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

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IN THE FAMILY COURT
AT AUCKLAND

FAM-2015-004-000342
[2018] NZFC 6121

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[XY] Applicant
AND	[TZ] First Respondent
AND	[YZ] Second Respondent
AND	[MY] Third Respondent

Hearing:	6-10 August 2018
Appearances:	R Reed and M Tan for the Applicant B Snedden for the First Respondent R Pidgeon for the Second and Third Respondents
Judgment:	16 November 2018

RESERVED JUDGMENT OF JUDGE S J FLEMING

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[1] Ms [XY] and Mr [TZ] met around the beginning of 2008. They married on [date deleted] May 2009. There is one child of their relationship, namely a daughter [JZ], born on [date deleted] 2013. They agree they separated on 12 May 2014.

[2] Throughout their relationship, Mr [TZ] was a student who apart from a few months did not work in employment. Ms [XY] was mostly employed. Neither party had any significant assets at the time they met. At the conclusion of their relationship the main assets were an apartment situated in [address 1] owned in the name of Mr [TZ] (agreed value of $300,000), and the net proceeds of sale of a jointly owned property in [address 2] totalling $350,000 (or thereabouts). Those funds are held pending resolution of these proceedings. Apart from Ms [XY]'s earnings from employment, all monies to support the couple were provided by Mr [TZ]'s parents, the second and third respondents Mr [YZ] and Ms [MY]. The total of the advances made by Mr [TZ]'s parents is $874,000. Part of those advances was used to acquire assets.

[3] The primary issue to be determined is whether the advances made by Mr [TZ]'s parents were gifts or loans. Other issues include:

- A determination of which property was the family home at separation.
- Do the provisions of s 10 apply to either the apartment or [address 2]?
- Are there extraordinary circumstances making the equal sharing of property repugnant to justice?
- If there are, how should relationship property be divided?
- Post separation compensation.
- Should an order be made pursuant to s 26 of the Act?

[4] All counsel agreed issues of credibility were critical in the determination of the issues. In particular, credibility impacted on the classification of the monies provided by Mr [TZ]'s parents as either gifts or loans.

Background

[5] After Ms [XY] and Mr [TZ] met around the beginning of 2008, their relationship developed quite quickly and they travelled together to China at the end of that year, which was the first occasion Ms [XY] met Mr [TZ]'s family.

[6] An apartment in [address 1] was acquired in Mr [TZ]'s sole name in February 2009. Ms [XY] and Mr [TZ] moved into it on 24 February 2009. The purchase of the apartment was funded entirely by monies provided by Mr [TZ]'s parents. It cost $128,000.

[7] Ms [XY] confirmed in her evidence the apartment was purchased by her parents-in-law for their son (see paragraph 30 affidavit sworn 6 October 2015).

[8] Ms [TZ] and Ms [XY] married on [date deleted] May 2009, about three months after they had moved into the apartment and they remained living there until October 2012. When they left the apartment, it was rented for $300 per week.

[9] The reason Ms [XY] and Mr [TZ] moved from the apartment was because they were expecting their first child and wanted a bigger property. They found one at [address 2] in Remuera and it was purchased on 5 October 2012. The price was $812,000 and the property was owned in the joint names of the parties. The purchase was financed by borrowings from the ASB Bank ($450,000) and by further funds provided by Mr [YZ] and Ms [MY], the respondent's parents. The total of their advance for this purpose was $350,000. Some of those funds were transferred by other members of Mr [TZ]'s family in China, but there is no dispute all the funds were provided either directly or indirectly by the parents.

[10] Ms [XY] and Mr [TZ] were able to obtain finance from the ASB Bank to complete the purchase of [address 2] on the basis the $350,000 provided by Mr [TZ]'s

parents was a gift. There is a gift statement which is purportedly signed by Mr [YZ] recording those funds are a gift. There is some confusion as to whether the gift statement was ever provided to the Bank but that is not directly relevant to the issue to be determined, namely whether the $350,000 was a gift or a loan. Having said that, most of the documents produced point to a gift statement having been sighted by the Bank and there is a record in the financing documentation that $350,000 was gifted by the respondent's parents.

[11] Mr [TZ] claims the gift statement was prepared by himself and Ms [XY] and that both practised his father's signature to find out whose signature resembled most closely that of his father. His evidence is his parents never saw the document and his father never signed it. He said he signed the document and when his parents learned about it they were very angry.

[12] The couple moved in to live in [address 2] following its purchase. Ms [XY]'s income when working was paid into the parties' joint account and used on day to day expenses. Her salary was modest with an annual gross income ranging between just over $5000 to $26,000 (1 April 2012 to 31 March 2013). Ms [XY] took maternity leave from the end of 2012 through until 2013. While on maternity leave Ms [XY] received benefits from Inland Revenue, which again were paid into the parties' joint account. Mr [TZ]'s income contribution was minimal throughout the relationship because he did not work for more than a few months.

[13] The other funds transferred from China to New Zealand by Mr [TZ]'s parents which were not used on the acquisition of the apartment and house, were used to support the couple's living expenses. Ms [XY] and Mr [TZ] both accuse one another of being extravagant. Mr [TZ] pointed to the record of a large amount of purchases made by Ms [XY] from her employer. Ms [XY] maintains she would use her staff discount to purchase duty-free items for friends and would be repaid by the friends and denies the suggestion she bought many items for herself. Even if Ms [XY]'s version is correct, there is evidence both purchased expensive items. Mr [TZ] in particular was a keen fashion follower and enjoyed gaming and gambling. They both travelled to China. On one occasion they flew to Queenstown to eat a particular hamburger. They dined out, went to bars and generally lead a lifestyle that would not

have been remotely affordable were it not for the extensive financial assistance provided by Mr [YZ] and Ms [MY].

[14] Towards the end of 2013 Mr [TZ] said he and Ms [XY] had realised they could not afford to pay the outgoings on the [address 2] house without further advances from his parents. He said there was agreement the property should be sold with the sale proceeds being used to repay his parents but he says "the applicant (Ms [XY]) was very reluctant to do so".

[15] Ms [XY] on the other hand said Mr [TZ] had decided he wanted to separate and told her so towards the end of 2013. Whatever may have been the reason, Ms [XY] and Mr [TZ] did agree to sell [address 2] and it was sold on 14 May 2014. The net sale proceeds amounted to $386,306.38 and are being held in an interest-bearing account pending resolution of these proceedings.

[16] In the months prior to the sale of [address 2] Ms [XY] and the couple's daughter moved into Ms [XY]'s mother's home for a few days and then back into the [address 1] apartment in around March 2014. Ms [XY] left the apartment on 12 May 2014 and that is the date the parties agree is the date of separation. It appears Mr [TZ] was spending some time away from the apartment preparing the [address 2] property for sale between February and 12 May 2014.

[17] On 15 May 2014 Mr [TZ] withdrew approximately $110,000 from the parties ASB account which increased the overdraft. Ms [XY], on the same day, withdrew the balance of $6000 from the account. The overdraft was repaid out of the proceeds of sale of [address 2].

Gifts or Loans

[18] Mr [TZ] and his parents claim all of the funds provided by the parents were loans. Ms [XY] claims they were gifts.

[19] Apart from the gift statement recording the basis for the $350,000 provided by the parents to purchase [address 2], the only other written documentation relating to the monies provided were five "promissory notes".

[20] Mr [TZ] and his parents produced those five promissory notes which they claimed recorded the basis for all the advances made between 2008 and the end of 2013. Each promissory note recorded a specific amount of money being "borrowed" by Mr [TZ] and that the loan was repayable on demand. If demand was made, Mr [TZ] was to repay the loan – both principal and interest – within three days. The interest rate was five percent. The particulars of the five promissory notes are:

- The first is dated 11 January 2009 (relating to advances in 2008 of $45,000);
- 21 February 2010 (relating to advances in 2009 of $184,000);
- 19 March 2011 (relating to advances between 2010 and 2011 of $60,000);
- 8 March 2013 (relating to advances between 2012 and March 2013 of $468,0000); and
- 8 December 2013 (relating to advances from April 2013 to the end of that year of $90,000).

[21] Two of the promissory notes relate in whole or part to the purchase of the apartment and [address 2] (21 February 2010 and 8 March 2013). Mr [TZ] said (and this was confirmed at the hearing) the idea of promissory notes came from his parents. Mr [TZ] said some of the promissory notes were signed in China and others in New Zealand when his parents were here.

[22] Ms [XY] challenged the veracity of the promissory notes. She applied for orders for discovery claiming the notes were created by Mr [TZ] after the parties' separation. She sought discovery of any electronic files on the basis inspection by an expert may demonstrate the promissory notes were created after the proceedings were issued. The application was opposed and was not granted. A costs order was made

against Ms [XY]. She was ordered to pay costs of $500 to Mr [TZ] and $3382 to his parents.

[23] Ms [XY] also issued interrogatories against all three respondents and a number of the questions related to the promissory notes. All three respondents repeatedly denied the promissory notes had been created after the proceedings were issued and insisted, on oath, they had been drafted and signed on the dates recorded in either China or New Zealand.

The Law

[24] There is no dispute there are three things necessary to establish a valid gift, namely:

- The expression of the intention of the donor to make a gift.
- The assent of the donee to the gift.
- The actual or constructive delivery to the donee.[1]

[25] Further, it is agreed there is a presumption the transfer of property from parents to a child is a gift, although that presumption can be rebutted by evidence showing there is no intention to benefit by way of gift. Mr Pidgeon submitted the presumption is no longer as strong as it might have been in the past, referring (particularly where there are adult children) to decisions in overseas jurisdictions. He did not however contend there was no longer any such presumption. In any event I note the recent comments of Gordon J that:

> "The presumption of advancement should extend to adult children, regardless of whether they are independent or dependent."[2]

[1] *N v N* (Relationship property loan) [2010] NZFLR 161, para [42] to [47]
[2] *Woolf v Kaye & Clark* (CIV 2015-404-1043) [2018] NZHC 2191, para [188]

[26] In this case, there is no issue about the delivery of the funds to the recipients nor the assent by either Ms [XY] or Mr [TZ]. The dispute turns primarily on the expression of intention by Mr [YZ] and Ms [MY] as donors.

[27] Ms [XY]'s evidence is the funds were a gift and she was told that by her parents-in-law. Her mother, Ms [G], also said Mr [YZ] had talked about gifting money to Ms [XY] and Mr [TZ] and suggested when his son and wife had a child they would need to change where they were living and purchase another property, which he would gift to them.

[28] The respondents deny the monies were a gift.

[29] As already indicated the issue of credibility is critical to the determination of whether the monies provided were a gift or a loan given the conflict in the evidence.

[30] Mr [TZ] said he had been borrowing money from his parents well prior to meeting Ms [XY] and had used that money for the payment of his tuition fees, rent and living expenses. The parents said they had agreed with their son to support him during the first year of his study but thereafter all financial support provided would be repayable on the basis recorded in the promissory notes. Although Mr [TZ] said his parent's version was correct, it was surprising he did not make reference to the first year's advances being a gift, rather than a loan, in his first affidavit. He said in that affidavit he had been borrowing money from his parents since before he met Ms [XY] but made no reference to any agreement the first year of support was gifted rather than lent.

[31] There was a meeting between all the parties and Ms [XY]'s mother in April or May 2014 at which time the division of property between the applicant and respondent was discussed. The respondents claim the promissory notes were shown to the applicant and her mother at that time but this is denied.

[32] At the hearing it was established the promissory notes were not prepared at the time Mr [TZ] and his parents had said, on oath, that they were prepared. The

documents were prepared, as Ms [XY] had maintained throughout, after the proceedings were filed.

[33] The admission the documents were prepared after these proceedings were issued, and not on the dates, and signed in the places alleged in the affidavit evidence of all three respondents, was elicited in the cross examination of Mr [TZ] by Ms Reed. Mr [TZ], despite repeating on a number of occasions during the hearing the documents were prepared on the dates recorded on the documents, finally admitted when confronted with some evidence to the contrary, that all the promissory notes were prepared at a later stage. He said they were prepared "at the point that I became aware she (Ms [XY]) did not want to repay money" to his parents. He accepted it was a serious matter to provide false documentation to the Court.

[34] Mr [TZ]'s mother similarly continued, during the hearing, to maintain the promissory notes were signed on the dates and places referred to in her earlier affidavit evidence. Finally, she also agreed they were prepared subsequently when told about her son's evidence that the notes were prepared and signed after the separation.

[35] Mr [YZ] admitted the documents were prepared after separation during the course of his evidence having denied they were in his earlier affidavit evidence.

[36] All three respondents maintained that, although they had not told the truth in their affidavits or when giving evidence at the hearing (with the exception in the latter regard of Mr [TZ]), the promissory notes reflected the reality of the transaction – that is the monies had been advanced by way of loan and the terms of the loan were as recorded in those notes; namely interest was payable at the rate of five percent and once demand was made the loan had to be repaid within three days.

[37] I do not believe the evidence of the respondents that the monies were loans rather than gifts. I find myself unable to rely on their evidence because they did not tell the truth about when the promissory notes had been prepared and signed.

[38] It is further implausible there was ever any verbal agreement as claimed by the respondents to the effect loans made to their son and/or his wife would be repayable

on demand within three days and carry interest at five percent having regard to their son and daughter-in-law's financial circumstances.

[39] The promissory notes well post-dated the advances and were prepared at least at the point of separation if not after the proceedings were issued in an effort to establish the advances were loans.

[40] I have additional reservations about Mr [TZ]'s evidence. He admitted early on he had forged his father's signature in order to obtain the funds from the ASB Bank. Mr [YZ] claims his signature has been forged and there is some independent evidence from the handwriting expert suggesting the signature may not be that of the second respondent but the evidence was not conclusive suggesting there would need to be further investigation. I am unable to be certain Mr [TZ] did forge his father's signature on the gifting document but it adds to my serious concerns around his credibility.

[41] Further, I note Mr [YZ] and Ms [MY] first claimed the funds provided to acquire the apartment were neither a gift or a loan to their son. They claimed they beneficially owned the property as asserted in a letter written by their then counsel dated 26 May 2014, where it is stated:

> "… The [address 1] property was a purchase for them (the second and third respondents) and is in the name of their son as trustee for the parents."

[42] I conclude the second and third respondents did intend to gift all the funds provided but changed their minds when it became apparent their son and his wife were separating and then decided to claim the monies provided were loans rather than gifts. All three respondents have been prepared to go to considerable lengths to try and establish the funds advanced were loans rather than gifts without any regard to the truth.

[43] I prefer the evidence of the applicant and I am satisfied all the advances were gifts to her and the first respondent (with the exception of the advances to the first respondent used to acquire the apartment) rather than loans.

The Family Home

[44] I sought further submissions from counsel addressing which of the two properties – the [address 1] apartment or [address 2] – was the family home at the date of separation. I am grateful to counsel for those further submissions.

[45] The family home is defined as:

> "… The dwelling house that either or both of the spouses use habitually or from time to time as the only principal family residence …"
>
> (s 2 of the Property Relationship Act)

[46] There can only be one family home at the time of separation.[3] The evidence discloses it was agreed [address 2] was to be sold around the end of 2013. The parties were then still living together in that property. In February 2014 Ms [XY] moved temporarily with the parties' daughter to her mother's home while some redecorating was undertaken for the purposes of the sale. She then returned to [address 2] but by March 2014 Ms [XY] was living in the apartment at [address 1] where she remained until 12 May 2014. Mr [TZ] was living there too even though he said he was spending time (including overnight) at [address 2] preparing it for sale. There is no suggestion they were separated over the period between March to May 2014. It was never anticipated Ms [XY] and Mr [TZ] would again live in [address 2] because it was being prepared for sale and was to be sold. A sale and purchase agreement was signed on 11 May 2014, the day before the separation. Both parties agree they separated on 12 May 2014 and no earlier. Upon that evidence, the apartment was the family home at separation even if the parties were not necessarily always spending every night together at that property.[4] Residence in the property does not have to be shared.

Application of Section 10

> **10 Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift**
>
> (1) Subsection (2) applies to the following property:

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[3] *F v F* [2017] NZHC 1450 at para [20(b)]
[4] *Ellis v Ellis* [2008] 27 FRNZ 266 at 17

(a) property that a spouse or partner acquires from a third person—

(i) by succession; or

(ii) by survivorship; or

(iii) by gift; or

(iv) because the spouse or partner is a beneficiary under a trust settled by a third person:

(b) the proceeds of a disposition of property to which paragraph (a) applies:

(c) property acquired out of property to which paragraph (a) applies.

(2) Property to which this subsection applies is not relationship property unless, with the express or implied consent of the spouse or partner who received it, the property or the proceeds of any disposition of it have been so intermingled with other relationship property that it is unreasonable or impracticable to regard that property or those proceeds as separate property.

(3) Property that one spouse or partner acquires by gift from the other spouse or partner is not relationship property unless the gift is used for the benefit of both spouses or partners.

(4) Regardless of subsections (2) and (3) and section 9(4), both the family home and the family chattels are relationship property, unless designated separate property by an agreement made in accordance with Part 6.

[47] If the apartment had not been the family home then it may well have been Mr [TZ]'s separate property, because as already mentioned, Ms [XY]'s evidence is the apartment was purchased by her parents-in-law for their son. There is no evidence the funds advanced were ever a gift to Ms [XY], rather the funds advanced were a gift to Mr [TZ] which is also reflected in the ownership of it. However, the apartment is the family home and is therefore relationship property (s 8(1)(a) and s 10(4)).

[48] I am also satisfied the proceeds of sale of [address 2] are relationship property and s 10 does not apply. The evidence of Mr [TZ] and the other respondents is the advances were made to both the applicant and the first respondent, albeit they describe the advance as being a loan rather than a gift. The monies provided by the second and third respondents were a gift to both Ms [XY] and Mr [TZ], not Mr [TZ] solely. There is reference to the applicant expressing her thanks to her parents-in-law for the money

which enabled them to purchase a larger home. By the time [address 2] was purchased the parties were well married and were expecting the birth of their first child, the second and third respondent's grandchild. There is the evidence of the applicant's mother to the effect the second respondent wanted to provide a bigger home for the parties and his grandchild. The property is registered in the parties' joint names reflecting the intention of the gift to both and they both were liable for the mortgage.

Does Section 13 Apply?

[49] Section 13 provides an exception to equal sharing. It provides:

> **13 Exception to equal sharing**
>
> (1) If the court considers that there are extraordinary circumstances that make equal sharing of property or money under section 11 or section 11A or section 11B or section 12 repugnant to justice, the share of each spouse or partner in that property or money is to be determined in accordance with the contribution of each spouse to the marriage or of each civil union partner to the civil union or of each de facto partner to the de facto relationship.
>
> (2) This section is subject to sections 14 to 17A.

[50] Mr Snedden relies on the following factors in support of his submission s 13 applies and there are extraordinary circumstances that make equal sharing of property repugnant to justice:

- The value of the apartment and net sale proceeds represent 96% of the gross pool of relationship property.

- The respondent's parents have provided virtually all of the relationship property.

- The advances in 2010/2011 ($60,000) and 2013 ($167,952) were paid into the parties joint account during the marriage and the total of $227,952 was used by the parties to support a lifestyle that would have otherwise been unavailable to them.

- The applicant made a financial contribution as well through her earnings but it was insufficient to have sustained the lifestyle adopted by the parties which was only possible because of the generosity of the respondent's parents.

[51] The conclusion that there are extraordinary circumstances making equal sharing repugnant to justice is a stringent and difficult test to overcome. However it was never designed to be an impossible one.

[52] There are two aspects to the test, namely:

- Identification of the extraordinary circumstances; and secondly

- A consideration of whether those extraordinary circumstances make equal sharing repugnant to justice.

[53] The total value of relationship property is:

[Address 2] sale proceeds	$386,306.38
Add back ASB withdrawal by Mr [TZ]	$110,000.00
Add back ASB withdrawal by Ms [XY]	$6,000.00
TOTAL	**$502,306.38**

Apartment (agreed value)	$300,000.00
Chattels	$10,000.00
ANZ three accounts ($422.88, $1,500, $307.86)	$2,230.74
Kiwisaver (Mr [TZ])	$1,598.38
Kiwisaver (Ms [XY])	$6,000.00
Toyota Car (Mr [TZ])	$7,000.00
TOTAL	**$829,135.50**

[54] A half-share would amount to $414,567.75. In the case of Ms [XY], she would need to account for her withdrawal from the ASB after separation ($6000), her Kiwisaver ($6000) and chattels ($5000) so she would be owed $397,567.75 if there was an equal division.

[55] In this case there is a very high disparity of capital contribution to what is a relationship of relatively brief duration. The parties started living together in February 2009 and separated just over five years later on 12 May 2014. As has been noted in other cases the effects of a substantial financial contribution may be balanced out by other contributions in a lengthy relationship but this is not a lengthy relationship. The principles contained in s 1N provide all forms of contribution to the marriage partnership are treated as equal and there is no presumption a monetary contribution is of greater value than a non-monetary one. In this case, the contribution apart from the financial ones are largely unremarkable in terms of a comparison between each spouse's contributions. There are of course intangible benefits but these are mutual.

[56] Ms [XY] contributed no capital at all. All the capital was introduced into the partnership through Mr [TZ]'s family. It is a large contribution made by the family totalling around $874,000 and has resulted in relationship property assets of $829,000.00.

[57] A disproportionate financial contribution by one spouse to the relationship cannot of itself establish an extraordinary circumstance, but a gross disparity of contributions can, along with other factors, be regarded as an extraordinary circumstance. The circumstances of the relationship also need to be assessed (*Bowden v Bowden*[5]).

[58] The assets in existence of separation are not the product of the parties' mutual effort within the marriage. Indeed, the assets are not attributable to either parties' efforts. This observation does not overlook the contributions of income earned made by Ms [XY] but that income could not and did not produce assets of this value.

[5] *Bowden v Bowden* [2016] NZHC 1201

[59] This couple led a luxurious lifestyle that would not have been remotely within their contemplation or capability were it not for the financial assistance provided by Mr [TZ]'s parents. Certainly Ms [XY] made a financial contribution (and Mr [TZ] himself virtually none) towards the running of the household during the marriage, but her salary was modest. Both have accused each other of being extravagant and wasteful. I conclude both Mr [TZ] and Ms [XY] enjoyed spending money which would not have been available to them from their own resources.

[60] I am satisfied the combination of a significant disparity in capital and financial contributions to the relationship in terms of lifestyle, and the length of the relationship means there are extraordinary circumstances.

[61] The second aspect of the test is whether those extraordinary circumstances make equal sharing repugnant to justice. I am satisfied they do because:

- The apartment was the separate property of the respondent, having been acquired by gift from his parents, but has become relationship property because of the effects of the Act.

- The parties enjoyed the benefit of living rent-free in the apartment.

- The parties were able to enjoy a very high standard of living which included overseas trips and travel within New Zealand which would not have been possible for it not for the great generosity of the respondent's parents.

- The provision of over $220,000 in income to the couple by the respondent's parents is completely out of the ordinary.

The Share of Each Party

[62] In order to assess the share of each party in the relationship property in accordance with the contribution to the relationship I need to assess their contributions and have regard to the relevant provisions of s 18.

[63] There is one child of the relationship and the applicant has been primarily responsible for the care of the child (s 18(1)(a)). The applicant was also responsible for the management of the household and performance of household duties (s 18(1)(b)).

[64] The provision of money for the purposes of the marriage came from Ms [XY] when she was employed and also when she was receiving a benefit, but the vast majority came from the respondent via gifts from his parents (s 18(1)(c)).

[65] The acquisition or creation of relationship property is exclusively the result of the contribution made by the respondent from his family (s 18(1)(d)).

[66] There is no evidence of any contributions as envisaged by ss 18(e) and (f), by either party. Similarly there is no evidence of either of the parties foregoing a higher standard of living than would otherwise have been available. Indeed, the evidence is to the contrary in that they achieved a much higher standard of living than could be expected for a full-time student on the one hand and a person earning a quite modest income on the other.

[67] There is no evidence there were any contributions of the type referred to in s 18(h).

[68] There has been a significant disparity in contributions made by Mr [TZ] and Ms [XY] over the course of this relationship. Each case in which there has been a determination of extraordinary circumstances making equal sharing repugnant to justice depends very much on its own facts but they are of assistance in assessing the appropriate division based on the contributions of each party.

[69] In this case I am satisfied the relationship property should be divided on the basis of each parties' contribution to their relationship which I assess as being:

(a) A 65% contribution by Mr [TZ]; and

(b) A 35% contribution by Ms [XY].

Post-Separation Compensation

[70] Ms [XY] seeks an order for compensation based on occupation rent for the [address 1] property where Mr [TZ] has been residing since separation in May 2014. The apartment is relationship property. Ms [XY] has had to house both her and the parties' daughter elsewhere. There has been minimal financial contribution made by Mr [TZ] towards his daughter's support.

[71] I am satisfied it is just that an order be made requiring Mr [TZ] to compensate Ms [XY] for the period of his occupation.

[72] The evidence as to the amount of rent which would have been payable on the apartment is unsatisfactory and there is no evidence of other costs which would normally be deducted (such as rates, maintenance and general upkeep) in fixing the compensation based on a notional rental calculation.

[73] In the circumstances, I am satisfied it is just to compensate Ms [XY] by an award of interest on the amount owing to her up until date of payment of the amount due.

[74] No submissions were filed addressing interest as appropriate compensation or, if awarded, an appropriate rate. Accordingly if counsel are unable to agree on the interest payable, submissions as to the rate of interest are to be filed within 28 days of the date of this decision.

Application for Order Pursuant to Section 26

[75] Mr [TZ] is liable to pay child support for his daughter. Both parties have the benefit of a share in relationship property. It is not a large amount of property and will be needed by the parties to re-establish themselves. In these circumstances, I am not satisfied it would be just for any order to be made settling relationship property or any part of that property for the benefit of the parties' daughter.

Costs

[76] Costs are reserved. If costs are unable to be agreed upon submissions are to be filed 28 days from the date of this decision.

Signed at Auckland this 16th day of November 2018 at am / pm

S J Fleming
Family Court Judge