

In the Court of Appeal of New Zealand | I Te Kōti Pīra o Aotearoa
CA 481/2022

Between **Anthony Paul Simons**
First Appellant
And others

And **ANZ Bank New Zealand Limited**
First Respondent
And another

Notice of cross-appeal by first respondent

28 September 2022

BELL GULLY

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Full list of parties

- Between **Anthony Paul Simons**
First Appellant
- And **Andrew John Beavan and Mei Lim**
Second Appellants
- And **Philip Charles Dunbar and Sheryn Valeri
Dunbar**
Third Appellants
- And **Bruno Robert Bickerdike and Emma Renae
Punter**
Fourth Appellants
- And **Glenn Jonathan Marvin and Anna Mary
Cuthbert**
Fifth Appellants
- And **ANZ Bank New Zealand Limited**
First Respondent
- And **ASB Bank Limited**
Second Respondent

NOTICE OF CROSS-APPEAL BY FIRST RESPONDENT

1. The first respondent in the proceeding identified above, ANZ Bank New Zealand Limited (**ANZ**), gives notice that it is cross-appealing to this Court against the judgment of Venning J in the High Court dated 29 July 2022 ([2022] NZHC 1836). That judgment is cross-appealed to the extent that his Honour held that the High Court has jurisdiction to grant a common fund order (a **CFO**).
2. The specific ground on which the cross-appeal is brought is that the Honourable Judge erred in finding (at [165] – [168]) that there is jurisdiction to grant a CFO under the High Court’s inherent jurisdiction or rules 1.2 and 1.6 of the High Court Rules 2016, given (in particular) that:
 - (a) No such jurisdiction has been recognised by the courts of either Australia or England.
 - (b) Rule 1.2 of the High Court Rules lays down the general objective of the Rules as an aid to interpretation of other rules. It does not create any power for the Court to grant a CFO.
 - (c) Rule 1.6 of the High Court Rules only empowers the Court to take steps to manage the proceeding in circumstances where there is no prescribed procedure; it does not empower the Court to create new substantive rights (including rights affecting non-parties).
3. ANZ seeks the following judgment from the Court of Appeal:
 - (a) an order dismissing the appellants’ appeal;
 - (b) an order allowing ANZ’s cross-appeal;
 - (c) an order overturning the reservation of leave to the appellants to renew their application for a CFO after the completion of the stage 1 hearing (order 9 made by the High Court); and
 - (d) costs and disbursements in its favour.

4. ANZ is bringing this cross-appeal pursuant to the leave to cross-appeal given by the High Court on 14 September 2022 (refer Minute/Orders of Venning J at [15](e)).
5. ANZ is not legally aided.

Dated: 28 September 2022



S M Hunter KC / J H Stevens / S V A East
Counsel for ANZ

ANZ's address for service is Level 22, Vero Centre, 48 Shortland Street, Auckland.

Documents for service on ANZ may be left at that address or may be:

- (a) posted to the solicitor at PO Box 4199, Auckland; or
- (b) emailed to both sophie.east@bellgully.com and jenny.stevens@bellgully.com, provided that the email is less than 25MB and copied to counsel at smhunter@shortlandchambers.co.nz.

Documents served on ANZ should be marked for the attention of Sophie East.