Supreme Court of New Zealand
Te Kōti Mana Nui

**23 March 2016**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

# MELANIE ANN CLAYTON v MARK ARNOLD CLAYTON AND MARK ARNOLD CLAYTON AND BRYAN WILLIAM CHESHIRE AS TRUSTEES OF THE CLAYMARK TRUST

## (SC 38/2015) [2016] NZSC 30

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz**

Mr and Mrs Clayton married in 1989, separated in December 2006 and the marriage was dissolved in 2009. There have been various issues between the parties about trust and relationship property matters associated with the marital breakdown. This appeal relates to the Claymark Trust (the Trust) which was settled on 10 May 1994. This is a discretionary trust with beneficiaries that include Mr and Mrs Clayton and any children of Mr Clayton.

The parties settled after the oral hearing of the appeal in the Supreme Court. The parties accepted that, as the appeal had been fully argued and the issues are of wider public interest, it is nevertheless appropriate to issue a judgment. The Supreme Court's judgment relating to one of the other trusts, the Vaughan Road Property Trust, is delivered at the same time.

At issue in this appeal was whether an order should have been made in regard to the Trust under s 182 of the Family Proceedings Act 1980. Section 182 deals with nuptial settlements and allows orders varying the settlement to be made either for the benefit of the children or of the parties to the marriage. In exercising this discretion, a court may take

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into account the circumstances of the parties and any change in those circumstances since the date of the settlement, as well as other matters the court considers relevant. Also at issue was whether an order should have been made under s 44C of the Property (Relationships) Act 1976 (PRA).

The Family Court held that the Trust was not a nuptial settlement and therefore that no order under s 182 should be made. This was because the Trust was created for business purposes and Mrs Clayton had no expectation of acquiring an interest in business assets. The Family Court also refused to make an order under s 44C of the PRA. The decision of the Family Court on these issues was upheld by the High Court and the Court of Appeal.

The Supreme Court unanimously allowed the appeal relating to s 182 (with Elias CJ concurring in separate reasons with the reasons delivered by Glazebrook J for herself and Young, Arnold and O'Regan JJ). The Supreme Court held that the courts below had not correctly applied s 182. The first task under s 182 is to decide whether a settlement is a nuptial settlement. A generous approach should be taken to this question. To be a nuptial settlement, the arrangement must be one that makes some form of continuing provision for either or both of the parties to the marriage in their capacities as spouses. This means that there must be a connection or proximity between the settlement and the marriage.

In this case, there was a clear connection between the marriage and the settlement of the Trust. Therefore the Trust is a nuptial settlement. The nature of the assets is not determinative. A nuptial settlement can be made for business reasons and contain business assets.

The second stage is to decide whether and, if so, how to exercise the discretion. The Court held that the discretion should be exercised in accordance with the terms of s 182 and in light of its purpose, taking into account all relevant circumstances. Nuptial settlements are premised on the continuation of the marriage or civil union. The purpose of s 182 is to empower the courts to review a settlement to remedy the consequences of the failure of the premise on which the settlement was made. Each case will require individual consideration.

In this case, there is a clear difference between the benefits Mrs Clayton would have received from the Trust had the marriage continued and her current position after the dissolution of the marriage. There is therefore a clear basis for exercising the discretion under s 182. Further, the Trust was settled during the marriage to benefit the Clayton family unit. All of its assets were acquired during the marriage. Had the matter not settled, the Court would therefore have made an order to split the Trust equally into two separate trusts.

Given the decision on s 182, it was not necessary to deal with the s 44C of the PRA.

For the above reasons the appeal was allowed.

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