidence was at times "argumentative or unnecessarily defensive", her Honour found that, overall, she appeared to be honest in her answers (PJ1[51]–[52]). Accordingly, where there was an inconsistency between John and Natalie's evidence or the objective evidence, the primary judge stated that she preferred Natalie's evidence and the objective evidence (PJ1[34]).

30 The primary judge's principal findings of fact and supporting reasons may be summarised as follows.

31 First, John's evidence as to a conversation he said he had with Natalie in Lena's presence prior to the exchange of contracts did not assist his case. That was because:

(1) John's version of the conversation, which included a claim that he told Natalie that he and Lena had found a holiday home, which they would put in her name and he would cover all the payments, did not establish any true intention concerning the purchase price and mortgage repayments; and

(2) in cross-examination, Lena denied that she was present during this conversation – rather John told her about it (PJ1[35]–[38]).

32 Secondly, the solicitor who carried out the conveyancing for Natalie (Mr Marando) deposed to a conversation he had had with John. He said that John told him that he was going to purchase the property for Natalie (his eldest daughter), and that he would be paying for everything. He said that he told John that it seemed to him that there was some sort of a trust and John could formalise the arrangements in a trust deed, which would protect him if Natalie did not subsequently acknowledge that the property belonged to him. Mr Marando also deposed that he had told Natalie that she was going to be listed as the purchaser on the contract and loan, that it would be in her name, but that John had said that she was holding the property for him on his behalf (PJ1[40]–[41]).

33 The primary judge noted that Natalie denied this conversation with Mr Marando and that he also acknowledged in cross-examination that he had no detailed file notes of any conversation, nor any clear recollection of providing Natalie with any advice concerning the house purchase (PJ1[41]–[42]). Also, Mr Marando acknowledged in cross-examination that he was aware of the mortgage document, but he had not prepared it and it was not shown to him at any time by John (PJ1[43]).

34 The primary judge made the following multiple findings at PJ1[44]:

> Even accepting Mr Marando's evidence about his conversation with John concerning a trust deed, John ultimately created a mortgage document rather than a trust deed, as detailed below. Further, even accepting he made some statement to Natalie, it did not clearly explain the nature of the trust and the basis of his statement other than perhaps something John had told him and any understanding by Natalie of the existence of a trust. It might have been expected that Mr Marando would have given his client clear advice if she was becoming a trustee. In any event, Mr Marando's evidence does not clearly demonstrate the position of the parties at or around the time of the completion of the purchase.

35 Thirdly, as to John's claims that his advance of $75,000 to Natalie to assist with the purchase and the regular payments of $1,400 into her bank account demonstrated that he intended to be the true or beneficial owner of the property, her Honour found that, without more, these actions were equally consistent with Natalie's claim that John loaned her $75,000 and then provided further financial assistance with the property as he had promised (PJ1[45]). The primary judge also noted that these payments were sometimes described in TSM's unredacted bank statements as "car allowance" (PJ1[87]).

36 Fourthly, her Honour explained at PJ1[46] why she did not place any real weight on Lena's affidavit evidence.

37 Fifthly, the primary judge noted at PJ1[47] that there was no documentary record of an express trust and no affidavit evidence of any conversation in which John told Natalie that she would be holding the property on trust for him.

38 Sixthly, Natalie was not challenged on her evidence that John never told her that she would be holding the property on trust for him and the primary judge rejected John's assertion during cross-examination that he had told Natalie that she "can hold it in trust for us" (PJ1[48]).

39 Seventhly, her Honour found that there was no substantial difference between John and Natalie's recollection of the pre-purchase conversation but it was necessary to look beyond that evidence to determine whether John had discharged his onus of establishing the existence of a trust that rebutted the presumption of advancement and the fact that Natalie was the registered proprietor (PJ1[53]–[54]).

40 The primary judge then turned her attention to various documents at PJ1[55]ff. Her Honour's assessment of that documentary evidence may be summarised as follows (noting that one of the appellant's arguments on appeal is that her Honour did not address all the relevant documentary evidence or did not assess relevant documents in the light of the totality of the evidence).

Text messages

41 After noting that the text messages relied upon by John were sent some five to six years after the property was purchased, her Honour correctly stated at PJ1[56] that "only admissions and subsequent conduct can be relied upon to advance a party's position in this regard". Accordingly, no weight was given to text messages sent by John to Natalie which asserted his ownership of the property.

42 Her Honour then addressed various individual texts as follows.

Natalie's texts dated 6 December 2016

43 On 6 December 2016, Natalie sent messages to John as follows:

> "I understand. But this is out of my budget. I have no budget and matt [her boyfriend] is not putting money in. You said you would give me money for helping out with the house. However much that is will be the car I can afford."
>
> "… I helped you with that house and it has done nothing but cause me problems and waste my time."
>
> "You said you would give me money for helping out with the house…"

44 Her Honour addressed those messages at PJ1[58]:

> These messages do not identify any of (a) what is being responded to, (b) what "house" is being discussed and (c) what "help" was involved. In cross-examination, Natalie was not sure, but considered the message might have been a reference to her assistance with her property and her "help" in allowing John and the family and friends to stay there rent free. I do not consider this ambiguous message, without all the surrounding context, amounts to an

admission by Natalie that she understood she held the property on trust for John.

Exchange of texts before 17 October 2017

45 On an unknown date, Natalie sent the following text message to John:

> You bullied your 18yr old daughter to have her name on a house and mortgage so you could avoid tax. Then you constantly threaten and abuse her mother and her and try to bully everyone into doing what you want then when you dont get your way you stop paying the intested on a house you bought in someone elses name without their full consent now you are threatening me again because I told you this property effects me negatively and it is in my best interests to take full control and give you no access. I have also given you options in order to have full financial control over the property but you dont want to take that option. I am not causing trouble i am looking after myself and my interests. You have caused me enough hardship emotionally and physically in life.

46 The primary judge did not regard Natalie's text as an admission by her that she knew that she held the property on trust for John. This was because:

(1) There was no evidence about the assertions that John was making in the message he sent to her that led Natalie to respond in such emotional terms.

(2) Natalie gave general evidence that John bullied her and often sent her "harassing texts". However, there was no evidence detailing bullying occurring at the unknown date of the text message. Natalie denied she was bullied into purchasing the property in 2011 and was not challenged on that evidence in cross-examination.

(3) It is not clear what Natalie meant by taking "full control". John's counsel did not suggest that Natalie was drawing a distinction between beneficial control and legal control. Another interpretation might have been that Natalie was going to stop John having access to the use of the property, and/or having any involvement with the rental agent and/or other aspects of the property if he was no longer providing her with financial support. This was not explored in cross-examination (PJ1[61]).

47 The primary judge concluded that, without more, the text message was not conclusive that Natalie knew that she held the property on trust for John since 2011. Natalie's text message was consistent with her:

(1) understanding that she owned the property and John had promised to assist financially with the property's costs, including where the rental payments were insufficient;

(2) feeling that John was overbearing and had organised the purchase exactly the way he wanted without involving Natalie enough; and

(3) believing (wrongly or rightly) that John had organised the purchase in some way that avoided tax, whether that was a reference to stamp duty (which was paid for by the exemption), tax on the payments TSM made to her, or something else. John did not give any evidence about how his alleged ownership of the property was accounted for in relation to any tax liability (PJ1[62]).

48 On an unknown date, but before 17 October 2017, John and Natalie exchanged the following text messages:

> John: "I want to deal with it"
>
> Natalie: "Put everything in your name and you can"
>
> John: "Until then, I need to pay the bill & collect the rent, have it properly documented."

49 On 17 October 2017, Natalie sent a text message to John raising similar ideas:

> Stop threatening people it will get you no where. The only way you will ever have anything to do with shoal bay is when its in your name and you can pay the stamp duty. You screwed my life around with this so you can pay the price as i have. That's the … Options.

50 The primary judge did not find these text messages assisted John. Rather, Natalie was asserting that she was the owner of the property and John would have to pay for it and the stamp duty if he wanted to own it or be more involved with the property. That was consistent with Natalie's beneficial ownership, not John's (PJ1[65]).

Exchange of texts sent possibly in second half of 2017

51 On an unknown date, but because of their content likely to be in the second half of 2017, Natalie and John had this text message exchange:

> John: "What is the last bank statement?"
>
> Natalie: "Well money has gone on interest, that's $1014 per month you gave me 5k. I've been paying electeicity anf water from it i paid aircon deposit You haven't put money for months in there you know money does not come from trees. No bookings apparently"

52 On an unknown date but again likely to be in the second half of 2017, John and Natalie exchanged the following text messages:

> Natalie: "What have i stolen? I've spent none of that money it all went on the fence, clearner, bills, interest. You haven't put anything in there for months. Money was going to run out eventually no rental came in"
>
> John: "You told be it's rented to Christmas, where is the money?"
>
> Natalie: "They haven't transferred anything"

53 The primary judge did not find these text messages to assist John. It was not disputed that John, through TSM, made regular deposits into Natalie's bank account and from that money she paid for the mortgage and property expenses. The text messages went no further than Natalie explaining the details of that arrangement at that time (PJ1[68]).

John's bank account records

54 In the TSM banking records relating to the three transfers making up the sum of $75,000, John had described each of those payments (dated 11, 20 and 21 October 2011) in those records as "Natalie Deposit", "Loan to Natalie" and "Natalie Loan" respectively. Her Honour noted at PJ1[71] that John said that these payments were not truly a loan to Natalie, but instead ought to have been described in the banking records as "loan to director". Her Honour found that this was inconsistent with John's evidence that he loaned the money to TSM and drew down on it, the consequence being it might have been expected that the description might have been something like "draw down on director loan".

55 The primary judge explained why she found John's evidence regarding the descriptions as unconvincing or as not ringing true (see PJ1[72]–[73]).

56 The primary judge also addressed the fact that John's descriptions of the payments were redacted in the copies of the banking records annexed to his affidavit. Her Honour inferred that John decided to rely on redacted copies because he wanted to distance himself from the payments being loans and that those descriptions were also inconsistent with his assertion of a trust (PJ1[75]).

The mortgage document

57 After noting that the mortgage document as between John and Natalie was dated 18 November 2011, which was shortly after the contract for sale of land had been exchanged and the $75,000 had been advanced to Natalie, the primary judge described the relevant covenants. Her Honour noted John's affidavit evidence that the purpose of the mortgage document was "in case an issue arose and Natalie turned rogue" (PJ1[79]). Her Honour concluded at PJ1[81] that, objectively, the mortgage (which was prepared by lawyers other than Mr Marando at John's request) was consistent with his intention that he

was giving Natalie a loan. If he had a different intention, it was logically likely that a different document would have been prepared.

58 The primary judge also noted at PJ1[82] that John had assisted Natalie and two of her siblings to purchase another property with the benefit of loans from him, which was consistent with John's evidence that "every father would help their children out" (see further below at [95]).

The caveat

59 The primary judge noted at PJ1[83] that the first explicit reference to a "resulting trust" is in the caveat which John lodged on the property in November 2018, which is well after the purchase date of the property. Her Honour concluded, for this reason, that the caveat did not assist John's case.

The primary judge's conclusion

60 Having regard to all these matters, the primary judge concluded at PJ1[93]:

> I do not find that as a whole Natalie's messages, taken together with the other evidence, indicate that it was the parties' common intention that the property was to be held by Natalie on trust for John.

61 Her Honour added at PJ1[94] that the conclusion that there was no trust was most obviously demonstrated by contemporaneous documents created by John, namely the mortgage and John's choice in describing as a "loan" his advance of the $75,000.

62 Accordingly, John's primary case was rejected.

63 The primary judge then considered John's alternative case regarding the $75,000 loan/mortgage. Her Honour noted that Natalie accepted that she was obliged to repay the amount of $75,000 plus interest as specified in the mortgage covenants (PJ1[98]).

64 It is not necessary to summarise other parts of the primary judge's reasons for judgment as they are not subject to appeal.

The grounds of appeal

65 Grounds 3, 4 and 7 in the notice of appeal dated 14 January 2022 were not pressed.

66 The remaining four grounds of appeal may be summarised as follows:

(1) The primary judge erred in holding that John had asserted as his primary position below that Natalie held 25% of the property on trust for him, rather than that Natalie held 100% of the property on trust for him.

(2) The primary judge erred in failing to recognise that the presumption of advancement had been rebutted with the consequence that Natalie held the property on resulting trust for John.

(3) The primary judge erred in failing to accept that certain text messages provided by Natalie to John demonstrated a common intention that she held the property on trust for him.

(4) Alternatively, the primary judge erred in failing to hold that Natalie held the property on resulting trust for John as to 25%.

67 To avoid adding unduly to the length of these reasons for judgment, I will address the parties' primary submissions on the appeal in the next section of these reasons for judgment.

Consideration and determination

68 As noted above, the central thrust of John's argument on the appeal is that the primary judge erred in her fact finding. John contends that the primary judge failed to look at all the evidence globally in determining whether or not there was a trust, including evidence of John's subjective intention and any common intention. John asserts that her Honour was selective in the matters which led her to conclude that the $75,000 was merely a loan and that there was no purchase price resulting trust or common intention constructive trust more generally.

69 As will shortly emerge, John contended that the primary judge erred in not viewing matters such as the texts, the mortgage document and Mr Marando's evidence in the context of the evidence generally. As is evident from my earlier summary of the primary judge's reasons for judgment, these particular matters were also argued below. In fairness to the primary judge, however, it became apparent during the course of oral address on the appeal that John raised and emphasised for the first time other documentary evidence which was not the subject of any contention by him below in either his pre-hearing outline of written submissions or in his oral closing address. That is the case, for example, in relation to the Winning Holidays rental agreement and insurance documents relating to the property, both of which figured prominently for the first time in the appellant's argument on the appeal.

70 It is well to address those documentary materials before returning to address the other evidence relied upon by John in challenging the primary judge's findings of fact. The Winning Holidays rental agreement is dated 14 December 2012, which is more than 12 months after settlement of the property. Under the heading "Principal details & contact information" the names of both Natalie and John appear as well as both their mobile phone numbers. Natalie's residential address, email address and work telephone number are also provided. John's name also appears under the heading "Alternative contact", together with his email address, work telephone number and home telephone number.

71 Significantly, Natalie's bank account details alone were provided for the purpose of receiving rental payments (and such payments were in fact deposited into that account).

72 The agreement was signed by both Natalie and John under the heading 'Signed by the Property Principal/s or by the Authorised Representative".

73 I do not accept John's submission that this document carries any particular evidentiary weight favourable to him on the relevant issues. It is dated approximately 12 months after the property purchase was completed. The explanation for this delay probably relates to the time taken for the renovations. It might also be noted that Lena gave evidence that, during the construction period, a friend of John's lived at the property for approximately two years while he oversaw the renovations. Nor do I consider that the rental agreement contains any admission against interest by Natalie simply because John's name and contact details appear on the agreement. Merely because he is identified as a contact person for the purposes of the agreement does not of, itself, or in conjunction with other matters, demonstrate that he had a beneficial interest in the property. Indeed, the facts are equally consistent with Natalie's case, as ultimately upheld by the primary judge (not the least being the fact that rental payments were paid into Natalie's NAB account).

74 The same may be said regarding the insurance documents relating to the property. No copy of the original insurance policy was in evidence. A written document titled "Confirmation of Policy Details" for the period 11 November 2015 to 11 November 2016 for a "Home Buildings insurance policy" in relation

to the property states the name of the insured(s) to be both Natalie and John. The document also discloses the fact that there was a no claim bonus of 25%. An attached document identified various policies held by John which were taken into account in determining the "Loyalty Discount" in relation to the Home Buildings insurance policy relating to the property. John's name was used to take advantage of a discount on the premium because of his other policies with the insurer. Both Natalie and John are also stated to be "[t]he insured" on this document, and the NAB is stated to be the first mortgagee (consistently with the mortgage between that bank and Natalie).

75 The evidence disclosed that the insurer made payments under the policy in November 2016 after a gumtree fell on the property. John placed particular emphasis on the fact that an amount of $38,000 was paid by the insurer into his account in respect of lost rent relating to this incident. The evidence also disclosed, however, that the insurer sent details of that payment in a letter which was addressed to both Natalie and John, in which Natalie is identified as being the subject of the claim and recording that the sum of $38,000 was deposited into an account (which was owned by John).

76 These insurance documents are not determinative of the relevant issues, whether looked at in isolation or in conjunction with other relevant evidence. They provide equal weight to the competing claims raised by both Natalie and John. Under cross-examination, Natalie said that she agreed with John that the $38,000 (although representing lost rent) should go into his account because he was "looking after repairs", however, her evidence was somewhat vague on the topic.

77 It might also be added that there was no evidence as to how this insurance payment was treated for tax purposes. If it represented lost rental income it would presumably have been Natalie's taxable income (the evidence below did include Natalie's group certificates for the financial years ending 2016 to 2019 respectively, but they disclosed only her work income). Although counsel for Natalie stated in his opening below that Natalie declared the rental income in her tax returns and claimed the interest on her loan with NAB, there was no evidence to substantiate that claim.

78 As was pointed out by the Court on the appeal, this is but one of several notable lacunae in the evidence. For example, in addition, the evidence did not include copies of primary documents relating to the first home owner's scheme (noting, however, that an amount of $7,000 was paid into Natalie's account in relation to this scheme), the stamp duty exemption which Natalie apparently received in the amount of $8,990, land tax or copies of the settlement sheet and directions to pay concerning the purchase of the property. This kind of contemporaneous financial information would presumably bear directly upon the ultimate issue in the case as to who had beneficial ownership of the property.

79 On the appeal, John placed particular emphasis on several texts, which appear in two tranches and are annexures to John's first affidavit below (some of the texts are set out at [43] to [52] above). This affidavit was evidently prepared quite hastily in the context of urgent proceedings relating to the caveat. This is reflected in the disorderly state of some of the annexures, including the texts, some of which are not dated or are out of order. This is not insignificant because these and other matters may have influenced the primary judge in giving the texts little weight.

80 On the appeal, particular emphasis was given to an exchange of texts between Natalie and John on 6 December 2016. It is evident from these texts that their relationship was strained at this time (bearing in mind that it is more than five years after the property purchase). Relevantly, Natalie sent a text at 3:59PM on 6 December 2016. The context appears to be a discussion between them regarding the future of Natalie's car, which apparently had been damaged. Natalie told John: "You said you would give me money for helping out with the house …". Other texts at around this time suggest that Natalie was asking John whether he could lend or give her some money for a replacement car. In a text sent by her at 4:29PM on 6 December 2016, she: "I helped you with that house and it has done nothing but cause me problems and waste my time …".

81 John sent Natalie a text at 4:42PM on that date in which he said: "I have already put myself in $100,000 debt for you in the T/House. I put in for you and 2 other. Im not really fond of get myself into further debt if it's only for short

term to assist you and then my money and good will has been wasted by you …".

82 These particular texts well illustrate the difficulties presented for the primary judge and why her Honour gave them little weight. The references to "the house", "that house" and "the T/House" do not unambiguously relate to the relevant property. They could also relate to another property, being a townhouse in Greenacre NSW which was bought in 2015 by Natalie and two of her siblings with financial assistance from John.

83 As noted above, there is also a series of undated texts which were not in any logical or chronological order. In one of the texts, Natalie told John: "You bullied your 18yr old daughter to have her name on a house and mortgage so you could avoid tax", that he "try to bully everyone into doing what you want and when you dont get your way you stop paying the intested on a house you bought in someone elses name without their full consent", and that "it is in [her] best interests to take full control and give you no access". Another of those undated texts from John to Natalie records him saying: "Well i will put it back on my Name". In another text from Natalie to John, she said: "It takes too much time to lodge claims for houses which are not mine then i have to go back and forward with information between you and them. Its more efficient if you just do it".

84 With one exception, I am not persuaded that John has established any appellable error regarding the primary judge's assessment and findings in relation to the texts. As her Honour pointed out, there are several ambiguities in many of the texts, including uncertainty as to whether the relevant property is the one being referred to, as opposed to some other property such as the townhouse at Greenacre. Moreover, the texts (which are undated but presumably exchanged in the period December 2016 to October 2017) and the weight which they attract needs to take into account the breakdown in the personal and family relationships at that time, including between Natalie and John. It should also be noted that Natalie's parents had separated on the first occasion in mid-2016. This may explain some of the emotional language in many of the texts.

85 The exception is the text which Natalie sent on an unknown date (but presumably before 17 October 2017) in which she stated that John had "bullied [his] 18yr old daughter to have her name on a house and mortgage so [he] could avoid tax". In my respectful view, the primary judge erred in not finding that this statement was an admission against interest. Given the express reference to Natalie being bullied into having her name on a house and mortgage, there can be no doubt that Natalie was referring to this property and not some other house. For the following reasons, however, I do not consider that the statement should be given significant weight. That is because, as Natalie pointed out under cross-examination, the context in which the text was sent is unclear, including "what was before it or what was discussed". Moreover, later in her cross-examination, Natalie expressly denied that she had been bullied by John into buying the property on the terms that she did. She also said that she was angry at the time this particular text was sent.

86 Given the limited weight which should attach to the statement, when it is viewed in the context of all the other relevant evidence, no appellable error has been established in respect of the primary judge's ultimate conclusions.

87 On the appeal, the appellant repeated many of the arguments raised below in respect of Mr Marando's evidence. Those contentions, together with the primary judge's rejection of them, are summarised at [32] to [34] above. In his outline of written submissions on the appeal, John contended that the primary judge erred by not giving Mr Marando's evidence "sufficient weight" in circumstances where (briefly stated):

(1) Mr Marando was a solicitor and an independent witness;

(2) merely because Mr Marando did not make a detailed file note of the conversation which he said he had with Natalie prior to the purchase, in which he purportedly said that the property would be listed in her name "but your father has said you are holding it for him on his behalf", did not prove that the conversation did not take place;

(3) the primary judge did not explain at PJ1[43] the correlation between the fact that Mr Marando was not shown the mortgage document and his capacity to give evidence of the conversation with Natalie; and

(4) the primary judge incorrectly considered at PJ1[44] that Mr Marando's evidence was of no assistance because it did not relate to the position at the time of settlement, in circumstances where his evidence was at

the very least relevant to John's subjective intention in making the $75,000 payment not as a loan, but as part of the purchase price.

88 There are several difficulties with these arguments. As to the first, it was open to the primary judge to assess Mr Marando's evidence in the way that she did, giving it limited weight. It needs to be borne in mind that Mr Marando was recollecting a conversation which he said he had had with Natalie (and which she denied) which took place more than 9 years prior and in respect of which he couldn't recall whether he had a file note in respect of this particular conversation. Mr Marando did say that he had reviewed the conveyancing file (which was not in evidence) before preparing his affidavit but he doubted the suggestion that the file notes were "detailed". It is also notable that under cross-examination many of Mr Marando's answers used the phrase "would have", which suggested a strong element of reconstruction on his part, which is unsurprising given the effluxion of time.

89 The same may be said regarding the second matter.

90 As to the third matter and John's criticism of the primary judge's finding at PJ1[43], I view this paragraph as doing no more than simply summarising some relevant background facts. Those facts were that Mr Marando had acknowledged in cross-examination that he was aware of the mortgage document and that he understood that it was intended to record the arrangement between Natalie and John, but that John never showed him a copy of the document.

91 Finally, as to John's contention regarding the primary judge's findings at PJ1[44], this contention misstates the full effect of that paragraph, the full terms of which are set out at [34] above. It is notable that her Honour gave several separate reasons for discounting Mr Marando's evidence. Moreover, her Honour's finding that the $75,000 payment was not intended to be a part of the purchase price, but rather was a loan, was amply supported by the contemporaneous documents to which the primary judge understandably gave particular weight (see PJ1[94]).

92 It is desirable to make the following additional observations in explaining why I consider each of the remaining grounds of appeal should be dismissed. As to

ground 1, I do not accept that the primary judge proceeded on the basis that John's primary position was that Natalie held 25% of the property on trust for him, as opposed to 100% of the property. Although this claim was not developed in either written or oral argument, I presume that it is based on the primary judge's statement at PJ1[95] that: "For the reasons identified above, John's primary case must fail". Fairly read, her Honour was not suggesting that John's primary case related to the $75,000 payment alone. That is made clear from the structure of her Honour's reasons and to her explicit acknowledgment in various places that John's claim that the property was held on trust for him was not confined to the $75,000 payment but extended to other matters, such as his contributions to the mortgage and property maintenance, being matters beyond the asserted resulting trust (see, for example, PJ1[28] and [84]–[89]). That is sufficient to reject ground 1.

93 As to ground 2, John has not established that the primary judge erred in failing to recognise that the presumption of advancement had been rebutted. Although, as noted above, the primary judge did not have the benefit of *Bosanac High Court* and the observations there regarding this "presumption", the particular passages from *Bosanac* referred to by the primary judge are not materially at odds with those observations. As Gordon and Edelman JJ stated in *Bosanac High Court* at [126], the Full Court had asked itself the wrong question: instead of starting with the objective facts and enquiring into the parties' words or conduct at the time of the transaction (or immediately thereafter as to constitute part of the transaction) to ascertain the parties' objective intention in relation to the beneficial ownership of the property, the Full Court relied on only selected facts.

94 The judgments in *Bosanac High Court* also contain some helpful analyses and statements of relevant principle concerning resulting trusts and/or the presumption of advancement (see at [12]–[15], [22] per Kiefel CJ and Gleeson J; at [60], [64]–[67] per Gageler J, and at [104]–[113], [115]–[116] per Gordon and Edelman JJ). I do not view any of those statements of principle, however, as being inconsistent with the primary judge's reasoning and, in particular, with her Honour's reliance upon the decision in *Amit Laundry* (see at [19] above).

95 In the present proceeding, having regard to the relevant contemporaneous documentation, her Honour's preference for Natalie's evidence rather than John's where there was an inconsistency and John's own evidence that "every father would help their children out" (see at PJ1[82]), no appellable error has been established with respect to the primary judge's reasoning that John had not rebutted the presumption of advancement in respect of his payments towards the mortgage obligations and improvements to the property (apart from the $75,000 loan which was secured by the mortgage).

96 As to ground 5, which focuses upon the primary judge's assessment of the text messages, I have explained above why I reject John's complaint that the primary judge erred in not viewing those texts as supporting a purchase price resulting trust or as manifesting a common intention that Natalie would hold the property on trust for him.

97 Finally, as to ground 6, no appellable error has been demonstrated in respect of the primary judge's rejection of John's claim that Natalie held the property on resulting trust for him as to 25%. Her Honour's reasoning in support of that conclusion has been summarised above.

Conclusion

98 For these reasons, the appeal should be dismissed, with costs (following the event). The appellant has not established any appellable error on the part of the primary judge in respect of her fact finding, which is not only supported by her Honour's preference for Natalie's evidence over that of John, but also by contemporaneous documentation. Her Honour cannot be criticised for not addressing documents which were not relied upon by John below. In any event, when proper regard is had to those documents they do not alter the primary judge's ultimate conclusion.

99 If either party wishes to contest the proposed costs order, they should file and serve a brief outline of submissions not exceeding two pages in length within 28 days hereof. The other party should respond by way of a brief written submission not exceeding two pages in length within a further 14 days thereof. If these circumstances arise, the issue of costs will be finalised on the papers and without a further oral hearing.

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Amendments

02 February 2023 - [94] - "or" changed to "of"