

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2017-004-000249  
[2022] NZFC 6946**

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| IN THE MATTER OF | THE PROPERTY (RELATIONSHIPS) ACT<br>1976 |
| BETWEEN          | XIN ZHOU<br>Applicant                    |
| AND              | WEIHANG YUE<br>First Respondent          |
| AND              | WEN ZHOU<br>Second Respondent            |

Hearing: 16, 17, 20, 21, 22, 23 and 27 June 2022

Appearances: M Hodge for the Applicant  
D Zhang and E Tie for the Respondent  
A (T) Brown and G Zhang for the Second Respondent

Judgment: 16 August 2022

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**RESERVED JUDGMENT OF JUDGE J G ADAMS**

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[1] This is a three-sided case between a wife, her husband, and the wife's father. The relationship between Xin Zhou (also known as Bonnie) and her former husband Weihang Yue (also known as Tony) extended for five and a half years. Xin Zhou's

father is Wen Zhou. In this judgment, I use their Chinese names, but configured in the Western manner with their family names at the end rather than at the beginning.

[2] Two residential properties figure in this case. The one at Blockhouse Bay is the remnant of a larger piece of land to which title was taken in the names of Ms Zhou and Mr Yue. They raised a mortgage against that property for a development project in which two other titles were subdivided off and sold. Mr Yue raised a mortgage against the other property, an apartment in Hobson Street in his sole name, to assist with the Blockhouse Bay project. The couple lived in the apartment from some years, and then moved into Blockhouse Bay. Mr Zhou claims the Blockhouse Bay property pursuant to a resulting trust. Ms Zhou accepts his claim and has already transferred her half share to her father.

[3] There are two main issues:

- Firstly, is there relationship property in Mr Yue's registered half share in a house property at Blockhouse Bay? Wen Zhou (supported by his daughter Xin Zhou) claims it belongs to him. Against that, Mr Yue claims the entire Blockhouse Bay property is relationship property (including the half share that Xin Zhou transferred to her father post-separation) or that, if I find his entire share is not to be allocated to him alone, he should at least have an interest pursuant to a resulting or constructive trust. This raises jurisdictional limitations that I shall address later. Mr Yue seeks an order that Ms Zhou pay \$60,000 to him for her occupation of the Blockhouse Bay property since he departed. In addition, he would like me to order substantial interest against his former father-in-law (for use of Mr Yue's property) if I am able to do so under the Property (Relationships) Act 1976.
- Secondly, are the sale proceeds of the apartment relationship property? Title to the Hobson Street apartment was registered in Mr Yue's name years before the relationship began. The couple lived there but moved to Blockhouse Bay a year before separation.

[4] I must also decide what orders to make regarding savings, the car, and the engagement ring.

### **The marriage**

[5] Before addressing the issues, I sketch an overview of the marriage to provide context for later portions. Where necessary, I shall later explain some details more closely.

[6] Ms Zhou and Mr Yue met as tertiary education administration workmates. She is the younger of two sisters. She has lived in New Zealand since age 17 and has a Bachelor's degree in Human Resources. Her parents and her (married) sister live in Auckland. Mr Yue, an only child, came to New Zealand as an adult student. His parents contemplated emigrating to New Zealand but only ever visited.<sup>1</sup> Ms Zhou and Mr Yue both originate from Northern China. They are fluent in English but are both more comfortable in Mandarin.

[7] The couple lived in the two-bedroom apartment from September 2011. In December 2011, they married, in China. Ms Zhou had [details deleted] in mid-2012.<sup>2</sup> Her parents lived with them in the apartment from August 2012 to April 2015. Their son was born in [month deleted] 2013. In May 2015, after holidaying in China, they moved, together with Mr Yue's parents, to live in the Blockhouse Bay property.

[8] Towards the latter part of the marriage, and throughout several months after separation until early 2017, Yue family financial aspirations placed Ms Zhou in a loyalty conflict between her husband's family and her father. There were ongoing negotiations and discussions between Mr Yue, his parents, and Ms Zhou concerning Yue family views that Mr Zhou had failed to contribute sufficiently for the young couple. Under the pressure of competing loyalties, Ms Zhou vacillated between her fidelity to her father and her desire to shore up her marriage.

[9] The Blockhouse Bay project extended between June 2013 and August 2015.

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<sup>1</sup> During the marital relationship, Mr Yue's parents visited New Zealand for 2 months in 2012; 4 months from June 2015; 2 months from April 2016: Bundle 201.0276

<sup>2</sup> NoE 19, lines 20 - 25

[10] On 16 November 2015<sup>3</sup>, Ms Zhou and Mr Yue stole \$250,000 from a bank account that Ms Zhou operated for her father. Mr Zhou threatened to call the Police and they repaid the money.

[11] On 10 May 2016, an incident occurred at the Blockhouse Bay property. Mr Yue's mother slapped Ms Zhou. The Yue family restrained Ms Zhou from leaving the house with their son. Ms Zhou called the Police. A few days later, Mr Yue and his parents quit Blockhouse Bay and returned to the apartment. The following month, on 19 June 2016, Mr Yue and his parents quit New Zealand. The apartment was sold in July 2016 (settling in August).

[12] Ms Zhou wanted to repair the marriage. In August 2016, she visited China (taking their son with her) and she and Mr Yue spent time together<sup>4</sup> away from his parents. She visited again in January 2017, hoping for reconciliation but she was there served with divorce proceedings.

### **Is there relationship property in Blockhouse Bay?**

#### *Competing narratives*

[13] Here, I introduce the competing narratives, before testing them against relevant evidence.

[14] Mr Yue is registered on the title as a tenant-in-common as to a one half share. He can rely on that unless Mr Zhou, his former father-in-law, dislodges him by his claim of resulting trust. If I find the property is Mr Zhou's, I must consider whether Mr Yue, in his turn, has established an interest pursuant to a resulting trust. If so, that interest would appear to be relationship property.

[15] The Blockhouse Bay antagonists are Mr Yue and Mr Zhou. To the extent that Mr Zhou's wife (Ms Zhou's mother) was involved in relevant transactions I do not note her involvement separately, I simply treat Mr Zhou as standing for both of them.

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<sup>3</sup> Bundle 304.1484

<sup>4</sup> NoE 31

Was Mr Yue a prime mover of the Blockhouse Bay project or merely a family source of bridging finance who was never out of pocket throughout the venture? I must choose between their markedly differing narratives.

[16] On a without notice application in the High Court, Ms Zhou obtained a freezing order on the sale proceeds of the apartment. In his judgment discharging that freezing order, Muir J recorded,<sup>5</sup> in relation to the Blockhouse Bay development:

[17] In approximately June 2013, Ms Zhou identified a redevelopment opportunity at 236 Blockhouse Bay Road. This was a large property capable of being subdivided into three lots. Initially it seems that she planned development of the property with a third person (a Mr Lin), but this did not eventuate and at that point Mr Yue became involved in the project.

[18] The property was purchased for \$926,000, \$660,000 of which was funded by an ANZ loan. The balance appears to have been funded either by Ms Zhou or her parents. Ms Zhou and Mr Yue became jointly registered as proprietors of the property and joint mortgagees to the bank. Ms Zhou says that this was all simply a mechanism to facilitate purchase of the property by her parents who were not in employment and could not therefore raise money for the purchase. Mr Yue says that this is far from the case and that among the ultimate purposes of the development, one was to provide a larger home for their expanding family.

[19] Demolition of an existing dwelling on the property and subdivision proceeded as planned. Three lots were created of which two were sold for \$515,000 and \$550,000 respectively. A new home was, in turn, constructed on the third lot (236C Blockhouse Bay Road) into which Ms Zhou, Mr Yue, their child and Ms Zhou's parents moved in or around July 2015. This was approximately one year prior to the break-down of the relationship.

[20] Mr Yue deposes (with extensive primary documentation to support what he says) that he had a very substantial role in the redevelopment, including communicating and negotiating with architects, contractors, lawyers and local authorities and that he also made significant financial contributions to it including a sum of \$207,000 which he borrowed on the security of the Hobson Street apartment. He also deposes to having paid at least \$4,000 of interest on the ANZ loan together with numerous (and substantial) accounts associated with the development including to Watercare (\$21,082), Vector (\$4,432) and timber merchants (\$10,000). In addition, he says that he introduced in excess of \$100,000 of his parents' money into the development. This sum, together with the amount borrowed on the security of the apartment have been repaid from the proceeds of sale of the two sections.

[21] From the time that the parties moved into the new house, both Ms Zhou and Mr Yue depose to arguments about money. Ms Zhou says this is because Mr Yue was putting pressure on her parents to fund another property in which Mr Yue, Ms Zhou and their child could live and she says the tension escalated when Mr Yue's parents arrived in New Zealand and made additional

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<sup>5</sup> [2018] NZHC 1298

demands in this respect. Mr Yue says that it was in fact Ms Zhou and her parents who were placing pressure on his side of the family. Ultimately the pressures resulted in a breakdown of Ms Zhou and Mr Yue's relationship.

[17] My judicial context in this case differs from that in which Muir J addressed the application to discharge the freezing order. Material differences are: parties, interlocutory as against substantive, extent of evidence, length of hearing, and cross-examination. The proceedings have different sets of parties: Ms Zhou and Mr Yue are common to both, but Mr Yue's parents (who are not parties in the Family Court) were parties in the High Court applications, and Wen Zhou (who was not represented in the hearing before Muir J) is a party to these proceedings. In this seven-day hearing, I have the advantage of a quantity of material that was not before Muir J for the one day hearing in the High Court, and the benefit of material being tested by cross-examination. For these reasons, the picture that emerges in this hearing has some material differences from that noted by Muir J in paragraphs [17], part of [18], and [20] of the portion quoted above. Details will appear later.

[18] Mr Yue's litigation stance in the Family Court echoes what Muir J recorded. Mr Yue contends that he was a prime mover, if not the prime mover, in the subdivision and build project. He claims to have been a prime financial backer for the project.

[19] Mr Zhou, who was not a party in the case before Muir J, offers a very different narrative. He says the whole project was his alone.<sup>6</sup> His daughter and son-in-law provided bridging finance for which they were never out of pocket because the loans covered the funds required to service what was used for the project. He repaid the bridging loans from the sale proceeds of the two surplus Blockhouse Bay properties and another property he owned in Otorohanga (registered in the name of his niece Rui Gao). Mr Yue or his parents provided short-term bridging for which they were reimbursed.

[20] Mr Zhou says that Mr Yue and Ms Zhou were occasionally called upon to help with communication because Mr Zhou could not speak English, but they were not otherwise involved in project management. He denies that Mr Yue (and Ms Zhou) had

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<sup>6</sup> Bundle 201.0096, para [90]: "I was the one who actually managed the entire project and dealt with the relevant personnel directly."

any expectation of sharing beneficially in the property. They were a young couple with modest income and no experience of property development. Mr Zhou disputes that, by dint of making his borrowing capacity temporarily available, Mr Yue was entitled to half of a \$1,600,000 property debt free.

[21] Mr Yue took a combative line in his case. For example, he clung to his false assertion, made years earlier in these proceedings, that he, not Mr Zhou, paid the early expenses (and inferentially that he was not reimbursed) right through the evidence of Ms Zhou and Mr Zhou, only conceding when he began his evidence-in-chief on the sixth day of the hearing.

[22] Mr Yue, who claims he was not beneficially entitled to the apartment, drew down a mortgage loan facility against the apartment for the project. He claims the full contribution benefit of the loans raised through him as if they were stakeholder contributions rather than bridging finance. Pursuing that line, Mr Zhang emphasised the project payments that were made from Mr Yue's bank account, characterising them as contributions, even though he was shielded from paying interest and he was fully repaid. That litigation focus misses the crucial point, namely whether the character of those payments was stakeholder contribution or bridging finance.

*Testing the competing narratives*

[23] To help me determine the character of Mr Yue's payments, and to determine whose narrative I should accept, I ask the following questions:

- (a) Whose narrative about the genesis of the project rings more true?
- (b) Whose conduct at material times is more congruent with their litigation stance?
- (c) Whose representations have been more congruent with their litigation stance?
- (d) What other evidence bears on the credibility or candour of the protagonists?

- (e) What should I make of the fact that Ms Zhou has acknowledged her father's case and transferred her half share in Blockhouse Bay to him?

*Whose narrative about the genesis of the project rings more true?*

[24] Mr Yue led Muir J to the view that it was Ms Zhou who identified the redevelopment opportunity, and that she planned development with a Mr Lin that did not go ahead.<sup>7</sup>

[25] Mr Zhou, who impresses me as an entrepreneurial person with a roving interest in property, provided a detailed narrative<sup>8</sup> that was supported<sup>9</sup> by his old friend Xinhe Lin. Mr Zhou already owned properties in New Zealand, typically placing them in the names of various relatives. For example, his first property in Richardson Road was registered in the name of his daughter Kun Zhou; she later became sequentially registered owner of his substitute properties at Koromiko Street and Harbutt Avenue. Her husband Jie Zhang was registered owner of Mr Zhou's property in Sunset Close, Otorohanga. Mr Zhou was personally registered as owner of his Thompson Street, Otorohanga property until he needed to raise finance on it, so he then transferred it to his niece Rui Gao. Mr Zhou was unable to raise a mortgage personally despite his obvious resourcefulness and (disguised) property ownership.

[26] Mr Zhou's plan was to acquire the property in partnership with his old friend, subdivide it into three sections, sell off one of the houses, and the two gentlemen would be neighbours in retirement. Like Mr Zhou, Mr Lin intended to place his interest in this property in the name of a relative. Mr Zhou proposed that his younger daughter, Ms Zhou, would stand for him, and Mr Lin proposed his own son, Yang Yang Lin, to stand in his stead.

[27] Mr Zhou's narrative explains the appearance of Yang Yang Lin as a co-purchaser at the auction. Unfortunately, Mr Lin was caught short financially, and he withdrew. Accordingly, Yang Yang Lin stood aside. Mr Zhou was already committed,

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<sup>7</sup> [2018] NZHC 1298, para [17] quoted above

<sup>8</sup> Wen Zhou affid Bundle 201.0060 to 201.0074

<sup>9</sup> Xinhe Lin affid, Bundle 201.0112 to 201.0115



having funded the deposit. On my assessment, he is a resourceful man. He could have devised other fallback propositions (for example, he thought of using his other son-in-law Jie Zhang to raise money on Sunset Close, Otorohanga) but the one that he adopted was to shrink the project, retaining only one of the three properties (because he no longer had a substitute for Mr Lin), and involve his new son-in-law as a nominee, thereby engaging the borrowing resource of the apartment for bridging finance.

[28] Having seen the parties in court for seven days, I think it is unlikely that Ms Zhou, then a young married woman with no assets to call upon, had the wherewithal or temperament for a venture of this complexity. Despite Mr Yue's temperament of ferocity and bluster, I do not perceive him as having the skills or confidence to carry forward such a complex venture considering he had never had previous relevant experience. He raised finance but, on the view I take of his family circumstances, I cannot believe he could have undertaken such a project without the approval and involved support of his own parents.

[29] Mr Zhou seems the much more probable candidate as the mastermind and operator of the project. His narrative explains the appearance of Yang Yang Lin as a nominal purchaser at the time of the auction, a feature that Mr Yue glossed over unconvincingly.

[30] I found Mr Zhou a credible witness. He is a strong-minded individual. In cross-examination, Mr Xinhe Lin was not put to any test on his evidence, merely asked to confirm the essentials. I deduce his evidence must be tacitly accepted by Mr Yue. In any case, I find Mr Lin's evidence is convincing. So too, Mr Zhou's evidence.

[31] I find Mr Zhou has given a clear and convincing narrative of the genesis of the project. I find that Mr Yue, in proceedings where Mr Zhou was not represented (because he was not then a party) attempted to gloss the narrative in his favour, to make it seem as if he was more of a player in the project than was the case.

*Whose conduct at material times is more congruent with their litigation stance?*

[32] Although Mr Yue put himself forward to Muir J as having “a very substantial role in the [project],”<sup>10</sup> he was unable to substantiate this claim in the Family Court hearing. His claim of involvement relied on thin scraps of evidence. I pay attention to payments from his accounts, his communications with Council, and his engagement with the real estate salesperson engaged to sell the excess two properties.

[33] Payments from his account are, without more, suggestive of his involvement. But if his payments were merely bridging finance underwritten by Mr Zhou, that support for his case loses much force. I leave this aspect to one side for the moment.

[34] Mr Yue was unable to demonstrate that he organised workers or engaged in activities that planned or furthered the project in substantial ways. Had he been able to substantiate his claim, I would have expected evidence that demonstrated his relationships with key personnel and workers. In the vacuum, I find that these matters were undertaken by Mr Zhou. Mr Yue was throughout engaged in full-time work at Unitech. Mr Zhou’s evidence<sup>11</sup> that the contractors spoke Chinese was not contradicted. There is clear evidence that contractors acted on Mr Zhou’s instructions.<sup>12</sup> Insurance invoices were sent to Mr Zhou.<sup>13</sup> Mr Zhou produced written communications about design and contracting that demonstrate he directed the project.<sup>14</sup> Mr Yue conceded that the Council recorded Mr Zhou as the person in charge of the project.<sup>15</sup>

[35] Mr Zhou does not speak or write English. Mr Yue and Ms Zhou were registered owners on the title. Correspondence relating to matters like insurance were addressed to Mr Zhou but sent via Mr Yue. These features are equivocal because they can fit with either narrative.

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<sup>10</sup> See [2018] NZHC 1298 at para [20] quoted above

<sup>11</sup> NoE 220 line 10

<sup>12</sup> NoE 220 The contractors spread soil from the new section onto the sections to be sold.

<sup>13</sup> NoE 389 (Stylecover)

<sup>14</sup> Bundle 304.1328 – 304.1421

<sup>15</sup> NoE 388

[36] Mr Yue attempted to make much of correspondence<sup>16</sup> in September 2014 with a Council representative concerning mud tracking onto the road from the site. Mr Zhou and Ms Zhou accept that Mr Yue and Ms Zhou were conduits for this matter, but it is of little moment. The emphasis placed on it by Mr Yue seemed disproportionate. Had Mr Yue been closely involved in the substance of the matter, I would have expected evidence of matters rather more substantial.

[37] Ms Zhou produced emails sent by Mr Yue relating to the project that unmistakably disclose that they are sent on behalf of Mr Zhou. For example, “My father in law Mr Zhou want it to be sent to you.”<sup>17</sup>

[38] The evidence of Jie Yao, the real estate agent who acted on sale of the excess properties is telling. Although Mr Yao may lack expert knowledge on trust law, he could tell who was calling the shots in the sale of the properties. It was Mr Zhou who instructed him and it was Mr Zhou to whom he reported.<sup>18</sup> I find his evidence compelling to prove that Mr Zhou was the master, and that Ms Zhou and Mr Yue did his bidding in signing documents as he directed. Mr Yao had encountered this type of situation before.<sup>19</sup> I find their behaviour, observed by Mr Yao, was congruent with their merely being nominees, not as stakeholders in the project.

[39] I find it probable that Mr Yue knew Mr Zhou owned other properties that were nominally registered to other family members.

[40] Subject only to the underlying question about the character of payments made from his account, other indicators under this head support Mr Zhou’s case, and are incongruent with Mr Yue’s claims which seem overblown.

*Whose representations have been more congruent with their litigation stance?*

[41] As Muir J tellingly observed,<sup>20</sup> pressures about money matters, particularly tensions arising from Yue family views that their support exceeded that of the Zhou

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<sup>16</sup> Bundle 305.1951 and following

<sup>17</sup> Bundle 201.0134, para 20; 305.1633 et seq.

<sup>18</sup> NoE 159 lines 3 – 5; 160 lines 19 – 25; 161 lines 12 – 13.

<sup>19</sup> NoE 163, 18 - 24

<sup>20</sup> [2018] NZHC 1298 at [21] quoted above

family, ultimately led to the breakdown of the marriage. These tensions surface in several documents and actions. In my view, these tensions were active soon after Mr Yue's parents joined them in June 2015 in the Blockhouse Bay property.<sup>21</sup>

[42] Ms Zhou's family had been based in New Zealand for years. They, or Mr Zhou as head of the family, already owned several properties. The funds which had been remitted from time to time from China had been ploughed into the then rising property market; they had done well.

[43] Mr Yue's family had property aspirations too. From reading her WeChat communications with her son<sup>22</sup>, and from observing her when cross-examined, I am confident that his mother, Xiaoran Chi, is a forceful personality, eager for the wellbeing of her son, and desirous of favourable property outcomes that would reflect well on their family. Mr Yue is their only child. I sense that the pressure from his family was not always entirely comfortable for him. I believe that, although he retreated with his parents to China in June 2016, he harboured hopes that he could steer events to recover his marriage, until about October or November 2016 when, in my view, his family stipulated the cost of reconciliation at an \$800,000 contribution by Mr Zhou.

[44] The ten representational items I shall now list occurred after completion of the project, many of them after separation, but the ongoing outflow of representations indicate currents of discourse that already flowed strongly through the latter part of the marriage. I shall deal with the items chronologically.

*Representation 1: Implicit in theft of \$250,000*

[45] On 16 November 2015, Ms Zhou and Mr Yue jointly stole \$250,000 from an account Ms Zhou operated for her father. Ms Zhou made the transfer. Initially, Mr Yue denied involvement.<sup>23</sup> She claimed he persuaded her.<sup>24</sup> She said they went

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<sup>21</sup> Mr Yue's parents were in New Zealand for 4 months from April 2015, returning to New Zealand for 2 months April to June 2016. Bundle 201.0276, para [11].

<sup>22</sup> Bundle 304.1502 to 304.1509

<sup>23</sup> Bundle 201.0155 and 201.0259

<sup>24</sup> NoE 74, line 13

together to get it.<sup>25</sup> They both made gestures to joint responsibility. She accepted she “stood side by side with your husband and took the blame.”<sup>26</sup> He said he “was aware” of the action and she agreed with him.<sup>27</sup> It seems plain that they presented jointly immediately thereafter in attempts to persuade Mr Zhou to let them keep the money. Although Mr Yue tried to distance himself from this action, he accepts he knew about it and I find they did it together. Their wrongdoing was discovered promptly because although Mr Zhou may not understand English, he can read figures. He was furious.

[46] Why would they do such a mad thing? The clues reveal themselves in later family discourse. Plainly, they desired property that Mr Zhou held. At 16 November 2015, Mr Yue was the registered owner of the apartment worth about \$600,000. Mr Yue and Ms Zhou were also the registered owners of Blockhouse Bay, a property worth perhaps \$1.6 million. On Mr Yue’s litigation stance, they had achieved the Blockhouse Bay property without incurring any resultant debt. Their joint implication in this act is incongruent with Mr Yue’s litigation stance. If they believed that they had no beneficial rights to Blockhouse Bay, as Mr Zhou contends, their envious action makes more sense.

[47] When Mr Zhou ordered them to return the money immediately, he strengthened his urgency by stating he needed to pay \$50,000 for an uncle in China. The young couple attempted to bargain<sup>28</sup> with him to let them keep \$200,000. He did not agree. He demanded that Blockhouse Bay be transferred to him.<sup>29</sup>

*Representation 2: Email to Nelson Wang*

[48] Mr Yue was concerned about tax implications if they immediately transferred Blockhouse Bay to Mr Zhou. On 18 November 2015, he emailed<sup>30</sup> an accountant, Nelson Wang. The email reads:

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<sup>25</sup> Bundle 201.0278 at [27]b and [28].

<sup>26</sup> NoE 97, lines 20 – 25

<sup>27</sup> NoE 324 – 325 (line 2).

<sup>28</sup> See *Representation 3* below

<sup>29</sup> Mr Yue deposed that Mr Zhou “was very aggressive in trying to obtain ownership rights....insisting that we transfer the property to him.” Bundle 201.0034, para 69

<sup>30</sup> Mr Zhang sought to have this document excluded from evidence, even though it formed part of the bundle. I ruled it should remain in evidence, giving reasons.

Re: New Tax Rule

Dear Nelson Wang,

1. I have received and read your documents, and I expect your analysis and instructions on my case.
2. I bought an apartment in 2006 and moved out in May 2015. If I sell this property, it should not be taxed.
3. Our parents bought a second property in our name in June 2013. Split it into three pieces with titles around August 2015. Sold two of them, and kept one for house construction. We moved into this house in May 2015. If we change the property owner or sell it now, shall we pay taxes? If we change the property owner to our parents, what will be the impact on us? Since we cannot live with our parents for a long time, we plan to move out of this second property and purchase another one. If the owner name of the second property is not changed, what impact will it have on the purchase of the third property? Up to 70% loan. What else impact will there be on buying a house? Will it be determined that the second property is our investment house and other income taxes will be charged to us? Shall be taxes paid based on our wage income?

In addition, if the husband and wife buy a house separately, will some tax be avoided?

Sincerely,

Yue Weihang

[49] Mr Yue's email to Nelson Wang was sent near midnight, two days after the \$250,000 theft. Mr Yue wanted advice on tax implications if he sold the apartment, and if they transferred title to Blockhouse Bay to Mr Zhou. The email discloses "Our parents bought a second property in our name [sic] in June 2013." I read "our parents" in that sentence as reference to Mr Zhou and his wife. No suggestion has been advanced that Mr Yue's parents were stakeholders in the Blockhouse Bay project. In this context, I find that Mr Yue wrote this letter on behalf of himself and his wife jointly. In this chapter of the narrative, they were operating in concert.

[50] Notably, Mr Yue does not disclose in his email to Nelson Wang that there is any express trust between himself and his parents relating to the apartment. In this email, he speaks as if the apartment is his to dispose of. He discloses interest in purchasing a property, enquiring if Blockhouse Bay would then be treated as an investment property for tax purposes. I find that Mr Yue, his parents and Ms Zhou

were actively considering the acquisition of a suitable family home for the young couple.

*Representation 3: 2015 agreement*

[51] Within three days after<sup>31</sup> Mr Zhou confronted his daughter and son-in-law about the theft of \$250,000, Mr Yue's father drafted a form of proposed agreement<sup>32</sup> to resolve the standoff. Mr Zhou never signed the agreement. It is fair to say he never entertained it as a viable, let alone appealing, proposition. The main terms were that Mr Zhou would be repaid \$50,000, Mr Yue would transfer his registered interest to Ms Zhou, the property would be sold in two years' time with the sale proceeds passing to Mr Zhou. The young couple would continue to be temporarily housed at Blockhouse Bay pending sale. As part of the bargain, Mr Yue and Ms Zhou would retain \$200,000, and Mr Yue would relinquish any claim to Blockhouse Bay.

[52] Although the "2015 agreement" is long, I quote it entirely to demonstrate significant features of its terms:

**Agreement**

**Party A:** Mr. Yue Weihang

**Party B:** Mrs Zhou Xin

**Party C:** Mr Zhou When

**Property:** 234C Blockhouse Bay Road Avondale Auckland

**Agreement I:**

- 1) Party A represents to transfer the ownership of Property 236C BHB to Party B, commits not to claim for any return on such property and waives the rights in and to such property.
- 2) Party B acknowledges the representations made by Party A and commits to fulfil the following agreement in connection with such property.

**Agreement II:**

- 1) Party B represents to borrow one room of property 236C BHB from Party C.

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<sup>31</sup> NoE 99 - 100

<sup>32</sup> Bundle 304.1494 (English translation).

- 2) Party C acknowledges the representations made by Party B and the representations made by Party A in Agreement I.
- 3) Party B and Party C agree that such property shall be listed for sales or have the ownership changed 2 years after the period of ownership.
- 4) Party B commits that the income arising from the property sales shall be owned by Party C.
- 5) Party C commits to be responsible for the costs arising from the sales and change of ownership of such property.
- 6) Party C acknowledges the decision on listed sales or change of ownership of the property and may not interfere without reasons. In addition, Party C shall honour the commitments so as to relieve the anxiety of Party A and Party B.
- 7) Party C acknowledges the reason for Party B by taking NZD 250,000.00, and Party B commits to immediately refund NZD 50,000.00 to Party C. Thereafter, Party B and Party C may not propose any objection.
- 8) Neither Party A or Party C may unilaterally decide any kind of mortgage loan in connection with such property during two years. If required, Party B and Party C shall solve such issue through friendly negotiation and work out a new agreement. Party B and Party C shall do its utmost to avoid any economic burden and pressure on the other party as possible; otherwise, the responsible party shall be liable for the joint and several losses.
- 9) Party A accepts the contents contained in Agreement II, without any objection.

### **Agreement III:**

- 1) After this Agreement is signed, Party C agrees that Party A, Party B and its minor son (as Party C's grandson) are living in such property, until a suitable residential place is found. Party A and Party B commit to move out of the property after the CITY 125A apartment is completely decorated. Party C has no objection and commits to give assistance in the decoration.
- 2) Party C commits that during such period, it shall not charges any kind of rent and expenses from Party A and Party B; and Party A and Party B commit to be continuously responsible for their daily expenditures (such as the water, electricity, gas, telephone, internet charges and the individual food expenses) incurred during the residence.
- 3) Upon execution of this Agreement, neither Party A nor Party B is obliged to be responsible for any additional expenditures (such as the land tax, insurance, repair and construction, except for those listed in Article 2 hereof) in connection with such property shall have the name changed as Party C and be implemented by Party C. Provided that party C fails to make the change for reasons, Party A and Party B shall give an understanding and assist Party C in such changes. Party A and



Party B have never gained any benefit from such property (the rent income has been always actually held by Party C), therefore, the additional expenses in connection with such property shall be borne by Party C.

- 4) Party A and Party B agree that Party C may use the furniture and household electrical appliances (see Annex 1) purchased and owned by Party A and Party B; Party C acknowledges the title in and to such items and may not take away or sell off such items and allows that such items may be temporarily kept in such property, until they are taken away by Party A and Party B at the due time. Party A and Party B shall consider the inconveniences caused to Party C arising from taking away of such items, or through negotiation these parties shall solve the use relationship.
- 5) With respect to the charges imposed by the government, laws and tax arising from the property purchase and sales during the period of two years, Party C shall consider to give a treatment and make the related compensation. Party A and Party B commit not to make any trouble without causes or put forward unjustified requests but to furnish Party C with related expenses charging certificates and bills; otherwise, such issues shall be solved by the parties through friendly negotiation.
- 6) The parties commit that upon execution hereof, neither party may throw verbal or physical attack, any kind of coercion, threat and extortion and the visual and non-visual spiritual and mental striking against the other party but is obliged to be strict with its behaviour.
- 7) The parties commit not to implement the evil behaviour unbeneficial to the family harmonious relationship, or the behaviour of instigating the division, separation and properties partition, all of which are the principles.
- 8) The parties acknowledge the contribution made by each party to the family and such property but may not accordingly in any manner look down upon, laugh at, extort and threaten the other individual.
- 9) The parties commit to strictly perform the terms hereof.
- 10) Party C shall be unconditionally responsible for the legal costs arising from the execution hereof.
- 11) Agreement I, II and III consisted of this Agreement are interactive and shall be deemed as an integral part hereof
- 12) This Agreement shall be made into triplicate with each party holding one copy and become effective after signed by the parties. Each copy has the same legal effects.

[53] Clauses 6 to 9 reveal and reflect the inter-family tension that underpinned the theft and this subsequent attempt to gain traction from the situation. These terms fit with my understanding of the involvement of the Yue family behind the scenes. My understanding of these tensions is confirmed by congruent behaviours that form part

of this narrative. Although Mr Yue and his mother attempted to frame the November 2015 agreement as their attempt to resolve a problem between their daughter-in-law and her father, I, like Mr Zhou,<sup>33</sup> recognise it as their family desire to extract funds from Mr Zhou. I do not regard the term whereby Mr Yue relinquished his interest in Blockhouse Bay as being more than administrative; it does not appear to me to be a solid part of the bargain. In other words, I do not read this document as representing that Mr Yue was making a substantive claim to Blockhouse Bay at that time.

*Representation 4: #78 property agreement*

[54] On 2 May 2016 (only days before the incident and subsequent separation), Mr Yue, his parents, and Ms Zhou signed what is known as the “#78 property agreement.” It discloses a plan for buying a property. The property was not purchased. The address is not material: all that is recalled is that it was #78 in an Auckland street. The text of the document reads:

Contributive Fund Agreement for Purchasing #78 Property

1. Yue Jianping, Chi Xiaroan, Yue Weihang and Zhou Xin agreed to co-purchase the #78 Property.
2. The total fund for the purchase is estimated to be 1.3 million (among which 1.2 million is for the purchase of the property, 100,000 is for subdivision)
3. Yue Jianping and Chi Xiaroan contribute approximately 1 million (the sale proceeding of the city apartment, 630,000; Cash 290,000; purchase of part of the construction material and furniture from China, 80,000). Yue Weihang and Zhou Xin provide a long term loan of 300,000 (estimated repayment in 5-7 years). Yue Weihang and Zhou Xin promise to pay 30,000 per annum (for repayment of the loan interest and part of the capital). Yue Jianping and Chi Xiaroan promise to pay 30,000 – 40,000 per annum for repayment of the capital.
4. Yue Weihang and Zhou Xin provide a short-term loan as revolving fund for constructing the new house, the interest of which shall be calculated as the cost of the construction. The sale proceeding of the existing house and the rental income shall be used as funds to construct the new house.
5. All four persons shall abide by the above agreement to ensure timely implementation of the purchase and construction.

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<sup>33</sup> NoE 147, lines 23 – 24 “Not reflecting her situation but reflecting the whole wish, the wish of his whole family.”

[55] The agreement reflects the continuing discourse between the signatories about acquiring a home for the young couple, with ownership shared with Mr Yue's parents. The #78 project would require \$1.3 million. The capital was to be sourced from sale of the apartment (\$630,000), cash from Mr Yue's parents (\$290,000), a loan (I assume a mortgage) to be obtained by Mr Yue and Ms Zhou (\$300,000), and Mr Yue's parents would provide \$80,000 worth of materials and furniture from China. There is no suggestion that Blockhouse Bay was regarded as a financial resource for this project. This document is congruent with the proposition that neither Mr Yue nor Ms Zhou believed they had any right to Blockhouse Bay despite their registration on the title.

[56] Ms Zhou says she only signed a blank page, that she was unaware of the contents of the document. I am not willing to accept her evidence on that point. In many instances, I prefer her evidence to that of Mr Yue but I do not find her utterly reliable at all points. As will appear, her track record has been "wobbly" as she has been pulled between competing loyalties. I find she did sign the "#78 property agreement." For the purposes of this section of my judgment, that document is notable for the absence of any indication that Mr Yue (and Ms Zhou) were beneficial owners of Blockhouse Bay. I shall later discuss this document further in relation to the apartment.

*Representation 5: Letter of apology*

[57] After separation, and repatriation of the Yue family to China, Ms Zhou wished to repair the rift and make herself acceptable to her in-laws. In anticipation of her visit to China in August 2016, she prepared a formal letter of apology<sup>34</sup> to hand to them. Ms Zhou and Mr Yue agreed that he vetted and amended her draft to enhance its accuracy and acceptability.<sup>35</sup> Thus, although the letter is Ms Zhou's, he took part in its composition. In two places, her letter frankly refers to Blockhouse Bay as her father's property. On page 1, para 3, she said "When Weihang and I moved to my father's property..." On page 2, she said "...relying on living in my father's place." I infer that it was no issue within the Yue family at that time that Blockhouse Bay was her

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<sup>34</sup> Bundle 305.1739 to 305.1742

<sup>35</sup> NoE 35 – 37; 298, lines 6 - 24

father's property. There is no indication that Mr Yue, who pre-approved the form and contents of the letter, took exception to those comments.

*Summary of representations to August 2016*

[58] Thus, all the representations made by Mr Yue and Ms Zhou through to her August 2016 visit to China consistently support Mr Zhou's litigation stance. Against that background, Mr Yue's litigation stance tries to rewrite history relying, not on the evident common understanding of all parties but (well after the Blockhouse Bay project was completed), building on the bridging finance he contributed, albeit contributed without material cost to himself.

[59] I find the significant change in Mr Yue's stance arose after he returned to China along with his parents. I believe Mr Yue was influenced by his parents to quit the marriage and to quit New Zealand. He retained some desire to retrieve the marriage (evidenced, for example, by his helping her draft her letter of apology) but, like Ms Zhou, this involved pacifying his parents who, I infer, felt disrespected by their daughter-in-law. The Yue family continued to regard the Zhou family as unsavoury and tight-fisted. Any thought that Ms Zhou might claim against the apartment would add pressure to their negative views.

*Representation 6: Proposed terms for reconciliation*

[60] Mr Yue says that in the August 2016 visit, he proposed<sup>36</sup> terms for reconciliation. These included that they each pay for their own expenses, even though they would live together with their young child. (Ms Zhou had earned a little higher than him in the latter stages of the marriage.) Money matters ranked high in his conditions.

*Representation 7: 30 October 2016 message ("in the future")*

[61] On 30 October 2016 Mr Yue sent a message to Ms Zhou. They had been separated since May and he returned to China with his parents in June. She visited

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<sup>36</sup> Mr Yue affid Bundle 201.0035 – 6, para 76

with their child in August. She longed for reconciliation. He was exercised about property contributions by their respective parents. His message reads:

I beg you to think about it again, have your parents already given us the money? In their minds, they would be the one who have and manage the money. They always say they will give you the money in the future, in the future, in the future, Really? Don't forget you still have a sister who also can get division of the money. At the same time, what my parents are doing? They keep sending money to New Zealand for us. Yes, that money gives me to manage it now. You might say you haven't even touched the money, but . . . haven't we spent it already? So now if you want to compare, you can see the differences. Your family keeps cheating you by making excuses of the property, but my family has already sent us money. Before the fight, I, WeiHang Yue never ever worried about money. Honestly, your family really hurt me so much, I am very sad now. Money, fucking of it!!!

[62] Mr Yue's message expresses his resentment that Ms Zhou's family only promise money "in the future". He points out she has a sister as a rival for her parents' property. He contrasts the family support: "my family has already sent us money." I find this message reflects his view, and that of his family.

*Representation 8: 23 November 2016 agreement*

[63] In November 2016, Mr Yue presented Ms Zhou with a draft agreement.<sup>37</sup> The agreement explicitly treats Blockhouse Bay as their property. It proposed sale with \$800,000 being paid to a joint bank account of Mr Yue and Ms Zhou, and the balance being paid to an account Ms Zhou operated for her father, Mr Zhou. Both Mr Yue (in China) and Ms Zhou (in New Zealand) signed the agreement on 23 November 2016. At the time, I find Mr Zhou was unaware of the proposition.

[64] I find that by October 2016, Mr Yue's family had decided that Blockhouse Bay was worth about \$1.6 million, and that, if Ms Zhou was to be allowed to reconcile with Mr Yue, her family would have to contribute half of the value of Blockhouse Bay. In other words, I find that she was presented with a financial price to achieve her desire for reconciliation. Ms Zhou said: "After I met the respondent and his mother [in August 2016] the respondent's mother told me if I want the respondent come back to me and my children [sic], if I wanted to maintain this marriage, my parents had to take

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<sup>37</sup> Bundle 301.0151. Mr Yue was then in China, Ms Zhou was then in New Zealand.

out \$800,000.”<sup>38</sup> Mr Yue’s message to her on 9 October 2016 is congruent. For example: “I will tell you my request one last time, what I want now is that your family to give you the money to sustain our marriage....So the total is \$800,000....This is the best solution and there are no other options!!!”<sup>39</sup>

[65] Mr Zhou described the sustained Yue family pressure on his daughter as “using marriage to threaten Bonnie.”<sup>40</sup>

*Representation 9: WeChat communications Mr Yue and his mother*

[66] I find that Mr Yue’s mother was complicit with him in this gambit. She may well have been the driving force. Mr Yue is a dutiful son, anxious to satisfy his parents. His mother has a strong personality. Covertly behind the scene of his negotiations with Ms Zhou late in 2016, she took a firm line with her son. This reflects unmistakably in their WeChat exchanges.<sup>41</sup> These occurred while Mr Yue was inducing Ms Zhou to sign an agreement to dispose of their purported interest in Blockhouse Bay. Mr Yue told his mother “Please careful with the wording. Zhou Xin have questions for the word I have wrote.” A few messages later, Mr Yue says “I am sure we won’t sign it today. It’s just an intention.” He adds, “No choice, her character is the same as her father.” His mother responded: “Don’t worry, you can negotiate with her.” She adds, “We just remind you, do not say that it is our idea. You can negotiate with her and you must be careful.”

[67] Within the context of their circumstances, I read those exchanges as criticisms of Ms Zhou on the basis she will be mean about property like her father. The exchanges between son and mother disclose them in concert to obtain an outcome beneficial to the Yue family interests.

[68] I find that Ms Zhou signed the November 2016 agreement to appease her in-laws and Mr Yue. She desperately wanted to retrieve her marriage. I do not find that it bolsters Mr Yue’s case as an admission of the veracity of his claim.

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<sup>38</sup> NoE 30 lines 21 to 25

<sup>39</sup> Bundle 305.1696; see also NoE 296 lines 8 – 9.

<sup>40</sup> NoE 218 line 7

<sup>41</sup> Bundle, 304.1502 – 304.1509

*Representation 10: Tenancy agreements*

[69] For completeness, I note the tenancy agreements. While living at the apartment, Mr Zhou (as tenant) signed a tenancy agreement with Mr Yue, thereby supporting Mr Zhou to obtain a WINZ benefit. Later, a similar agreement was signed in relation to Blockhouse Bay between Mr Zhou (as tenant) and Mr Yue and Ms Zhou (as landlords). The agreement in relation to Blockhouse Bay was backdated to 1 October 2013,<sup>42</sup> long before the property was inhabitable. I find that Mr Yue filled out the forms because Mr Zhou was unable to do so.<sup>43</sup> Nonetheless, I find they both knew the import of what they were doing. I find that these documents were false, fraudulently designed by all parties to enable Mr Zhou to secure a WINZ benefit for which he declared<sup>44</sup> that he owned no property. Whether the benefit funds were paid into the household I do not know. The tenancy agreements demonstrate the pragmatism and opportunism of the parties. The tenancy agreements also demonstrate cavalier and casual approaches by all parties to documentation.

[70] I have noted Mr Zhou's practice of installing family nominees in his place as registered owners of properties he controls. This is not a common Western practice. In New Zealand law, the practice that most closely corresponds involves trusts which, for real estate, typically involves express trusts.<sup>45</sup> I have previously encountered the practice employed by Mr Zhou, in cases involving Chinese parties. It carries risks, as Mr Zhou experiences in this litigation. I am not persuaded that the main reason for such arrangements is to better manage the owner's language difficulties in New Zealand. I wonder if it may have to do with avoiding tax or avoiding issues arising from introducing funds into New Zealand from China by irregular means or under irregular guise. Quite a lot of funds remitted for Mr Zhou or Mr Yue's parents seem to have been tagged as tuition fees. Nevertheless, Mr Zhou's motive in distancing himself from his properties seems immaterial to my decision-making here.

[71] Whether nomination of registered owner by the real owner is a common practice in China I do not know, nor was evidence given about that. I am untroubled

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<sup>42</sup> Bundle 304.1258

<sup>43</sup> NoE 139 – 140; 245, lines 18 - 19

<sup>44</sup> Exhibit C

<sup>45</sup> See s 25 Property Law Act 2007

judicially because the practice is not illegal (albeit risky). In this case, I have plenty of cogent evidence to make confident findings about the ownership of the properties under question.

*What other evidence bears on the credibility or candour of the protagonists?*

[72] That Mr Yue was complicit with Ms Zhou in stealing a large sum of money (\$250,000) from Mr Zhou reflects poorly on his honesty and candour. I could say the same about Ms Zhou but, in this part of my decision, where the protagonists are Mr Ye and Mr Zhou, I focus on them.

[73] Mr Yue's litigation stance is resentful and combative, over-reaching reality and lacking balance in many respects. For example, although Ms Zhou is a solo parent with virtually no property from their relationship, Mr Yue (who was ordered by a Chinese court to pay child support), complains that he is "the parent who has been financially disadvantaged by their separation."<sup>46</sup>

[74] Mr Zhou and Mr Yue pointed the finger at each other about the tenancy agreements. I find they are both complicit in the falsity and the resultant fraud on WINZ.

[75] Mr Yue says he was beaten up by thugs in China and his parents' car was damaged in late 2016. He claims Mr Zhou was responsible. He also suggested that, because Mr Zhou requested from Ms Zhou a wedding photo depicting Mr Yue's father's Rolex watch, that I should find Mr Zhou planned to make trouble for Mr Yue's parents. I am unable to make such findings on the balance of probabilities on the evidence in this case.

*What should I make of the fact that Ms Zhou has acknowledged her father's case and transferred her half share in Blockhouse Bay to him?*

[76] Mr Yue's claim suggests his involvement in the Blockhouse Bay project was joint or common with Ms Zhou. That she characterises her own involvement as

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<sup>46</sup> Yue affid Bundle 201.0257, para 35



limited to communication or covering for her father (when absent), and that she has subsequently transferred her half share to her father, creates a structural gap in Mr Yue's case. I exercise caution about placing too much reliance on these features because Ms Zhou has changed allegiances during the marital breakdown.

[77] Nonetheless, I believe I understand the conflictual circumstances that produced "wobbly" behaviours in Ms Zhou. Even if I treat her current alignment with her father's case as equivocal, I find her evidence about the involvement of herself and Mr Yue in the project has substance. Overall, her statements (with notable exceptions like the November 2015 agreement) and contemporary behaviours are powerfully congruent with her father's case.

[78] In broad terms, Blockhouse Bay was funded in the following manner. Kun Zhou (Mr Zhou's older daughter) sold Harbutt Avenue on 17 August 2012, yielding \$354,387<sup>47</sup> for her father. Mr Zhou paid the Blockhouse Bay deposit of \$92,600.<sup>48</sup> In July 2013, Mr Yue and Ms Zhou obtained a mortgage advance of \$660,000 on the security of Blockhouse Bay. Part of the loan was retained to service it. On 18 November 2014 and 15 December 2014, Mr Yue drew down a total of \$207,606.40 on the existing facility registered against the apartment. Again, a portion was set aside to service the borrowing. Because of delay in Mr Zhou accessing funds from a sale in Otorohanga, Mr Yue contributed sums from his parents' funds under his control: \$50,000 on 24 March 2015 and \$20,000 on 28 March 2015. The borrowings were repaid from sales of 236B (\$550,000 on 26 August 2015) and 236A (\$515,000 on 28 August 2015). Mr Yue accepted that \$133,964 was refunded to his parents.<sup>49</sup> Mr Yue accepted<sup>50</sup> that sums were refunded to him.

[79] Rui Gao had raised a mortgage on Thompson Street, Otorohanga to provide funds for the project. When Thompson Street sold for \$263,874 in 2014, a little over \$250,000 went to repay that mortgage.<sup>51</sup> Sunset Road, Otorohanga (in name of other son-in-law Jie Zhang) sold in September 2015, the funds of \$269,953 were paid into

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<sup>47</sup> Bundle 201.0195 at [14] and 201.0197 at [22].

<sup>48</sup> Accepted by Mr Yue: NoE 371, lines 10 - 11

<sup>49</sup> NoE 394, line 20 Possibly this sum included refunds to Mr Yue. I am unable to reconcile the amount but no one complains they are owed money.

<sup>50</sup> E.g. NoE 374

<sup>51</sup> Bundle 201.0076 at [36].

Ms Zhou's bank account for her father. (This was the deposit that tempted Ms Zhou and Mr Yue to take the \$250,000.)

[80] Mr Zhou's account of the funding<sup>52</sup> of the project is borne out by the evidence. At the end of the project, he had invested sale proceeds of Harbutt Avenue and Thompson Street together (I find) with some cash sums he had. Mr Yue's parents had (perhaps unknowingly) contributed funds for five months and were fully repaid. Mr Yue and Ms Zhou had drawn down mortgage advances but were protected from any servicing of those loans and had no resultant debt at the end. I find this is how they expected it to end up.

[81] Having reviewed the salient evidence, I find that the focus on payments made from Mr Yue's bank account (or advances from money deriving from his parents whether they knew of those advances or not) is misguided. The preponderance of the evidence supports Mr Zhou's proposition that the project was his alone, and that he persuaded Mr Yue (and Ms Zhou and his niece Rui Gao) to undertake various tasks that enabled him to bring it to completion. I find that neither Mr Yue nor his parents were in debt at the conclusion of the project.

*Is there a resulting trust in favour of Mr Zhou?*

[82] Mr Zhou paid the deposit for Blockhouse Bay, which was then a sub-dividable prospect with two dwellings already on it. Ms Zhou was already a nominal part-purchaser. I find she was placed in that position as Mr Zhou's nominee without any expectation of beneficial ownership. In other words, she held the property on a resulting trust for her father.

[83] Mr Zhou had other options, but he nominated Mr Yue to take the place of Yang Yang Lin as the other nominal half owner. I find that Mr Yue accepted his registered half share for the benefit of Mr Zhou, to take Mr Zhou's directions in regard to it. I find that Mr Yue understood the nature of his registered ownership from the outset as one of trust for Mr Zhou. I find that Mr Yue did not substitute for Xinhe Lin (through

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<sup>52</sup> Affidavit 5 June 2018, Bundle 201.0060 - 0108

Yang Yang Lin) but undertook his role under the newly formed plan whereby Mr Zhou would sell off two sections and build a house to retain.

[84] I find that Mr Yue, throughout the project, acted consistently with Mr Zhou's plan. I reject Mr Yue's contention that he was a prime mover or driver of the plan. I find that his involvement in management of the project was minor. In this aspect, I find in accordance with the case for Mr Zhou and Ms Zhou.

[85] Mr Yue and Ms Zhou were able to raise mortgage finance on Blockhouse Bay. Later, Mr Yue drew down funds from the bank on mortgage facilities secured against the apartment (the original debt having been repaid before the marital relationship). Mr Yue also contributed the use of funds under his control that derived from his parents. I find that all these funds were repaid and that the costs of servicing loans were attended to by Mr Zhou's arrangements. The upshot is that Mr Yue, his parents or Ms Zhou were never put to actual expense for the servicing of loans. What funds they made available were used without actual expense to them. I do not ignore that Mr Yue's parents were without use of their funds for a time nor that Mr Yue and Ms Zhou were at borrowers' risk but, in the overall circumstances, these were temporary, and understood.

[86] A resulting trust gives effect to a presumed common intention of the parties.<sup>53</sup> In this case, I am convinced that the parties had a common intention to the effect claimed by Mr Zhou.

[87] My jurisdiction in this matter is prescribed by s 141 Trusts Act 2019 and described for this case by Associate Judge Smith.<sup>54</sup> I can determine these matters to the extent necessary to determine whether relationship property exists in Blockhouse Bay. If I find for Mr Zhou, I have jurisdiction to vest it in Mr Zhou.

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<sup>53</sup> *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] UKHL 12; [1996] 2 All ER 990

<sup>54</sup> *Zhou v Yue* [2019] NZHC 2167

*Is there a resulting or constructive trust in favour of Mr Yue?*

[88] Mr Yue contends that his efforts and payments should, at least, be recognised by a resulting or constructive trust in his favour. I have jurisdiction to consider this because it is a necessary part of discovering whether or not this produces an item of relationship property. If Mr Yue is successful, his efforts during the relationship with Ms Zhou would seem to produce relationship property.

[89] I find that Mr Yue's efforts in the project were peripheral, and minor. I find it amounted to no more than occasional supportive communications and acting as a conduit. He was involved in the project, knowing about his father-in-law's practice of using family members as nominal holders of parcels of his property. His provision of bridging finance was pursuant to harmonious family relationships, and undertaken in that understanding.

[90] When I read that part of the Supreme Court in *Deng v Zheng*<sup>55</sup> dealing with cultural considerations, I felt it was speaking to me. Many years in courts of rich cultural diversity like Manukau District Court have required me, frequently, to hear cases that involve parties, one or more of whom have a cultural background different from my own.<sup>56</sup> The most willing cultural chameleon is apt to be tested.

[91] In this case, I have listened closely to the evidence, observed the witnesses, and considered the events in relation to the individual parties within their fluctuating relationships and their respective changing interests. The circumstances described in this case involve two Chinese families, one resident in New Zealand for several years, the other represented here more tenuously by their son. Most of the significant features in this case (such as the particularity of different family structures, desires within a kin group to see their fortunes increase, differing patterns of supporting children, mediating international movement of funds, minimising exposure to tax) are not especially culturally remote.

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<sup>55</sup> [2022] NZSC 76, paras [75] to [84]

<sup>56</sup> Above at [78](a)

[92] As with *Deng v Zheng*, the circumstances in this case involve looking through forms to find the true substance of the matter, perhaps more so than in many cases. Nonetheless, I have found the circumstances of this case to be comfortably accessible to judging processes, increasingly so as I have ruminated over the evidence, and tested my impressions. I have heard cases where I felt at a cultural disadvantage (some involving Chinese litigants) but this is not among them. If I am mistaken, I am unconsciously mistaken.

[93] I have spent many days working on this decision. While reading the affidavits; and, later, during the hearing; and, later again, while considering all the evidence: I have observed the rhythms of the Zhou and Yue family groups and their members. In their relational context, Mr Yue was, I find, well aware that he owed duties of responsibility to his wife's father. He housed his parents-in-law in the apartment for a time. It was cramped. They helped care for their daughter during her pregnancy. They helped care for the baby. Mr Zhou provided the use of Blockhouse Bay for Mr Yue and his parents for the year before separation. Mr Yue was aware of the pattern of fidelity required of him by his own parents. His mother impressed me with her formidable force during oral evidence (by AVL from China).

[94] Mr Yue can point to the temporary (albeit substantial) support his entree to finance constituted. He (and Ms Zhou) undertook the financial risks of exposing themselves as borrowers. So too did Rui Gao who, for this project, took registered ownership of an Otorohanga property<sup>57</sup> from her uncle, and raised a mortgage for the purpose of this project. Rui Gao has a degree in accounting and business.<sup>58</sup> A clear and impressive witness, she plainly regarded what she did as her duty without expectation of reward.<sup>59</sup> No money changed hands when she took title from her uncle (Mr Zhou). When Thompson Street, Ototohanga was sold, the net proceeds were deposited in the account Ms Zhou operated for her father. Rui Gao too, had earlier operated a bank account for her uncle. Both sides of the Yue/Zhou family knew the younger generation was expected to support the respective heads of family.

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<sup>57</sup> 6 Thompson Street

<sup>58</sup> NoE 202

<sup>59</sup> NoE 198 - 201

[95] I believe Rui Gao's evidence that she saw Mr Zhou pay cash to Mr Yue. I find that Mr Zhou did have cash reserves that he applied in relation to the Blockhouse Bay project.

[96] Although Mr Yue put himself out to arrange the finance, I find he did so without expectation of sharing in the capital result. He acted as a dutiful, supportive son-in-law. Later, he regretted the position. He complained about his father-in-law's meanness. He joined with his wife in attempting to retain some of the \$250,000 they stole from Mr Zhou after the project was completed. Post-project envy does not amount to entitlement to benefit. Without denigrating what Mr Yue did, he was never obliged to fund anything for the project from his own resources. At the end of the project, his financial and asset position were undiminished.

[97] I cannot perceive a balanced basis upon which Mr Yue can lever himself up to a recognisable expectation of beneficial sharing. As I indicated earlier, this is not a situation where Mr Yue has a good case based upon the proportion of funds that flowed through his accounts. He was only a middleman, passing on borrowed funds. His short-term provision of parental funds under his control is to similar effect in this context. I find no resulting or constructive trust in his favour.

**Is there relationship property in the apartment sale proceeds?**

[98] I must address two successive sub-issues. Firstly, Mr Yue claims he held the apartment on trust for his parents as evidenced by a document dated July 2006. Ms Zhou argues that the document is a sham. Secondly, although they were residing elsewhere at separation, she says they were still relying on the apartment to fund another home for them, and therefore argues that its use as a family home was not spent.

*Was Mr Yue the beneficial owner of the apartment or a trustee for his parents?*

[99] I must determine issues concerning Mr Yue's beneficial interest in the apartment on the balance of probabilities.

[100] The apartment was purchased in October 2006 when Mr Yue was a student in Auckland. The purchase price was \$322,000 which was paid by a deposit of \$87,000 and a Westpac mortgage loan of \$235,000. Mr Yue's parents paid the deposit and subsequently made payments to reduce, and eventually repay, the mortgage by August 2011. I find the apartment was substantially acquired by funds provided by Mr Yue's parents.

[101] When Mr Yue and Ms Zhou moved to Blockhouse Bay,<sup>60</sup> the apartment was rented out and the rent was paid into their joint account.<sup>61</sup> Body corporate fees were paid from that account.<sup>62</sup>

[102] After separation, the apartment was sold for \$620,000.<sup>63</sup>

[103] Mr Yue says he and Ms Zhou did not live together at the apartment before their December 2011 marriage in China. On this point, I prefer the evidence of Ms Zhou that they lived together from September 2011.<sup>64</sup> Her narrative about this period seems the more probable. I find that both sets of parents (who were then all in China<sup>65</sup>) would have disapproved of their pre-marital intimacy. I think that Mr Yue is still embarrassed to admit this openly. The date is of no material importance to the property dispute, but it reflects on their relationships with their respective parents. Along with other indicators, I find Mr Yue has been more closely aligned with his parents than Ms Zhou has been with hers.<sup>66</sup>

[104] When Mr Yue produced the "July 2006 document"<sup>67</sup> it was news to Ms Zhou. It records that his parents will own the property and that Mr Yue will be able to live there "long-term until the time he has the means to be able to buy a house of his own and then move out." The document is handwritten in Chinese by his father and signed

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<sup>60</sup> 16 May 2015; Bundle 201.0277, par [19].

<sup>61</sup> Bundle 201.0131, paras [10] and [11]; NoE 271, 272.

<sup>62</sup> NoE 271, 272.

<sup>63</sup> Settlement August 2016. Opening submissions for Mr Yue, para 35; Bundle 201.0005 para 24 and 201.0008, para 47.

<sup>64</sup> Bundle 201.0276, para 13; NoE 15, lines 1 – 8; NoE 260, lines 22 – 25 (relationship "got serious quickly."

<sup>65</sup> Ms Zhou's parents were on holiday in China at this time; Mr Yue's parents resided in China.

<sup>66</sup> See also Bundle 201.0035, para [75].

<sup>67</sup> Bundle 301.0013, English translation at 301.0012

by Mr Yue and his parents. The true date of the document cannot be ascertained by reference to any witness (because there is none).

[105] The full text of the English translation of that agreement says:

Party A: Jianping Yue, Xiaoran Chi (Parents)

Party B: Weihang Yue (Son)

In order for it to be convenience for Jianping Yue and Xiaoran Chi (the parents) to go to New Zealand to live there or settle there permanently, Jianping Yue and Xiaoran Chi (Party A) have decided to purchase a small house in Auckland, New Zealand. And in 2006, [the parents] firstly sent 90 thousand (NZD) to Party B as a deposit for purchasing the house. The remainder will be paid by the Son through a mortgage. All payments for this property (including all related costs) will be Party A's responsibility. Later, Party A will send [the money] to Party B, in succession, to use for repaying the mortgage interest and principal until all the mortgage is paid off,

Party A (Parents) have the total ownership of this house.

Party B (Son) can live in this property long-term until the time he has the means to be able to buy a house of his own and then move out.

This agreement has two copies, one for each party.

Party A (Signature) Jianping Yue, Xi

Party B (Signature) Weihang Yue

[106] I find Mr Yue did not inform any bank or other third party that his parents had an interest in the apartment.<sup>68</sup> In November 2015, when he sought advice (on behalf of himself and his wife) from accountant Nelson Wang about tax implications of rearranging ownership, he wrote,<sup>69</sup> plainly: “I bought an apartment in 2006 and moved out in May 2015. If I sell this property I should not be taxed.” This representation is congruent with his having beneficial ownership.

[107] Although Ms Chi (Mr Yue’s mother) suggested<sup>70</sup> that Ms Zhou’s apology letter<sup>71</sup> handed to her in August 2016 contains an admission that the apartment belongs to Mr Yue’s parents. I am unable to find any such implication in it.

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<sup>68</sup> See, e.g. NoE 288

<sup>69</sup> Bundle 308.3085

<sup>70</sup> Bundle 201.0172, para [58].

<sup>71</sup> Bundle 305.1739



[108] I find that Mr Yue never told Ms Zhou that his parents had any interest in the apartment. Unless she tacitly admitted otherwise by signing the #78 property agreement a few days before separation, she had every reason to believe its ownership lay with him. That said, she must have been aware that he could not have afforded to buy it without his parents' substantial assistance. In a familial sense, she should have been aware that he owed duties to his parents because of their support.

[109] Although Mr Yue instructed solicitors to pay the sale proceeds of the apartment into his parents' bank account, when he enquired about tax liability in July 2016, he stated "I own this apartment since year 2006."<sup>72</sup>

[110] As part of his challenge to the July 2006 agreement, Mr Hodge notes that the English translation presents part of the text with a past tense verb: "And, in 2006, [the parents] firstly sent 90 thousand (NZD)..." I appreciate that may suggest the document was written later but I am not sufficiently confident of nuance in the translation to place weight on that part of his submission. It is not critical in my decision on this question.

[111] The purchase funds were sent by Mr Yue's family from China. New Zealand is, to them, a foreign country. The Yue parents had tentative thoughts of emigration. They may have wanted to ensure the funds were secured for them. Against that, Mr Hodge submits it was unlikely that Mr Yue's parents would have felt a need to record these matters in 2006 if the arrangement was as set forth in the agreement. Mr Yue's parents seem to have a high level of trust in him. There is no similar agreement<sup>73</sup> in place concerning his current property in China, even though that property has been similarly purchased with parental contribution and bank borrowing. I think there is force in Mr Hodge's arguments.

[112] On 2 May 2016, shortly before separation, Mr Yue, his parents, and Ms Zhou, signed the "#78 property agreement." Of significance to the question about who owned the apartment, the document expressly noted that the \$1 million from Mr Yue's

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<sup>72</sup> Bundle 305.1621

<sup>73</sup> Mr Yue's mother, NoE 347, lines 18 – 25. At NoE 366, lines 21 – 23, she says she advanced \$500,000 to Mr Yue for a short time for his Dalien property. Whether that bridged him until recovery of the apartment sale proceeds does not arise in evidence.

parents was to be partly made up from sale proceeds from the apartment (\$630,000). Was this a tacit admission by Ms Zhou that her in-laws owned the apartment?

[113] I have already found that, when Ms Zhou signed the #78 property agreement (days before separation), the Yue family were well engaged in negative rhetoric about the Zhou family (especially about Mr Zhou). Her interests were to please her in-laws and to further the prospect of she and her husband achieving a bigger home because the apartment was too small. The #78 property agreement sketched a prospective plan of action in relation to a property that was ultimately not pursued. Within the dynamics of the Yue family, I do not think Ms Zhou would have argued with her in-laws about the ownership of the apartment, even if she noted that implication in the agreement. I do not think that would have been her focus in respect of this proposal. Its thrust advanced her interests; I do not think she would make waves unnecessarily. I acknowledge that this is a reconstruction, but it fits with my understanding of the parties and their circumstances at the time. I find it is the probable scenario. Accordingly, I read little into the allegation that her signing the #78 property agreement amounts to a firm concession on her part.

[114] In his interlocutory decision discharging the freezing order, Muir J placed some emphasis on the #78 property agreement. Undoubtedly, it should have been disclosed in Ms Zhou's application for a freezing order. Nonetheless, as I observed earlier, I am better placed to assess its import.

[115] I have formed the view that Mr Yue and his parents form a close-knit cluster in which retention of "their" property became a keen focus immediately the marriage seemed to be foundering. They departed Blockhouse Bay, returned to the apartment, left New Zealand, and promptly sold the apartment. In relation to his parents' reaction to the 10 May 2016 incident, Mr Yue said:<sup>74</sup> "I felt very guilty for having placed them in this situation in the first place. I decided that as a son I owe it to them to take care of them and give them some warmth. We left for China on 19 June 2016."

[116] Mr Yue's mother swore an affidavit and was cross-examined. I am distrustful of the evidence both of Mr Yue and his mother. In respect of the Blockhouse Bay

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<sup>74</sup> Bundle 201.0035, para [75].

property, I find that Mr Yue has tried to construct a case out of lies. His representations about that property until about October 2016 are at odds with his later claims. His mother operated covertly with him to seek a financial deal out of Ms Zhou (and, through her, her father). She was avoidant under cross-examination<sup>75</sup> and, although Mr Zhang persuaded her, in re-examination, to answer the question she tried to avoid, I have an impression that she is manipulative and untrustworthy. These features bear on my assessment of the July 2006 document.

[117] If there were no familial nuances to this situation, I would hold that Mr Yue had the beneficial ownership of the apartment. I find that the only contra-indicator available to Ms Zhou would be if she drew an inference from the term of the “#78 property agreement” that indicated Mr Yue’s parents were contributors of the apartment. That said, her lens is not the lens through which this matter must be determined. I infer that she would not have raised the issue, if she noticed it as pertinent. They were meeting as a family group to find a way to achieve a bigger property for her and Mr Yue. In the context, she would defer to the older generation. I do not count her having signed the #79 property agreement as a weighty concession.

[118] On the balance of probabilities, I find that the “July 2006 document” is a sham. I think it is more likely to have been produced by Mr Yue’s parents and Mr Yue to shore up their defence to Ms Zhou’s attack on the apartment which they had never anticipated might be partly lost through divorce proceedings. As a close-knit trio, they left Ms Zhou, returned to the apartment and left New Zealand soon after. Mr Yue sold the apartment soon thereafter but was delayed in removing the proceeds because Ms Zhou obtained a freezing order.

[119] In my view, it would be unjust, in the circumstances of the Yue family, to act on the unquestioned basis that his parents intended to give that property to him. I believe the situation is more nuanced than that.

[120] Although it has not been explicitly argued, I find that the manner and circumstances of purchase of the apartment imposed filial obligations on Mr Yue to

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<sup>75</sup> Refusing to answer a question about what assistance she gave Mr Yue in purchasing his current Chinese residence. NoE 347

honour his parents' contribution. Because her family operates on similar lines, I find Ms Zhou will have understood those obligations (although it is not necessary for my finding that she understood). These relational characteristics may be termed cultural but my judgment has a tighter focus, picking up the nuances of the particular parties and their family sets, and looking to make appropriate findings in an accurate context.

[121] Mr Yue's parents did have thoughts of emigrating to New Zealand. Their son went ahead and they funded his foothold. But they had intentions of possibly following him. His placement in New Zealand was a down payment towards their own options.

[122] I find that there is an element of resulting trust in Mr Yue's ownership of the apartment. Although I rule out the "July 2006 document" and I do not accept unquestioningly the allocation of the apartment to his parents in the "#78 property agreement," I do not find myself in accord with his statement to Nelson Wang (November 2015) that implies he was untrammelled owner of the apartment.

[123] In the circumstances of this case, I find that Mr Yue's beneficial ownership of the apartment is limited to a one half share, and that he holds the other half for his parents by way of resulting trust. This is an outcome different to what either party sought but I believe it is appropriate and justified on the evidence. This determination is not binding as between Mr Yue and his parents but it is binding as between Mr Yue and Ms Zhou in these relationship property proceedings.

[124] Accordingly, I find that one half of the net sale proceeds are property of Mr Yue. If they are relationship property he will need to account for that share.

*Was the apartment still in use as a family home at time of sale?*

[125] If I am right in holding that an interest in the apartment was beneficially owned by Mr Yue, then that interest represents their family home at least during the period they resided there. Ms Zhou argues that it should still be classified as their "family home" after they moved from the apartment to Blockhouse Bay Road.

[126] Most of the 1976 changes in relationship property law have become well accepted: for example, the concept of equal sharing of relationship property after three years. That the family home should be shared equally, whatever its source, has failed to gain the traction<sup>76</sup> that many other aspects of the legislation enjoy. The provision for equal sharing of a home introduced by one partner can be contrasted with the classifications of life insurance or superannuation where the scope of captured property has been redefined down to the portion attributable to the relationship. Compulsory equal sharing of the home conflicts with another principle of the legislation, namely preserving separate property of a partner as separate (subject to statutory erosions),

[127] The precise issue in this case, the classification of the apartment (and the proceeds of sale) depends on determining “the use to which it was being put before the marriage ended”: s 2H(2)(b). Cases such as *Castle v Castle*<sup>77</sup>; *Evers v Evers*<sup>78</sup>; and *Thompson v Thompson*<sup>79</sup> exemplify and discuss the issue in various ways. Pertinently, in this case Ms Zhou relies on the interpretation adopted by Fitzgerald J in *F v F*.<sup>80</sup>

[128] *F v F*<sup>81</sup> sits on the cusp between the social aim of the legislation to share the home between partners whatever its source, and the principle that separate property that has been neither improved nor intermingled, should remain separate property. In that case, the family lived for about eight years in the home that the husband brought into the relationship. They had three children. They moved into rental accommodation and leased out the “home” on a short-term tenancy. Fitzgerald J determined that it was not clear the move was intended to be permanent. Fitzgerald J said<sup>82</sup> “This case is far removed from those where the parties had sold what had previously been the family home; been living away from the family home for some considerable time; or had

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<sup>76</sup> Law Commission Review of Property (Relationships) Act 1976, 28 June 2019, especially paras 3.37 and 3.58.

<sup>77</sup> [1997] 2 NZLR 97 (SC, Quilliam J)

<sup>78</sup> [1985] 2 NZLR 209 (CA)

<sup>79</sup> [2000] NZFLR 161 (HC)

<sup>80</sup> [2017] NZFLR 768

<sup>81</sup> [2017] NZFLR 768

<sup>82</sup> *Supra* at [35] (p777)

clearly intended to move away on a permanent basis.” Fitzgerald J found its use was not spent at the time of separation.

[129] In the present case, Ms Zhou, Mr Yue, their son and Ms Zhou’s parents had been living together in the two-bedroom apartment. Mr Yue’s parents arrived in New Zealand. The apartment was too small. Ms Zhou and Mr Yue, supported by his parents, wanted a bigger home.<sup>83</sup> Immediately before separation, as evidenced by the #78 property agreement, they were actively searching for a bigger home.

[130] In May 2015, about a year before separation, Ms Zhou, Mr Yue, their infant son, and Mr Yue’s parents moved from the apartment into the property at 236C Blockhouse Bay Road. This property was registered in the names of Ms Zhou and Mr Yue. If I had found they had a beneficial interest in Blockhouse Bay property, I would have found that interest represented their family home in substitution for his share in the apartment. If so, his share in the apartment would have resumed its former status as Mr Yue’s separate property. It had not been improved or enhanced in value save for market value rises. His half share of the sale proceeds would have been his alone.

[131] I find that the circumstances of this family are analogous to the parties in *F v F*. I find that they moved out of the apartment into Mr Zhou’s Blockhouse Bay property as a stop-gap measure while they looked to buy a property using the apartment sale proceeds. This state of affairs reflects in the 2015 agreement, the #78 property agreement, and other signs of ongoing searches for a bigger residence. The use of the apartment as family home was not spent before separation. Accordingly, Mr Yue must account for his beneficial one half of the sale proceeds (namely \$310,000 as at August 2016).

### **Savings, the car, the engagement ring**

[132] Ms Zhou claimed equal division of \$310,000<sup>84</sup> as relationship savings. She targeted all sums in bank accounts (including term deposits) in the names of herself or

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<sup>83</sup> E.g. Bundle 305.1709 Mr Yue email 15 December 2015 about imminent auction; Bundle 304.1566 Mr Yue email 22 December 2015 about East Coast Road property; Bundle 305.1697 Mr Yue email 13 April 2016 re 21 Compton Street; and see Bundle 201.0137 at para [31].

<sup>84</sup> Bundle 201.0008 para 47

Mr Yue at separation. Mr Yue claimed that most of these sums were advances from his parents and were not intermingled.

[133] Ms Zhou's attempt to explain how they could have saved such sums from their modest incomes, especially after their expenses on international trips,<sup>85</sup> was not convincing. Ms Zhou was on maternity leave between April 2013 and January 2014. Although some of the accounts into which large amounts from the Yue parents were received had ordinary expenses paid from them, I do not find the large sums were intermingled. I do not find that the sum sent soon after their child's birth was proved, on the balance of probabilities, to have been a gift from Mr Yue's parents.

[134] Mr Yue did advance, for Mr Zhou's Blockhouse Bay project, some funds his parents had remitted, without express authorisation from them. I do not find his doing so means the money belonged to him and Ms Zhou. Instead, I find he exceeded his authority. Although I am cautious about accepting Mr Yue's mother's evidence in some areas, I believe her evidence that funds were remitted for living costs, retirement, and travel.<sup>86</sup> I decline to find those funds were converted into relationship property by Mr Yue's actions in making them available when he had them under his control. Mr Zhou refunded \$133,964 to Mr Yue's parents from the sale proceeds of 263A and 263B.<sup>87</sup>

[135] In respect of alleged gifts, I find in accordance with Mr Zhang's closing submission<sup>88</sup> that the net savings of the parties at separation was made up of ASB 00 account (\$364.88), ASB 50 account (\$7200), and \$5,385.78 of the funds in the ASB 51 account. I find that the \$50,000 drawn from the ASB 51 account by Mr Yue around separation was done to secure from Ms Zhou's reach the property his family regarded as theirs (just as they removed all their furniture from Blockhouse Bay at that time).

[136] I am uncertain which party had control of those amounts after separation. Therefore, I reserve leave for submissions or brief evidence within 14 days to clarify the position.

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<sup>85</sup> 2 trips to Australia, 1 trip to Fiji, 2 trips to China and multiple holidays around New Zealand: Mr Yue affid. Bundle 201.0032 para 53

<sup>86</sup> NoE 354

<sup>87</sup> NoE 394

<sup>88</sup> Mr Zhang closing submissions para 83d

[137] I find the value of the relationship property car retained by Mr Yue was \$34,000 for which he must account.

[138] Ms Zhou had been given an engagement ring.<sup>89</sup> It was therefore her separate property. I accept her evidence that it was worth \$6000.<sup>90</sup> They disagree whether she has retained it or Mr Yue took it away when he left New Zealand. I am more convinced by Ms Zhou on this point.<sup>91</sup> Mr Yue shall pay her \$6000 in compensation.

### **Orders**

[139] Mr Yue shall transfer his registered interest in the Blockhouse Bay property to Mr Zhou.

[140] Mr Zhou shall pay Ms Zhou \$178,000, (\$155,000 for one-quarter of the sale proceeds of the apartment, \$17,000 for half the car value, \$6000 for the ring) plus interest at 5% per annum from 1 January 2017 calculated on a daily basis until payment of any portion.

[141] The parties shall equalise sharing of the savings of \$12,950.66. I direct counsel within 14 days of this judgment to file an agreed position or evidence to identify who has had the sums since separation within 14 days and I shall then make a specific order to resolve this issue.

[142] Leave is reserved to any party to apply for orders to give effect, or to give better effect, to this scheme of orders.

### **Costs**

[143] I postponed arguments on costs until I had given this decision.

[144] In case it assists, I advise counsel that my tentative view, without having heard argument, is as follows:

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<sup>89</sup> NoE 85; 267

<sup>90</sup> NoE 85, 116, line 4

<sup>91</sup> NoE 85; 267 - 268



- (a) Ms Zhou has succeeded in part against Mr Yue. Costs should follow that event, but my tentative view is that the amount of costs should reflect that her own actions contributed to some of her litigation difficulties. My tentative view is that she might be awarded 50% of 2B costs.
  
- (b) Mr Zhou has succeeded entirely against Mr Yue. There are grounds for an uplift but, against that, Mr Zhou created the need for the litigation by choosing to use Mr Yue as one of the title-registrants of the property. My tentative view is that Mr Zhou should be entitled to 2B costs.

[145] If counsel cannot settle costs, written submissions (not more than 5 pages) should be exchanged within 14 days from the date of this judgment, and I shall then determine costs.

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Judge JG Adams  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 16/08/2022