IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 65/2024
[2025] NZSC 116

BETWEEN	BARTHOLOMAEUS ROLAND LASSNIG Appellant
AND	QIAN ZHOU First Respondent
	QIAN ZHOU AND BARTHOLOMAEUS ROLAND LASSNIG AS TRUSTEES OF THE LASSNIG FAMILY TRUST Second Respondents

Hearing:	4 March 2025
Court:	Glazebrook, Ellen France, Williams, Kós and Miller JJ
Counsel:	D Zhang and E Tie for Appellant V A Crawshaw KC, L L La Mantia and T M McGoldrick for First Respondent No appearance for Second Respondents
Judgment:	15 September 2025

JUDGMENT OF THE COURT

A **The appeal is dismissed. The orders made by the Court of Appeal as to the resettlement of the Trust stand.**

B **The appellant must pay the first respondent costs of $30,000 plus usual disbursements. We allow for second counsel.**

REASONS
(Given by Ellen France J)

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Introduction

[1] The parties, Qian Zhou and Bartholomaeus Lassnig, married in August 2012 and separated in late July 2015. Shortly after they were married, they settled the Lassnig Family Trust (the Trust). The Trust acquired three properties. The purpose of the Trust was to provide for the parties' retirement, as well as providing them with a home to live in. It is common ground that the Trust is a nuptial settlement for the purposes of s 182 of the Family Proceedings Act 1980 (the Act). Under s 182(1) the Family Court may vary the terms of a nuptial settlement where the parties' marriage or civil union comes to an end.

[2] After the dissolution of their marriage, Ms Zhou's application for resettlement of the Trust under s 182 of the Act was dealt with by the Family Court. Ms Zhou's financial contributions to the Trust were significantly greater than those of Mr Lassnig. The parties' non-financial contributions to the Trust, and to the marriage, were treated by the Court as roughly equal. The couple had no children together although each of the parties has an adult son from previous relationships. In considering the division of relationship property, the parties were agreed that their respective contributions by way of loans to the Trust were to be returned to them as separate property, and that a sum should be quantified and paid to Mr Lassnig as part of resettlement. Against this

background, the Family Court ordered resettlement of the Trust on the basis of an equal split of net equity as between the parties.[1]

[3] Ms Zhou appealed from that decision to the High Court. The High Court allowed Ms Zhou's appeal and ordered resettlement of the Trust under which Mr Lassnig was to receive 40 per cent of the net equity and Ms Zhou 60 per cent.[2]

[4] With the leave of the Court of Appeal, Ms Zhou appealed to that Court and Mr Lassnig cross-appealed.[3]

[5] The Court of Appeal allowed Ms Zhou's appeal and dismissed Mr Lassnig's cross-appeal.[4] The Court ordered resettlement of the Trust on the basis Mr Lassnig was to receive 20 per cent of the net equity of the Trust and Ms Zhou 80 per cent.

[6] This Court granted Mr Lassnig leave to appeal on the question of "whether the Court of Appeal was correct in its analysis under s 182".[5] That question raises issues about the application of s 182 to marriages or civil unions of short duration where one party makes a significantly greater financial contribution; other, non-financial, contributions are equal; and there are no children of the relationship or others with material interests.

[7] In determining this question, we have concluded that, while there were errors in the approach of the Court of Appeal, the outcome reached by that Court was correct. The appeal is dismissed for the reasons we give after first setting out the relevant background.

The facts

[8] We largely adopt the description of the facts in the Court of Appeal judgment.[6]

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1 *Zhou v Lassnig* [2022] NZFC 2747 (Judge Maude) [FC judgment].
2 *Zhou v Lassnig* [2022] NZHC 2475, [2022] NZFLR 430 (Venning J) [HC judgment].
3 *Zhou v Lassnig* [2023] NZCA 75 (Cooper P and Brown J) at [4].
4 *Zhou v Lassnig* [2024] NZCA 177, (2024) 6 NZTR 34-009 (Courtney, Goddard and Thomas JJ) [CA judgment].
5 *Lassnig v Zhou* [2024] NZSC 116 (Glazebrook, Ellen France and Kós JJ).
6 CA judgment, above n 4, at [2]–[18].

[9] The parties married on 17 August 2012 about two months after they met.[7] They separated on 26 July 2015 and their marriage was dissolved on 6 April 2018.[8]

[10] Before the parties met, Mr Lassnig's annual income was around $65,000. He had an interest in land in Taranaki which he held jointly with his former wife. He subsequently purchased her share. Ms Zhou had controlling shareholdings in Fields Parade Ltd (Fields), a property-owning company, and in Wiki Property Management Ltd (Wiki), a property management company. Ms Zhou had also settled the Zhou Family Trust. She was one of the two trustees of that Trust and a discretionary beneficiary. Fields owned three properties and the Zhou Family Trust owned a property at 557 East Coast Road in Browns Bay, Auckland.

[11] The parties settled the Lassnig Family Trust on 30 November 2012. As the Court of Appeal explained, the parties used the Zhou Family Trust deed as a template in drafting the Lassnig Family Trust deed. The parties were not legally advised before setting up the Trust. Both parties were trustees. They were also discretionary beneficiaries along with their parents, grandchildren and other relatives, any trust in which the discretionary beneficiaries had an interest, and such other person as may be appointed by the settlors. Ms Zhou and Mr Lassnig were the primary beneficiaries and, in the event of their death, Ms Zhou's son, John.

[12] Over the next 15 months, the Trust purchased three properties. The purchases were funded by the parties, through loans by them and their companies to the Trust, and bank loans. The details of these properties and the financial arrangements for their purchases were explained by the Court of Appeal in the following excerpt:[9]

> [8] On 12 December 2012, the Trust agreed to purchase 903 East Coast Road, Northcross for $670,000. Mr Lassnig contributed $167,000 while Fields contributed $71,919.09, in each case by way of advance to the Trust. The balance of the purchase price (approximately $430,000) was borrowed by the trustees from a bank. The bank borrowing was reduced on 5 August 2013 using funds provided by a $124,000 advance from Ms Zhou to the Trust.

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7 Mr Lassnig had come to New Zealand from Germany in November 2011.

8 The Family Court Judge found that when Mr Lassnig proposed and Ms Zhou accepted his proposal on 27 July 2012, that was the beginning of their qualifying relationship in terms of the Property (Relationships) Act 1976.

9 Footnote omitted.

> [9] On 19 April 2013, the Trust agreed to purchase 16 Jack Barry Road, Waitoki, (Jack Barry) for $985,000. Ms Zhou provided $45,000 towards the deposit (using funds from Fields) by way of advance to the Trust. The Zhou Family Trust advanced $700,000 to the Trust, funded by its transfer of 557 East Coast Road to Fields. Mr Lassnig contributed $20,918 towards the purchase price, again by way of advance. The balance of approximately $220,000 was borrowed by the trustees from a bank. After settlement in June 2013, Mr Lassnig and Ms Zhou moved from 557 East Coast Road into Jack Barry.
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> [10] On 26 February 2014, the Trust agreed to purchase 61 Young Access, Silverdale (Young Access) for $1,700,000. In total, Ms Zhou or her separate interests (including Fields) provided $270,000 towards the purchase price by way of advances to the Trust. The balance of $1,430,000 was borrowed from a bank. Following settlement in July 2014, the parties moved into Young Access where they remained until their separation. Wiki occupied a proportion of the property for its business and paid a monthly rental of $3,000.00.
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> [11] In June 2015, Ms Zhou's son, John, made two payments totalling $84,477 to reduce the Trust's borrowing on Jack Barry.

[13] To summarise the position as recorded in this excerpt (rounding up the figures): Mr Lassnig's advances totalled $188,000; those of Ms Zhou and the companies she controlled totalled $1,211,000; and the bank borrowings amounted to $2,080,000 before they were reduced. The sole remaining assets of the Trust are the properties at Jack Barry and Young Access. As at 29 March 2021, Young Access was valued at $2,800,000 and Jack Barry at $1,450,000.

Section 182 of the Act

[14] Section 182 of the Act relevantly provides as follows:

> (1) On, or within a reasonable time after, the making of an order under Part 4 of this Act or a final decree under Part 2 or Part 4 of the Matrimonial Proceedings Act 1963, the Family Court may inquire into the existence of any agreement between the parties to the marriage or civil union for the payment of maintenance or relating to the property of the parties or either of them, or any ante-nuptial or post-nuptial settlement made on the parties, and may make such orders with reference to the application of the whole or any part of any property settled or the variation of the terms of any such agreement or settlement, either for the benefit of the children of the marriage or civil union or of the parties to the marriage or civil union or either of them, as the court thinks fit.
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> …

> (3) In the exercise of its discretion under this section, the court may take into account the circumstances of the parties and any change in those circumstances since the date of the agreement or settlement and any other matters which the court considers relevant.
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> …
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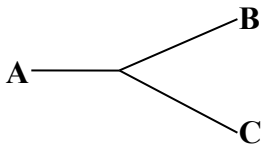
> (6) Notwithstanding subsections (1) to (5), the court shall not exercise its powers under this section so as to defeat or vary any agreement, entered into under Part 6 of the Property (Relationships) Act 1976, between the parties to the marriage or civil union unless it is of the opinion that the interests of any child of the marriage or civil union so require.

[15] The principal focus in this case is on the weight to be given to Ms Zhou's greater financial contributions in the context of a marriage of short duration. There is otherwise no dispute about the applicable principles as discussed in this Court's decisions in *Ward v Ward*, *Clayton v Clayton [Claymark Trust]* and *Preston v Preston*.[10]

[16] In terms of these principles, it is helpful to restate the purpose of s 182 as outlined in *Ward*, and confirmed in *Clayton* and in *Preston*, namely, "to empower the courts to remedy the consequences of the failure of the premise (a continuing marriage) on which the settlement was made".[11]

[17] In order to achieve that purpose, a "forward looking" exercise is to be undertaken, "comparing the position under the settlement assuming a continuing marriage against the current position under a dissolved marriage".[12] The approach, diagrammatically, is as follows:[13]



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10 *Ward v Ward* [2009] NZSC 125, [2010] 2 NZLR 31; *Clayton v Clayton [Claymark Trust]* [2016] NZSC 30, [2016] 1 NZLR 590; and *Preston v Preston* [2021] NZSC 154, [2021] 1 NZLR 651.

11 *Clayton*, above n 10, at [51] per William Young, Glazebrook, Arnold and O'Regan JJ; and see *Ward,* above n 10, at [15] and [19]; and *Preston*, above n 10, at [32].

12 *Clayton*, above n 10, at [53] per William Young, Glazebrook, Arnold and O'Regan JJ.

13 At [54] per William Young, Glazebrook, Arnold and O'Regan JJ; and see *Preston*, above n 10, at [32].

[18] In the diagram:[14]

> … A is the time of settlement, B is the position of the spouse under the settlement with the marriage dissolved and C would have been the position under the settlement assuming a continued marriage. The comparison is not between A and B but, rather, between B and C.

[19] In *Preston*, the Court described the stages of the inquiry in this way:[15]

> (a) The first stage is to determine whether there is a nuptial settlement.
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> (b) The second stage is to assess whether there is a difference between the position of the spouse under the settlement with the marriage dissolved (position B in the diagram set out above …) and what the position would have been under the settlement had the marriage continued (position C). If there is a gap between B and C, the discretion under s 182 is enlivened.
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> (c) The third stage is to determine how the discretion should be exercised in the particular case.

[20] As to the considerations relevant to s 182(3), which allows the court to take into account any matters it considers relevant, this Court has made it clear there is no exhaustive list of factors because, as was said in *Clayton*, "each case will require individual consideration".[16] This Court has however discussed various relevant factors, most of which will largely apply to the third stage of the inquiry. The factors identified are as follows:[17]

> (a) The interests of children (particularly dependent children). This was a "primary consideration".
>
> (b) The interests of other beneficiaries of the nuptial settlement.
>
> (c) The terms of the settlement and how the trustees are exercising or are likely to exercise their powers in the changed circumstances.
>
> (d) Who established the trust and the source and character of its assets. Whatever their origin, all assets in the trust are, however, part of the nuptial settlement.
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> (e) The manner in which the trustees would have exercised their discretion if the marriage had continued.

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14 *Clayton*, above n 10, at [54] per William Young, Glazebrook, Arnold and O'Regan JJ; and see *Preston*, above n 10, at [33].

15 *Preston*, above n 10, at [39].

16 *Clayton*, above n 10, at [57] per William Young, Glazebrook, Arnold and O'Regan JJ citing *Ward*, above n 10, at [26]; and see *Preston*, above n 10, at [34]. See also above at [14].

17 *Preston*, above n 10, at [35] (footnotes omitted) citing *Clayton*, above n 10, at [50], [56], [58]–[59] and [68] and *Ward*, above n 10, at [26].

(f) The wider benefits to the family the trust has provided or might have been expected to provide.

(g) The suitability of the relevant trust structure in light of the changed circumstances.

(h) Need (although this is not a prerequisite).

(i) The length of the marriage.

[21] We come back to discuss these considerations later in this judgment.

The judgments below

[22] We begin with a brief discussion of the decision of the Family Court on the s 182 application, then those of the High Court and the Court of Appeal on the respective appeals.

The Family Court

[23] The Family Court referred to the evidence of both parties about the intended benefits of the establishment of the Trust. The Judge noted Mr Lassnig believed that the equity of the Trust would be shared equally after repayment of the loan accounts. Ms Zhou said the Trust was settled "for joint benefit".[18] The Court next said the task was not to divide the assets of the Trust in the way that would occur under the Property (Relationships) Act 1976 but, rather:[19]

> … to have regard to the parties' expectations of the Trust were it not for dissolution of marriage and what difference then exists as a result of dissolution of marriage.

[24] The Judge considered the parties' intention was "clear", namely, for capital contributions to be reimbursed "and then joint sharing of the resultant accumulated value of the Trust's assets".[20] The Court also emphasised that after dissolution Mr Lassnig was no longer occupying the home owned by the Trust. Without resettlement, neither party's expectations would be met. On this basis, the amount to be paid to each of the parties would be 50 per cent of the equity of the Trust after repayment of loans and third-party debt.

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18 FC judgment, above n 1, at [247].
19 At [248].
20 At [249].

The High Court

[25] The High Court did not consider it was "entirely clear" the Family Court had followed the approach to s 182 set out in *Preston*; that is, undertaking a comparison of the position under the Trust with the marriage dissolved with that under the Trust assuming a continuing marriage.[21] The Family Court had focused on the parties' expectations, but, the High Court said, it was "the objectively assessed reasonable expectations that [were] relevant" rather than the parties' subjective views.[22] The latter views could, however, be relevant to the objective assessment. The High Court also considered insufficient weight had been given to the short length of the marriage. Accordingly, the Judge approached the matter on the basis the High Court "should reach its own views" on the application of the principles.[23]

[26] The Judge first considered the comparison between the position under the nuptial settlement as against the position under the settlement if the marriage was dissolved. On this analysis if the marriage was not dissolved, as a discretionary (and a principal) final beneficiary, Mr Lassnig would have continued to live in a Trust property and could have shared in surplus Trust income and/or capital distributions over his lifetime.

[27] After dissolution Mr Lassnig would be entitled to repayment of his loans to the Trust but would not be able to live in a Trust property. Nor would he have had any ability to call on the Trust for distributions of income or capital in the future.

[28] Where some form of resettlement of the Trust was required, as the parties accepted, the real issue between them was whether Mr Lassnig should share equally in the increased value of the net equity of the properties.

[29] Here, the Family Court had found the parties' overall non-financial contributions to the marriage were roughly equal. Therefore, the High Court said, the task was to decide the "appropriate weight to be given [to] the unequal financial

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21 HC judgment, above n 2, at [52].
22 At [53].
23 At [54] citing *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

contributions in the overall circumstances of this case".[24] The increase in net equity was via inflation and not from any particular improvements the parties had made to the property. The Judge also noted that without the initial contributions from Ms Zhou and her interests, the Trust would not have been in a financial position to have bought the three properties. The source of the Trust's assets was "a particularly relevant consideration in this case".[25]

[30] However, "the Trust was established during the relationship" and "was clearly intended to be for the benefit of both parties".[26] It was a "classic family trust established to primarily benefit and be used by the principal parties, Ms Zhou and Mr Lassnig".[27]

[31] Taking all these factors into account, including the short duration of the marriage, the High Court Judge considered that there should be a 60/40 split of the net equity in favour of Ms Zhou.

The Court of Appeal

[32] In considering the position under the settlement assuming a continued marriage (position C), the Court of Appeal said that the purpose of the Trust was to provide for the parties' retirement as well as a home for them to live in. The Court also noted as follows:[28]

> Relationships embarked on at a later stage in life often involve very different expectations from those associated with what used to be the norm of marriage at a young age when neither party had children, there was often little financial disparity between them and, even if there were, they were building a family unit together.

[33] The Court considered that this different approach could be expected to be maintained throughout the marriage although "potentially subject to some relaxation the longer the marriage continues".[29]

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24 HC judgment, above n 2, at [64].
25 At [65].
26 At [66].
27 At [66].
28 CA judgment, above n 4, at [55] (footnote omitted).
29 At [55].

[34] The Court took the view that, assuming a continued marriage, Ms Zhou and Mr Lassnig would have lived in a house owned by the Trust but subject to a mortgage that he would have had a shared responsibility to service.

[35] The Court found that the High Court had erred in putting into the mix the possibility of distributions in the short to medium term given the "significant external borrowing" at the time the parties separated and their "substantial" debt.[30] The Court considered that, given the purpose of the Trust was to provide for the parties' retirement, there could be no reasonable expectations of capital distributions in the short to medium term. If there were any such distributions, they would be made in proportion to the parties' financial contributions.

[36] Turning then to Mr Lassnig's position in light of the dissolution of the marriage (position B), the Court of Appeal agreed with the High Court that he was entitled to repayment of his advances. He no longer had the benefit of shared use of a Trust property but also no longer a shared responsibility for servicing the Trust's external debt or for upkeep of the Trust property. While he could not call on the Trust for income or capital distributions, as above, there was no realistic expectation of this. Accordingly, the Court said this:

> [73] So the material differences between scenario B and C are:
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> (a) in scenario B Mr Lassnig will not have shared use of a Trust property to live in — and will also no longer share responsibility for servicing the Trust external debt, and for the upkeep of the Trust properties;
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> (b) in scenario B Mr Lassnig will not enjoy the possibility of a longer term sharing of benefits from the Trust's investments, premised on the marriage continuing.

[37] The Court of Appeal took the view that the gap was a narrow one and in contrast to the High Court said that there was nothing to justify an expectation of a mortgage-free home for Mr Lassnig's sole use in the circumstances of a relationship lasting less than three years. The Court also noted that on the agreed assumption that

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[30] At [58]. The parties agree that in this paragraph the Court of Appeal incorrectly records the Trust's mortgage lending as at the date of separation (2015) and after the sale of the East Coast Road property (2016). The figure for 2015 should be approximately $1.719 million. The CA judgment at [78] correctly records the figure as at 2021, approximately $658,000.

Mr Lassnig's financial contributions would be repaid to him, that, together with a pro rata share of the equity, would be sufficient to provide him with sole ownership and occupation of "a modest home with a modest mortgage".[31]

[38] The Court of Appeal also attached some weight to the fact that the High Court had wrongly quantified the equity in the Trust, understating it by about a third ($456,610). The Court saw this as a "material misconception" when deciding on the division of the Trust equity.[32]

[39] In determining what the appropriate distribution should be, the Court of Appeal considered that the parties' respective loans were properly treated as relevant contributions to the Trust. They provided the equity enabling the Trust to acquire the properties and no interest was payable on those contributions.

[40] The Court noted that there were no dependent children and no interests for other beneficiaries or wider benefits to the family that the Trust had provided. Mr Lassnig's financial contributions had been 18.75 per cent. Neither party claimed interest on their contributions. The Court considered that the shorter the duration of the relationship, the more weight that can be given to the disparity of financial contributions. The Court also said that the split it ordered was necessary to meet one of the purposes of s 182, that is, "to prevent one party benefiting unfairly from the settlement at the expense of the other in the changed circumstances".[33] The Court took the view that the High Court's award had resulted in what was a "significant windfall" to Mr Lassnig.[34]

[41] In the end, as we have noted, the split ordered by the Court of Appeal was 80/20 in favour of Ms Zhou. The increase of Mr Lassnig's award to 20 per cent from 18.75 per cent, a division equating with his financial contributions, reflected "the temporally distant contingency that if the marriage had continued until the parties'

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31 At [77].
32 At [78]–[79].
33 At [116].
34 At [116].

retirement, Mr Lassnig might have benefited to a greater extent from the Trust's net equity".[35]

The case for the parties

[42] The appellant says that the Court of Appeal erred in its approach to the second stage of the inquiry discussed in *Preston*; that is, in determining the extent of the gap between Mr Lassnig's position under the settlement with the marriage dissolved (position B) and that under the settlement had the marriage continued (position C). In particular, the appellant says that the Court in assessing position C ignored the fact that, as Mr Zhang put it, the Trust was a vehicle for the parties to establish wealth and a life together and one which provided them with flexibility in terms of how the Trust funds were utilised during their marriage. The errors in the approach to the second stage have, the appellant submits, led to a flawed assessment in the third, discretionary, stage of the inquiry. Ultimately, counsel saw the case for Mr Lassnig as coming down to the question of whether the Court considers lending to be a contribution, which counsel submitted it was not. If it does, Mr Zhang said, the appellant's case fails as Ms Zhou's contributions outweighed his by a considerable margin.

[43] In supporting the approach of the Court of Appeal, the first respondent (whom we call the respondent) says that in a marriage of short duration, where the parties made no contributions to the Trust assets via the family unit in any way which led to an increase in value, and there are no other countervailing considerations, their financial contributions must assume primary importance.

Did the Court of Appeal approach the matter correctly?

[44] We agree with the appellant that the Court of Appeal erred in its approach to the second stage of the inquiry.

[45] We can begin with the Court's discussion of position C. The Court rightly places some weight on the fact that this was a marriage between individuals of mature age. Reasonable expectations have to be viewed in that context. The Court also said

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35 At [117].

that, over the long term, if the parties remained together at retirement they "might well have envisaged joint sharing of the benefit from the growth in value of the Trust assets".[36] But the Court then said in the shorter term that was not what was envisaged. The Court went on to find that the High Court was wrong to consider the possibility of distributions from the Trust over the short to medium term.[37] And that, in the unlikely case that occurred, any payments would have been in proportion to the respective financial contributions by means of pro rata repayment of advances made.

[46] Given that the second stage of the inquiry is premised on the continuation of the marriage, a longer-term focus is required. In particular, the focus is on the parties' expectations had the marriage continued (that is, in the long term). It is helpful at this point to reiterate the discussion in *Clayton* about the difficulties of assessing expectations in the context of a discretionary family trust as there is no guarantee of future benefit even if a person has benefited in the past. The Court also said that the matter must be looked at from the perspective of a family unit, assuming a continuing marriage, in which the applicant as part of the family unit would have continued to benefit directly or indirectly from the trust, including current and possible future distributions and also benefits for other beneficiaries of the trust.[38]

[47] In this case, the parties' expectations in the long term, presuming the marriage continued, were clear. Those expectations were the return of contributions and an equal sharing of the assets. Looked at objectively, these were reasonable and that should have been the beginning and end of the matter at the second stage.[39] Whether or not there would be distributions in the meantime was irrelevant for the purposes of the second-stage expectation.

[48] As to the Court of Appeal's assessment of the gap between B and C, the Court said this was "negligible" when the uncontested refund of Mr Lassnig's financial contributions and receipt of a pro rata share of the equity in the Trust's assets were

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36 At [69].

37 With perhaps an exception by way of repayment of advances: at [72].

38 *Clayton*, above n 10, at [50] per William Young, Glazebrook, Arnold and O'Regan JJ. The benefits referred to included keeping assets intact for future generations and the separation of trust assets from personally held assets.

39 See at [48] per William Young, Glazebrook, Arnold and O'Regan JJ.

taken into account.[40] The appellant says that the Court was wrong to consider the difference in the parties' contributions when assessing the gap between B and C.[41] We agree this aspect should normally be considered in the context of the third stage of the inquiry. That makes more sense in terms of the purpose of the inquiry.

Outcome

[49] As we have identified errors as to principle, we turn to consider the correct outcome. As we have indicated, the parties' objective and reasonable expectations had the marriage continued being clear, we can turn to the third stage of the inquiry. We make some general points about the approach to be taken before considering the relevant factors.

[50] To put the approach in this case in context, it is helpful to say a little more about the treatment of contributions. In *Preston*, in discussing the approach taken in *Clayton*, the Court said that because the focus is on the gap in expectations, contributions were not seen to be "a controlling factor of the s 182 discretion".[42] Contributions, as we note above at [48], are not generally relevant to the second stage of the inquiry. At the third stage the purpose of the exercise is to "assess whether an order is necessary and, if so, in what terms, to reflect the fact that [the] fundamental premise [of a continuing marriage] no longer applies".[43] Contributions may be relevant but will be considered along with all other relevant factors at the third stage.

[51] We restate two other points made in *Preston*. First, that it is important to ensure that non-financial contributions are taken into account and are not treated as lesser contributions. Second, is the desirability of moving the inquiry away from what the Court saw as "unedifying" debates about the extent to which the parties have contributed financially.[44]

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40 CA judgment, above n 4, at [77].
41 With reference to *Clayton*, above n 10, at [53] and [68] per William Young, Glazebrook, Arnold and O'Regan JJ.
42 *Preston*, above n 10, at [36].
43 *Ward,* above n 10, at [20].
44 *Preston*, above n 10, at [73].

[52] In a case such as this, however, involving a short marriage where there are no children of the marriage, contributions inevitably assume more importance where there are no other countervailing considerations. In those cases, it is likely that any s 182 resettlement will generally reflect the parties' respective financial contributions. We add the qualification, "generally", simply because it is difficult to foresee the differing factual circumstances that may arise and, as we have noted, the Court has emphasised that each case requires individual consideration.[45]

[53] Contributions will be more important in cases involving this combination of factors not only because there are no other countervailing factors, but also for equity reasons — namely, the premise of a long-term marriage has failed, but very quickly, rather than after a number of years.

[54] This Court has made it clear that s 182 has a different purpose from that of the Property (Relationships) Act and that the principles underlying that Act do not underpin s 182.[46] There is, as the Court said in *Clayton*, "no entitlement, or presumption, as to a 50/50 or any other fractional division of the trust property".[47] Having said that, the Court in *Clayton* went on to make the point that "s 182 has to be applied in the twenty-first century".[48] The Court in *Clayton* drew upon the recognition, "[i]n the current social context", of the fact parties to a marriage may sometimes contribute in ways that are different, but which are equal.[49]

[55] The importance we attach to the short duration of the marriage in the present context, similarly, draws upon the approach under the Property (Relationships) Act. In a marriage of short duration, s 14(2)(c) of the Property (Relationships) Act provides that the family home and chattels will not be equally shared if "the contribution of one spouse to the marriage has clearly been disproportionately greater than the

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45 *Clayton*, above n 10, at [57] per William Young, Glazebrook, Arnold and O'Regan JJ citing *Ward*, above n 10, at [26]; and see *Preston*, above n 10, at [44].

46 *Ward*, above n 10, at [17] and [30]–[31]; *Clayton*, above n 10, at [63], [65]–[66], [68] and [84] per William Young, Glazebrook, Arnold and O'Regan JJ; and *Preston*, above n 10, at [38].

47 *Clayton*, above n 10, at [65] per William Young, Glazebrook, Arnold and O'Regan JJ.

48 At [66] per William Young, Glazebrook, Arnold and O'Regan JJ.

49 At [66] per William Young, Glazebrook, Arnold and O'Regan JJ.

contribution of the other spouse". Where s 14(2)(c) applies, the relationship property is divided in accordance with the contribution to the marriage partnership.[50]

[56] The approach to claims under s 182 remains one that will be broad-brush in nature at both the second and third stages of the inquiry. The more detailed counterfactual analysis that has been undertaken here in relation to the likelihood of short-term benefits and comparison of living arrangements is not required at either of these stages.

[57] Accordingly if, having made an objective assessment of expectations (as discussed in *Clayton*)[51] and then having addressed the relevant factors, there is no other countervailing factor or anything else of any weight, in a marriage of short duration the court can proceed on the basis that the difference in financial contributions will generally determine the quantum of any award under s 182. The exception this reflects from the earlier cases is warranted because of the absence of countervailing factors and the equity considerations we have identified.

Assessment in this case

[58] Here, there are no dependent children or other beneficiaries of the nuptial settlement with a material interest. The parties were agreed that the purpose of the Trust was, principally, to benefit the two of them.

[59] The next factor referred to in the authorities, the terms of the settlement and how the trustees are likely to exercise their powers in the changed circumstances, is a neutral factor here where it is agreed the Trust will need to be resettled. The same point can be made about the suitability of the Trust structure in light of the changed circumstances.

[60] The assessment of the manner in which the trustees would have exercised their discretion if the marriage had continued, and of the wider benefits the Trust has provided or might have been expected to provide to the family, can be dealt with

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50 Property (Relationships) Act, s 14(3)(a). See also RL Fisher (ed) *Fisher on Relationship Property* (looseleaf ed, LexisNexis) at [12.73] and [12.80].

51 *Clayton*, above n 10, at [48]–[49] per William Young, Glazebrook, Arnold and O'Regan JJ.

together. The appellant says there are wider benefits to the family the Trust has provided or might be expected to provide; relevantly, the possibility of distributions.

[61] We consider that there is force in the appellant's argument that the prospect of capital distributions in the short to medium term should not have been discounted. As the appellant says, this was a standard discretionary family trust. The two parties were the trustees and the primary beneficiaries. Although the conception was of a fund for their retirement, on the premise of a continuing marriage it was entirely conceivable that things may have changed; that, for example, one of the parties or another beneficiary might have become ill, or, for whatever reason, unable to continue working. It could then reasonably be expected distributions might be made over the short to medium term. This is consistent with the respondent's evidence that setting up the Trust was for the parties' "joint benefit" and that the Trust was named the "Lassnig Family Trust" in order to "reassure and please" Mr Lassnig.[52]

[62] That said, in considering the discretionary factors we do not attach any great weight to the prospect of capital distributions given that the short duration of the marriage, in fact, meant the parties' relationship was still, relatively speaking, in its early days. In any event, this factor is adequately reflected in the 80/20 split adopted by the Court of Appeal which represents a slight increase on a division equating with the financial contributions.

[63] We otherwise agree with the Court of Appeal that the wider benefits enjoyed by the appellant were confined to occupation of a Trust property.

[64] The respondent in this context relies on what she describes as the poor quality of the marriage. This aspect was discussed by the Court of Appeal in this excerpt:

> [97] The relationship was already in trouble when, on 26 July 2015, Ms Zhou and Mr Lassnig were involved in a physical altercation which resulted in Mr Lassnig being served with a police safety order. Following the physical altercation, the marriage was over. There are no allegations of physical abuse prior to this time. Ms Zhou does record unhappiness at Mr Lassnig's behaviour, particularly the way he spoke to her and treated her generally, and his constant use of his cellphone, which she believed he used to communicate with other women.

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52 CA judgment, above n 4, at [62].

[65] The Court noted the Family Court's findings that while there was evidence of conflict in the relationship, perhaps reflective of different languages and cultural backgrounds, the case was not one "reaching the level of violence that would impact the court's decision as to quality of relationship" and so altering the approach to the division of relationship property.[53] The Court of Appeal took the view that, given the evidence and the Family Court's findings, this was not the case for deciding on the impact of alleged abusive behaviour on resettlement under s 182. The Court left open the prospect that "family violence, particularly if responsible for failure of the original premise, may be an available consideration in the third stage of the s 182 analysis".[54]

[66] We agree with the Court of Appeal that the facts of this case do not provide a good basis for considering this issue. The question raised by the respondent's argument should be left open for a case in which the facts provide a suitable basis.

[67] The next factor, need, is not a weighty one here. As the Court of Appeal said, Mr Lassnig's share together with the refund of his contributions was sufficient to enable him to buy a house albeit with what the Court of Appeal described as a "modest" mortgage.[55]

[68] The factor then referred to in the authorities is the length of the marriage. As this Court said in *Preston*, "the length of the marriage likely becomes a more significant factor if the marriage was short than if long".[56] This was a marriage of short duration. This factor is significant here.

[69] That leaves what is, on the facts of this case, the only other key factor, namely, the source and character of the Trust assets.

[70] In assessing the actual difference in financial contributions to the Trust assets in this case, we need to deal with arguments made by the appellant about the extent of the actual disparity. The appellant says, first, that the contributions of the parties were not as materially different as the Court of Appeal assumes because they were provided

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53 FC judgment, above n 1, at [125].
54 CA judgment, above n 4, at [107].
55 At [118].
56 *Preston*, above n 10, at [80].

by way of loans, not as capital contributions. As we have noted, the appellant accepts that if the loans are treated as relevant contributions, his case fails.[57] The appellant is critical of the Court of Appeal's analysis in that he says this appears to give Ms Zhou's contributions the same weight as if she had transferred those funds to the Trust outright whereas the money was in fact jointly borrowed following the pooling of the parties' funds. Next, the appellant argues that liability under a loan may be treated as a contribution so his personal liability under the bank loans to the Trust should count as part of his contributions. Finally, the appellant also argues that a focus on contributions is inapt where, as is the case here, the increase in value is as a result of inflation.

[71] As to the first of these submissions, we agree with the Court of Appeal that the loans are appropriately treated as relevant contributions to the Trust. They were the means of providing the equity to the Trust that enabled the Trust to purchase the properties, on an interest-free basis, and diversions of capital otherwise available to the contributor.

[72] In relation to the treatment of his liability under the bank loans, the appellant relies on *TN v AK* in which the court was required to make an assessment of financial contributions under s 14A of the Property (Relationships) Act.[58] In that case, the parents of one of the parties had provided money to assist the couple's purchase of a home. The couple had financed the remainder of the cost by taking out a joint loan. The couple were treated as having contributed equally to the home for the purposes of s 14A. That finding reflected the particular facts, and contrasts the different context of the present case where "the prospect of equal liability on personal covenants was remote … given the cushion provided by the parties' advances".[59]

[73] Nor do we accept the appellant's submission that the fact the value of the assets has increased because of the effect of inflation means that the character and source of

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57 See above at [42].

58 *TN v AK* [2019] NZHC 2466.

59 CA judgment, above n 4, at [87]. Nor do we see *Illingworth v Illingworth* [1981] 1 NZLR 1 (CA) as advancing the case for the appellant. The recognition in that case of an assumption of liability by the wife reflected the particular risks in relation to bridging finance. But, in any event, the finding was that despite the mortgage contribution, "the husband's contributions were clearly disproportionately greater than those of the wife": at 16.

the assets of the Trust became irrelevant. Mr Lassnig's mortgage payments are, of course, to be refunded to him under the settlement.

[74] We also agree with the respondent it is too late now to raise the fact the respondent has had the benefit of staying on in Trust property on a rent-free basis. If the appellant had raised the issue, this was an issue on which the respondent could have called evidence raising countervailing circumstances. Further, it is now over nine years since the parties separated and the appellant will have the capital gain on his proportionate interest in the Trust properties.

[75] Finally, we do not see the fact that the parties chose an investment trust as conclusive. The focus of the Court is on addressing the interests of justice in the context of the breakdown of a marriage, a social institution, so a less technical rather than a formalistic approach is apt.

[76] Ultimately, we agree with the Court of Appeal as to where the interests of justice lie. Given the facts, the 60/40 split awarded by the High Court in this case does not sit easily alongside *Preston*, where the Court's orders resulted in the provision of approximately 15 per cent of the value of the relevant trust equity to Mrs Preston. *Preston* illustrates the countervailing factors which may require a different approach from that which we adopt in this case. Although the marriage was not lengthy, Mrs Preston had made other, non-financial contributions to the family unit and there were relevant wider benefits, both direct and indirect, to which she and her dependent child lost access. Those other relevant factors had to be put in the mix.

Conclusions

[77] In undertaking the third stage of the inquiry, we have addressed each of the factors identified as relevant in *Ward*, *Clayton* and *Preston*, separately. We emphasise that the factors are indicative ones and that a broad-brush overall assessment is necessary with a view to making an adjustment to reflect the fact that the fundamental premise of an ongoing marriage no longer applies. In terms of the relevant factors, what we see as significant is the combination of a short-term marriage, where there are no dependent children or any other countervailing factors, and the fact of the source of the assets. If this was not a short-term marriage, then in accordance with the

approach in *Clayton*, the source of assets would just be one factor amongst many to be weighed. That is in part because non-financial contributions are important but also because of the nature of the s 182 exercise; namely, an adjustment to reflect the failure of the fundamental premise of a continued marriage.

[78] Where the marriage is of short duration like this one and there are no other countervailing factors, if there is a disparity in financial contributions then that will generally be the guiding factor. Applying this approach to this case, although differing in our reasoning, we agree with the outcome reached by the Court of Appeal.

Result

[79] The appeal is dismissed. The orders made by the Court of Appeal as to the resettlement of the Trust stand.

[80] Costs should follow the event. The appellant must pay the first respondent costs of $30,000 plus usual disbursements. We allow for second counsel.

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