

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA301/2024
[2026] NZCA 250

BETWEEN

A-WANG LIAO
Appellant

TAN-KUEI LIAO LU
Second Appellant

AND

PEI-YA LIAO
Respondent

Hearing: 21 August 2025

Court: Courtney, Mallon and Whata JJ

Counsel: S C I Jeffs and K K-H Sun for First and Second Appellants
S O McAnally for Respondent

Judgment: 16 June 2026 at 11 am

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellants must pay the respondent costs for a standard appeal on a band A basis together with usual disbursements.

REASONS OF THE COURT

(Given by Courtney J)

Introduction

[1] In 2012, Pei-Ya Liao bought a residential property in Glen Innes, Auckland, (the Glen Innes property) as an investment. Her parents, A-Wang Liao and

Tan-Kuei Liao Lu, contributed 10 per cent of the purchase price. Ms Liao funded the balance with her savings and a bank loan secured over both the Glen Innes property and a property in East Tāmaki that she already owned.

[2] The Glen Innes property was registered in Ms Liao's name. Some years later, Mr and Mrs Liao asked Ms Liao to transfer the Glen Innes property to them, saying that it had been purchased on the basis that it would belong to them and they would be the registered proprietors. Ms Liao did not transfer the property. Mr and Mrs Liao brought proceedings, alleging that Ms Liao holds the property on a resulting trust. They sought an order requiring Ms Liao to transfer the Glen Innes property to them and account for the profits accrued from it.¹

[3] Woolford J held that the presumption of advancement applied so that the amount Mr and Mrs Liao contributed to the purchase was properly treated as a gift to Ms Liao and she was the beneficial owner of the Glen Innes property.²

[4] Mr and Mrs Liao appeal. The issues on the appeal are whether the Judge erred in:

- (a) treating the presumption of advancement as applying to adult children or, in the alternative, as applying to financially independent adult children; and
- (b) finding that the presumption applied in this case or, alternatively, not otherwise finding that Ms Liao held the Glen Innes property on trust for Mr and Mrs Liao.

Resulting trusts and the presumption of advancement

[5] The principles relating to the circumstances in which a resulting trust arises are not controversial. Relevantly, where a person makes a voluntary payment to another

¹ The proceedings also concerned another property owned by Ms Liao, to which Mr and Mrs Liao had contributed money, and allegations of breach of fiduciary duty against Ms Liao in relation to property developments undertaken by Ms Liao's husband, Mr Lam. However, none of these matters are in issue in the appeal.

² *Liao v Liao* [2024] NZHC 828 [judgment under appeal] at [39].

or advances the whole or part of the purchase price for a property registered in another's name, it is presumed that they intended to retain the beneficial interest in the property transferred. The presumption is, however, a rebuttable one, as Lord Browne-Wilkinson explained in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*:³

... where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer ...

[6] In *Potter v Potter*, this Court described the elements of a resulting trust:⁴

[14] In the present context the essence of a resulting trust is that a person providing or contributing to the purchase price of property conveyed partly or wholly into the name of another retains a beneficial interest in the property to the extent of his or her contribution if there is nothing to indicate that he or she intended to confer the beneficial interest on the legal transferee ... The settlor must have expressed no intention to dispose of his or her beneficial interest. To fill the vacuum, the law presumes an intention to retain the beneficial interest which the settlor has never effectively alienated. The trust "results" from the lack of effective disposition to another.

[15] A refinement to that principle is that where the settlor transfers the legal title to property for an express purpose, the transferee receives it subject to a trust for the attainment of that primary purpose ...

[16] In either case the rationale is that notwithstanding the disposition of legal title, the settlor has retained the beneficial interest throughout, in the former case without qualification, and in the latter subject to the contingency that it would be superseded by fresh beneficial interests if and when the stated primary purpose were attained.

...

[19] Central to a resulting trust is the absence of any expression of intention on the part of the settlor that the beneficial interest pass to the legal transferee

...

³ *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (HL) at 708 (emphasis in original).

⁴ *Potter v Potter* [2003] 3 NZLR 145 (CA) (citations omitted).

[7] The presumption of a resulting trust may be rebutted either by evidence of an intention to make a gift (or other kind of disposition) on the part of the transferor or by the counter-presumption of advancement.⁵

[8] There are some relationships in which a voluntary transfer of property raises a counter-presumption — the presumption of advancement — which can displace the presumption that the transferor intended to retain the beneficial interest in the property. Where the presumption of advancement applies it is, instead, presumed that the transferor intended to make a gift of the property to the transferee. Historically, the relationships in which the presumption of advancement arose were those of husband and wife or father and child, based on the obligation on the former to support the latter and the love and affection presumed to arise by virtue of the relationship.⁶ Over time that has expanded to anyone standing in loco parentis.⁷

[9] Most of the cases considering the presumption of advancement over the last century have concerned voluntary transfers between domestic couples, both married and unmarried. Changing social and legislative conditions have largely overtaken the relevance of the doctrine to those cases. In New Zealand the Property (Relationships) Act 1976 abolished the presumption as between husband and wife.⁸ In the United Kingdom, in 2007, the House of Lords in *Stack v Dowden* regarded the presumption as between spouses as “much weakened, although not quite to the point of disappearance”.⁹ The High Court of Australia has expressed doubt over the rationale for the presumption in relation to husband and wife, describing it as “especially weak today”.¹⁰

[10] The present case is, however, concerned with the presumption of advancement as it applies between parent and child. Mr Jeffs, for Mr and Mrs Liao, submitted that

⁵ *Crampton-Smith v Crampton-Smith* [2011] NZCA 308, [2012] 1 NZLR 5 at [40].

⁶ *Dyer v Dyer* (1788) 2 Cox Eq Cas 92, 30 ER 42 (Exch) at 43; and *Kingdon v Bridges* (1688) 2 Vern 67 at 68, 23 ER 653 at 653.

⁷ *Re Paradise Motor Co Ltd* [1968] 1 WLR 1125 (CA) at 1140.

⁸ Property (Relationships) Act 1976, s 4(3)(a).

⁹ *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 at [101]. Subsequent legislation abolishing the presumption between husband and wife — s 199 of the Equality Act 2010 (UK) — was introduced, but has never been brought into effect.

¹⁰ *Bosanac v Commissioner of Taxation* [2022] HCA 34, (2022) 275 CLR 37 at [22].

the presumption should no longer be recognised as applying to adult children, whether dependent or independent and the Judge erred in finding that it applied in this case.

The presumption of advancement in relation to adult children in other jurisdictions

[11] The presumption of advancement in relation to adult children is still recognised in Australia and the United Kingdom but no longer in Canada.

[12] In *Nelson v Nelson*, which concerned the transfer of a property to adult children by their mother, the High Court of Australia accepted that the lower court had correctly proceeded on the basis that a presumption of advancement existed, adding, however, that:¹¹

In a case such as the present, the presumption of advancement may be of practical importance only if the evidence, including that of the actual relationship between the parties, does not enable the court to make a positive finding of intention.

[13] In *Laskar v Laskar*, the Court of Appeal of England and Wales said that the presumption of advancement as between parent and child still exists, although it was regarded as relatively weak and “even weaker where, as here, the child was over 18 years of age and managed her own affairs at the time of the transaction”.¹² More recently, in *Enal v Singh*, the Privy Council said:¹³

[34] Where a property has been purchased and conveyed into the name of someone other than the person who has paid the purchase price the traditional starting point in equity has been to presume that the property is held on trust by the named transferee in favour of the person who has paid for it. Equity is said to lean against a gift unless there is evidence of surrounding and other circumstances which indicates that this was what the payer intended. In the absence of evidence of an agreement or declaration to that effect at the time of the transfer the ascertainment of the payer’s true intentions will be largely a matter of drawing inferences from the objective facts relevant to the transaction.

[35] One such fact which is a feature of the present case will be that the property has been transferred into the name of a child of the payer. In such circumstances there is a presumption of advancement in favour of the child which, unless rebutted, will displace the presumption of a resulting trust. Although much criticised as based on outdated assumptions about the relative

¹¹ *Nelson v Nelson* (1995) 184 CLR 538 (HCA) at 549 (footnote omitted).

¹² *Laskar v Laskar* [2008] EWCA Civ 347, [2008] 1 WLR 2695 at [20], citing *Pettit v Pettit* [1970] AC 777 at 814.

¹³ *Enal v Singh* [2022] UKPC 13.

status of children to parents and of wives to husbands the presumption of advancement continues to form a relevant part of the court's inquiry as to the intended legal consequences of the transaction. ...

[14] In comparison, however, in *Pecore v Pecore* the majority of the Supreme Court of Canada held that the presumption of advancement applies only to gratuitous transfers by parents to minor children and not to transfers by parents to adult children, whether dependent or independent.¹⁴ The result is that a transfer between a parent and an adult child will be subject to the presumption of a resulting trust: if the transfer *was* intended as a gift, the transferee must rebut the presumption of a resulting trust by providing evidence of that intention.

[15] Rothstein J, writing for the majority, identified three reasons for this conclusion. First, a principal justification for the doctrine was parental obligation to support dependent children, citing *Grey (Lord) v Grey (Lady)*, which stated:¹⁵

... the Law will never imply a *Trust*, because the natural Consideration of Blood, and the Obligation which lies on the Father in Conscience to provide for his Son, are predominant, and must over-rule all manner of Implications.

[16] On the basis of this statement, the Judge considered that:¹⁶

[30] ... the traditional rationale behind the presumption of advancement between father and child is that a father has an obligation to provide for his sons ... The presumption also rests on the assumption that parents so commonly intend to make gifts to their children that the law should presume as much ...

Accordingly, the Judge concluded that because there is no general obligation on parents to support adult children, the presumption should not apply in respect of independent adult children.¹⁷

[17] Secondly, the Judge referred to the fact that it was a common practice for aging parents to transfer assets to their children so the latter could assist them to manage their financial affairs. In light of this practice, he considered that there should be a rebuttable presumption that the adult child holds the property in trust for the parent.¹⁸

¹⁴ *Pecore v Pecore* [2007] SCC 17, [2007] 1 SCR 795 at [40].

¹⁵ *Grey (Lord) v Grey (Lady)* (1677) Rep t Finch 338, 23 ER 185 (Ch) at 187 (emphasis in original).

¹⁶ *Pecore v Pecore*, above n 14 (citations omitted).

¹⁷ At [36].

¹⁸ At [36].

[18] Thirdly, the Judge reasoned that the presumption of advancement should likewise not apply in respect of dependent adult children: the wide variety of circumstances that could result in an adult child being viewed as dependent on their parent meant that dependency would have to be determined on a case-by-case basis, creating uncertainty.¹⁹

[19] The Judge considered, but rejected, parental affection as a basis to apply the presumption of advancement to gratuitous transfers from parents to adult children, observing that affection also arose in other familial relationships such as between siblings and yet the presumption would not apply in those circumstances.²⁰

[20] Abella J, in dissent, considered that the presumption of advancement should continue to apply to transfers from parents to children, both adult and minor. Her examination of the historical rationale for the presumption of advancement, including the statement in *Grey (Lord) v Grey (Lady)*, indicated that resting the presumption on obligation alone “narrow[ed] and somewhat contradict[ed] the historical rationale for the presumption”.²¹ Her Honour considered that “[p]arental affection, no less than parental obligation, has always grounded the presumption of advancement”.²²

[21] As to *Grey (Lord) v Grey (Lady)* the Judge drew attention to another statement of the Court in that case which identified natural affection as a rationale for the presumption of advancement:²³

For the natural consideration of blood and affection is so apparently predominant, that those acts which would imply a trust in a stranger, will not do so in a son; and, *ergo*, the father who would check and control the appearance of nature, ought to provide for himself by some instrument, or some clear proof of a declaration of trust, and not depend upon any implication of law ...

¹⁹ At [39]–[40].

²⁰ At [37].

²¹ At [89].

²² At [89].

²³ At [92], citing *Grey (Lord) v Grey (Lady)* (1677) 2 Swans 594, 36 ER 742 (Ch) at 743. We note that this case was cited in two different nominate law report series. The two reported cases differ from each other. Rothstein J and Abella J each cite a different version of the case.

[22] The Judge also referred to the decision in *Sidmouth v Sidmouth*, in which the presumption was applied in favour of an adult son with the Court saying:²⁴

... there does not appear to be anything to manifest an intention to make the son a trustee for the father. The circumstance that the son was adult does not appear to me to be material. It is said that no establishment was in contemplation, and that no necessity or occasion for advancing the son had occurred, but in the relation between parent and child, it does not appear to me that an observation of this kind can have any weight. The parent may judge for himself when it suits his own convenience, or when it will be best for his son, to secure him any benefit which he voluntarily thinks fit to bestow upon him, and it does not follow that because the reason for doing it is not known, there was no intention to advance at all.

[23] The Judge concluded that:²⁵

[98] The origin and persistence of the presumption of advancement in gratuitous transfers to children cannot, therefore, be attributed only to the financial dependency of children on their father or on the father's obligation to support his children. Natural affection also underlay the presumption that a parent who made a gratuitous transfer to a child of any age, intended to make a gift.

[24] The Judge rejected the majority's view that the existence of other forms of affection justified discarding the presumption in favour of adult children:²⁶

... it is not affection alone that had earned the presumption of advancement for transfers between father and child. It was the uniqueness of the parental relationship, not only in the legal obligations involved, but, more significantly, in the protective emotional ties flowing from the relationship. These ties are not attached only to the financial dependence of the child. Affection between siblings, other relatives, or even friends, can undoubtedly be used as an evidentiary basis for assessing a transferor's intentions, but the reason none of these other relationships has ever inspired a legal presumption is because, as a matter of common sense, none is as predictable of intention.

[25] Nor did Abella J accept that the mere fact it was common for ageing parents to put their children's names on their accounts so their children could assist with management of the accounts was a reason to displace the presumption of advancement in relation to adult children; parents generally want to benefit their children out of love and affection:²⁷ "If children assist them with their affairs, this cannot logically be a

²⁴ *Pecore v Pecore*, above n 14, at [94], citing *Sidmouth v Sidmouth* (1840) 2 Beav 447, 48 ER 1254 (Ch) at 1258.

²⁵ *Pecore v Pecore*, above n 14.

²⁶ At [103].

²⁷ At [100].

reason for assuming that the desire to benefit them has been displaced.”²⁸ Finally, while affection arose in many relationships, familial or otherwise, the parental relationship was unique in that it was the relationship most predictable of intention. The parental relationship involved “protective emotional ties” that were not attached only to the financial dependence of the children.²⁹ Her Honour concluded that:

[102] ... Since the presumption of advancement emerged no less from affection than from dependency, and since parental affection flows from the inherent nature of the relationship, not of the dependency, the presumption of advancement should logically apply to all gratuitous transfers from parents to any of their children, regardless of the age or dependency of the child or the parent. The natural affection parents are presumed to have for their adult children when both were younger, should not be deemed to atrophy with age.

The presumption of advancement in relation to adult children in New Zealand

[26] In New Zealand the presumption of advancement as regards adult children has continued to be recognised.³⁰ In 2019 the Law Commission | Te Aka Matua o te Ture, in its review of the Property (Relationships) Act, did not distinguish between adult and minor children when discussing the presumption of advancement. It recommended that the presumption continue to be applied, describing it as “a well-established principle that provides the court with an appropriate starting point when classifying family advances”.³¹

[27] However, in recent decisions there has been some divergence in the way the rationale for the doctrine has been explained. In *Woolf v Kaye*, Gordon J undertook an extensive review of the cases, including *Pecore v Pecore*.³² She preferred the reasoning of Abella J, and concluded that the presumption of advancement should extend to adult children, whether dependent or independent because:³³

[189] ... The traditional rationale behind the presumption was both parental obligation to provide for their children and parental affection.

²⁸ At [100].

²⁹ At [103].

³⁰ See for example *Chang v Lee* [2017] NZCA 308, [2017] NZAR 1223; *Parlane v Parlane* (2011) 3 NZTR 21-012 (HC); and *Woodcock v Woodcock* [2018] NZHC 470, [2019] NZCCLR 10 at [109]–[113]. See also *Nelson v Meier* [2016] NZHC 787 at [58] in which Hinton J proceeded on the assumption that a relationship of actual dependency is required for the presumption of advancement to apply.

³¹ Law Commission | Te Aka Matua o te Ture *Review of the Property (Relationships) Act 1976 | Te Arotake i te Property (Relationships) Act 1976* (NZLC R143, 2019) at [5.41]–[5.49].

³² *Woolf v Kaye* [2018] NZHC 2191, [2019] 3 NZLR 93 at [157]–[202].

³³ Footnotes omitted.

[190] I have doubts about the majority’s comment in *Pecore* that there is no longer a parental obligation to support an adult independent child. It is true that there is no legal obligation, but many parents still feel a form of parental or moral obligation to support their children. This is irrespective of the age of the child, or whether they are independent or dependent.

[191] In any event, parental affection still underlies the rationale for the presumption. That parental affection underlies the “uniqueness of the parental relationship”. The nature of the parental relationship differs from other familial relationships, such as that between siblings ...

[28] However, the issue as to the continued existence of the presumption of advancement in relation to adult children has not been squarely in issue in the cases in which it has subsequently been discussed. *Reid v Castleton-Reid* concerned a very elderly man, Mr Reid, (97 years old at the time of the appeal) who had deposited \$1.7 million into a share-trading account in the name of his son, Mr Castleton-Reid. The latter eventually closed the account and held the funds for himself, asserting a gift from his father.³⁴ There was a substantial body of evidence surrounding the circumstances of the transfer. On the basis of the evidence (and adverse credibility findings against Mr Reid) the first instance Judge held that the transfer was a gift.³⁵

[29] In the appeal, Mr Castleton-Reid did not rely on the presumption of advancement as his primary position — he said the evidence demonstrated that his father had intended a gift. Reliance on the presumption was his fall-back position. Although the majority decision in *Pecore* was discussed, it was not argued that New Zealand should adopt that position. Nor was the rationale for the presumption the subject of any dispute. This Court considered that the evidence did not show a gift was intended, so a resulting trust would arise, subject only to the presumption of advancement. However, the volume and nature of the evidence meant that the case did not really turn on the presumption.³⁶ The Court commented that:

[85] It is difficult to see any rationale for the operation of the presumption of advancement where an adult child is well established in life, as Mr Castleton-Reid was in March 2009. The presumption is based on the concept of a parental obligation to support children. ...

but immediately concluded that the evidence counted strongly against a presumption

³⁴ *Reid v Castleton-Reid* [2019] NZCA 372, [2019] NZAR 1655 at [5]–[24].

³⁵ *Reid v Castleton-Reid* [2018] NZHC 782 at [135].

³⁶ *Reid v Castleton-Reid*, above n 34, at [78]–[86].

of gift.³⁷

[30] Most recently, this Court in *MacKay v Blair* noted that it shared the reservations expressed by Fitzgerald J in *TN v AK*.³⁸ There, her Honour said that:³⁹

[68] ... there is some doubt whether the presumption of advancement carries much weight in transfers between parents and adult children; the Supreme Court of Canada, for example, has held the presumption of advancement is not applicable to adult children.

[69] ... I see merit in the approach adopted by the Canadian Supreme Court.

[31] We note, however, that the discussion of the presumption of advancement was obiter and of peripheral relevance, since the Court had already determined that Mrs MacKay's capacity to make a gift was in sufficient doubt that the matter should be remitted to the High Court for rehearing.⁴⁰ The Court was not required to conduct an in-depth examination of the relevant authorities, nor consider in detail the historical basis of, or justifications for, the presumption of advancement. The Court also does not appear to have had the Law Commission's recommendations about the presumption of advancement before it.

[32] It is evident that, despite reservations expressed as to the ongoing rationale for the presumption of advancement, the doctrine is still part of the law of equity in New Zealand and applies to adult children. We do not see any basis on which to depart from the longstanding recognition of it by adopting the approach taken by the majority in *Pecore*. First, we agree with Abella J's analysis that the historical rationale for the doctrine is not limited to an obligation to support. Rather, it reflects the unique relationship between parent and child and the fact that the emotional ties underpinning that relationship endure regardless of age. While that relationship does involve moral and legal obligations, it is not reducible to them. It is the uniqueness of the relationship that justifies the presumption that parents who advance money to their children can be assumed, absent contrary evidence, to have intended to make a gift of that money. If

³⁷ At [86].

³⁸ *MacKay v Blair* [2026] NZCA 58 at [99]–[100], citing *TN v AK* [2019] NZHC 2466.

³⁹ *TN v AK*, above n 38 (footnote omitted).

⁴⁰ *MacKay v Blair*, above n 38, at [87].

particular cultural considerations were relevant, evidence could be adduced to rebut the presumption.

[33] Secondly, we are not prepared to assume that what appears to be common practice in Canada of ageing parents putting assets in their children's names or adding their adult children's names to their bank accounts, without more, applies in New Zealand. In this country, the common practice is to use enduring powers of attorney, under which the donee (often an adult child of elderly parents) is able to manage the property and assets of the donor.

A resulting trust in this case?

[34] We turn to consider whether a resulting trust exists on the facts before us.

Some general background

[35] While the appeal is concerned only with the Glen Innes property and the evidence relating to that property lies within a narrow scope, the broader family dynamics are nevertheless relevant.

[36] Mr and Mrs Liao, now in their seventies, came to New Zealand from Taiwan with their three children in the early 2000s. Both came from very modest backgrounds but built a successful business in Taiwan and also invested in residential and commercial property there. They did not like debt and preferred to buy for cash. Both Mr and Mrs Liao said that Mrs Liao was the one responsible for managing the couple's money and making investment decisions.

[37] When Mr and Mrs Liao came to New Zealand they purchased a family home for cash. A few years later, they purchased another, also for cash. Although they still owned investment properties in Taiwan, they held surplus cash in term deposits in New Zealand, even after they were no longer required to do so by the terms of their visa.

[38] Ms Liao is the couple's only daughter. In 2011, Mr and Mrs Liao were travelling to and from Taiwan a good deal and were considering moving back. In her

brief of evidence, Mrs Liao said that this was because she and her husband had elderly parents there. In cross-examination, she said that she had to return there for medical treatment in 2011 and was there for six years.⁴¹ Whatever the reason — and perhaps there was more than one reason — the couple went back and forth during this time and spent a lot of time in Taiwan. They asked Ms Liao to manage their bank accounts while they were away and Ms Liao agreed. They gave Ms Liao access to the bank accounts for this purpose.

[39] In 2012, Ms Liao was thirty years old and in a serious relationship with a property developer, Mr Lam (whom she married in 2013). The couple shared an interest in property and Ms Liao was keen to start investing in property. At that time, she was working full-time as a waitress and earning about \$600 per week but living with her parents to save money. Mr and Mrs Liao gave her the deposit for her purchase of a residential investment property in East Tāmaki. She funded the balance with her savings and a bank loan. She serviced the bank loan using the rent from the property and her own income.

[40] At the end of 2012 Ms Liao purchased the Glen Innes property. The circumstances of the purchase are, of course, disputed. It is agreed that Mr and Mrs Liao advanced \$52,050 towards the purchase price but Ms Liao says this was a gift to allow her to progress her interest in property.⁴²

[41] In 2013 Mr and Mrs Liao gave Ms Liao their powers of attorney because they were still traveling back to Taiwan often and considering moving back there.

[42] Over the next several years, Mr and Mrs Liao assisted their other children financially. In cross-examination, Mrs Liao agreed that she had given her older son, Jimmy, \$40,000 when he got married and assisted him to pay his mortgage. She also agreed that \$200,000 had been transferred to Jimmy from her account and that “[p]resumably, [she] asked [Ms Liao] to transfer the money to Jimmy”. Jimmy’s evidence was that his parents had provided gifts of \$80,000 and approximately

⁴¹ Ms Liao said in her evidence that the real reason Mr and Mrs Liao went back to Taiwan was to help their younger son, Josh, manage a business that had been left in the care of relatives.

⁴² The evidence was \$20,000 of the \$52,050 advanced actually came via Ms Liao’s older brother, Jimmy and that Ms Liao repaid Jimmy in 2014 at Mrs Liao’s request.

\$400,000 to purchase houses and a further \$200,000 to pay down the mortgage on one of his properties.

[43] Mrs Liao also agreed that she had given her younger son, Josh, an interest free loan of approximately \$600,000, which he repaid. Josh confirmed in cross-examination that Mr and Mrs Liao had also advanced \$44,000 to a company that he controlled and had made him another loan of \$400,000.

[44] In 2015 Ms Liao transferred \$25,000 from Mrs Liao's bank account to her own. This payment was said by Mrs Liao to have been unauthorised but the Judge accepted that it was made with Mrs Liao's knowledge and approval as a gift to Ms Liao on the birth of her son.⁴³ That finding is not challenged on appeal.

[45] According to Ms Liao, after her marriage to Mr Lam, and seeing his success in property development, Mrs Liao began expressing interest in investing in property in New Zealand. In 2015, Ms Liao purchased a section in Orewa as a development site. The funds for the purchase price were provided by Mr and Mrs Liao and Mrs Liao was registered as the owner. Although the timing is a little unclear, it appears that this was initially intended to be an investment by Ms Liao and her mother together, that Mr Lam would build on the site and then, following that, the property would be sold and the parties would share in the proceeds. Following settlement, Mr Lam built a house on the property. Ultimately, however, Mr and Mrs Liao moved into the new house to live before selling it in 2021 and retaining the proceeds. There was dissatisfaction on both sides as a result of that outcome, but that property was not the subject of the High Court claim.

[46] In 2018, Mr and Mrs Liao invested in two developments being undertaken by Mr Lam in Orewa and Long Bay. These were the subject of a claim in the High Court but the Judge rejected the allegations of breach of fiduciary duty made against Ms Liao in relation to the developments.⁴⁴

⁴³ Judgment under appeal, above n 2, at [86].

⁴⁴ At [70].

[47] In 2019, Mr and Mrs Liao's money was used to purchase a section in Ellerslie, which Mr Lam built on. This was also the subject of a claim in the High Court. The Judge held that this property belonged to Mr and Mrs Liao, subject to Ms Liao being entitled to recover the costs of holding and developing the property.⁴⁵

The purchase of the Glen Innes property and subsequent dispute

Mr and Mrs Liao's account

[48] Mrs Liao says that she and Mr Liao were prompted to consider investing in real estate in New Zealand by Ms Liao and Mr Lam, who advised that it was preferable to term deposits, where much of Mr and Mrs Liao's cash was held. Mr and Mrs Liao say that they found the Glen Innes property and considered it would be suitable for this purpose.

[49] Mrs Liao explained Ms Liao's involvement in the purchase as follows. Although she and Mr Liao intended to purchase the property with cash (because they did not like debt), Ms Liao asked them to only pay the deposit in cash and to allow her to fund the balance of the purchase price with a mortgage in order to improve her credit rating. According to Mrs Liao, in Taiwan it is possible for the registered proprietor and mortgagor to be different people and for the mortgagor not to be on the title.⁴⁶ Mrs Liao therefore expected that the property would be registered in her and Mr Liao's name and "[Ms Liao] would simply be liable for the mortgage like a guarantor". But Mrs Liao was not worried about her daughter being in debt because she expected that rental income from the Glen Innes property would cover the mortgage and any shortfall would be met by Mr and Mrs Liao from their bank accounts, which Ms Liao had access to.

[50] In her brief of evidence, Mrs Liao described attending the auction with Ms Liao and Mr Lam. She said:

... [my] husband and I decided on the prices to bid, and we placed the winning bid on the Glen Innes property.

⁴⁵ At [59].

⁴⁶ There was no independent evidence of the practice in Taiwan but Mrs Liao's assertion was not challenged.

I do not remember signing any documents after winning the auction. I trusted [Ms Liao] to complete the legal processes in accordance with our wishes and on our behalf ... my husband and I do not speak English, so we could not have done this ourselves.

[51] Mrs Liao says she only found out that she and Mr Liao were not the registered owners of the property in 2019, during casual conversation with Ms Liao. She asked Ms Liao to transfer the property into their names but Ms Liao made excuses as to why she could not — or had not — done so.

Ms Liao's account

[52] Ms Liao gave evidence that it was Mr Lam who identified the Glen Innes property as a possible investment for her and introduced her to an Asian loan manager at the BNZ. The BNZ was prepared to lend up to 80 per cent of the purchase price on the basis that Ms Liao moved the borrowing on the property she already owned to the BNZ and combined the loans for both properties.

[53] Ms Liao had savings that would cover about 10 per cent of the purchase price of the Glen Innes property, leaving a further 10 per cent needed to complete the 20 per cent equity required by the BNZ. Ms Liao said she asked her mother whether her parents would be willing to invest in the property with her. Mrs Liao said that they were not interested in buying more property because it was too much trouble at their time of life and they had enough savings. Also, they preferred to keep their New Zealand money in the bank. Ms Liao approached her brother Jimmy to see if he was interested in investing in the property with her, but he was not. She returned to her mother and asked for help to cover the 10 per cent deposit for the purchase price — around \$50,000. Mrs Liao agreed to give Ms Liao the money she needed.

[54] Jimmy gave evidence that, unknown to Ms Liao, Mr and Mrs Liao asked him to transfer \$20,000 to them so they would not have to break their term deposits to give Ms Liao the money she needed.

[55] At the auction it was Ms Liao who bid. She had advice from her real estate agent, Mr Guo, who spoke Mandarin. Mr and Mrs Liao and Mr Lam were present at the auction to support her. Afterwards she signed the auction form and spoke to the

real estate agent in Mandarin. Her parents were present and would have understood everything that was being discussed. Later Mrs Liao provided the cheque for \$52,050 to cover the deposit.

[56] When Ms Liao went to see her lawyer to complete the purchase documents her parents came with her. The lawyer spoke in Mandarin. He explained the documents and made it clear that it was Ms Liao who was buying the property, would be the registered owner and would be responsible for the bank loan. Ms Liao funded the loan using the rent from the two properties, her own savings and earnings and help from Mr Lam.

[57] In mid-2020, Mrs Liao asked Ms Liao to transfer the Glen Innes property to Josh.⁴⁷ This request was repeated by Josh himself, who went to Ms Liao's and Mr Lam's home and upset Ms Liao and their children. Ms Liao kept brushing her mother off because of her mother's ill-health. Eventually, Ms Liao told her father that if they really wanted the Glen Innes property she would sell it to them at market price.

[58] Mr Lam gave evidence in which he confirmed Ms Liao's account in all these respects.

The Judge's reasons

[59] Since it was accepted that Mr and Mrs Liao had contributed 10 per cent of the purchase price, a resulting trust would arise to the extent of their contribution unless Ms Liao could show, on the evidence, that Mr and Mrs Liao intended to make a gift of that money or, alternatively, satisfy the Judge that the presumption of advancement applied so that it was presumed that a gift was intended.⁴⁸

[60] The Judge considered that there was "a paucity of contemporaneous evidence" as to the parties' intentions around the time of purchasing the Glenn Innes property.⁴⁹ He therefore turned to the presumption of advancement, which he found did apply.

⁴⁷ On Ms Liao's account, her parents also asked that she transfer the Ellerslie property to her other brother, Jimmy, which she also refused to do.

⁴⁸ Judgment under appeal, above n 2, at [34].

⁴⁹ At [35].

The reasons he gave can be summarised as follows. Ms Liao was not financially independent and, given Mr and Mrs Liao's circumstances, it was not unreasonable for them to assist her. It was relevant that they had provided a similar gift to Ms Liao only a few months before. The fact that Ms Liao refinanced her existing mortgage to combine it with the loan on the Glen Innes property was consistent with her account of wanting to develop her interest in property investment and asking her parents for assistance. Moreover, apart from initial cleaning and sorting, Mr and Mrs Liao had no involvement with the Glen Innes property.⁵⁰

[61] The Judge concluded that:

[39] By a slim margin, therefore, I consider that the presumption of advancement has not been displaced with respect to the Glen Innes property and the monies transferred to the defendant for payment of the deposit was likely a gift. That amount was, as noted, \$32,050, being the amount of the deposit less the \$20,000 loan from Jimmy. ...

Appeal

[62] Mr Jeffs submitted that, in reaching his conclusion, the Judge failed to fully analyse the evidence and failed to recognise the absence of evidence that might otherwise be expected. He argued that there was sufficient evidence on which to reach a finding as to Mr and Mrs Liao's intentions so that recourse to the presumption of advancement was unnecessary or, alternatively, that the presumption was displaced.

The admissibility of subsequent statements and conduct

[63] Some of the evidence that Mr Jeffs relied on was evidence of subsequent statements (particularly LINE (a messenger application) messages between the parties). The admissibility of this evidence appears not to have been raised in the High Court. In this Court Mr Jeffs submitted that it was admissible.

[64] In the United Kingdom evidence of subsequent conduct is generally admissible in determining the parties' intentions in relation to a transaction, with the weight to be given the evidence a matter for the judge, having regard to the relevant context.⁵¹

⁵⁰ At [37]–[39].

⁵¹ *Enal v Singh*, above n 13, at [37]–[38].

In Australia, it is not admissible.⁵² The question has not been expressly considered in New Zealand in the context of a resulting trust, though in *Lendich v Codilla* this Court referred to parties' subsequent conduct in determining whether the transferor had intended to retain the beneficial interest in a property transferred many years before.⁵³ In *Legler v Formannoj*, the Supreme Court, in the context of an express trust, considered that evidence of post-settlement conduct could be relevant in determining what the settlor intended the words of the trust deed to mean (though expressly disclaiming any comment on whether the principles of contractual interpretation necessarily apply to the interpretation of trust deeds).⁵⁴

[65] In our view, subsequent statements and conduct are generally admissible in determining whether a transferor intended to retain the beneficial interest in property voluntarily transferred. As with all evidence of subsequent conduct, there is an obvious risk of self-serving statements. The weight to be given to such evidence is for the judge, who is best placed to make that assessment.

[66] In this case, the Judge did not refer to the subsequent conduct except obliquely in noting the lack of involvement by Mr and Mrs Liao in the Glen Innes property in the years following the purchase. We consider that the evidence of the parties' subsequent statements and conduct should have been taken into account in determining Mr and Mrs Liao's intentions at the time of the purchase.

Was there evidence of intention?

[67] We start with Mr and Mrs Liao's and Ms Liao's respective circumstances, which the Judge viewed as favouring Ms Liao. Mr Jeffs criticised the Judge's view that because Ms Liao was not financially established, whereas Mr and Mrs Liao were well established, it was not unreasonable for them to have helped her, especially given that they had made a similar gift only a few months before.

⁵² *Bosanac v Commissioner of Taxation*, above n 10, at [113].

⁵³ *Lendich v Codilla* [2023] NZCA 222, (2023) 24 NZCPR 374 at [101]–[111].

⁵⁴ *Legler v Formannoj* [2024] NZSC 173, [2024] 1 NZLR 710 at [121], n 115. This view was based on admissibility of subsequent conduct in the context of contractual interpretation: *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444 at [31]; and *Gibbons Holdings Ltd v Wholesale Distributors Ltd* [2007] NZSC 37, [2008] 1 NZLR 277 at [7] per Elias CJ and [52]–[55] per Tipping J.

[68] Mr Jeffs argued that it was, in fact, inherently unlikely that Mr and Mrs Liao would have made a further gift to Ms Liao so soon after the first. This was because Ms Liao's modest income meant that she would have found it challenging to service such a large mortgage debt. Given Mr and Mrs Liao's aversion to debt it was implausible that they would have encouraged their daughter to double her borrowing by purchasing another property.

[69] We do not accept this submission. When the parties' circumstances, and their subsequent conduct, are viewed in their totality we think there is sufficient evidence that Mr and Mrs Liao intended their contribution to the purchase price of the Glen Innes property to be a gift to Ms Liao.

[70] First, in 2012 Mr and Mrs Liao had been in New Zealand for more than 10 years without showing any interest in property investment and were spending a good deal of time in Taiwan, including for Mrs Liao to obtain medical treatment. This was the reason they eventually gave Ms Liao powers of attorney to operate their bank accounts. It seems very unlikely that they would have become interested in buying an investment property in New Zealand at this time.

[71] Secondly, even on Mr and Mrs Liao's account, Ms Liao had herself contributed the same amount of equity to the purchase as they did. Given her relatively modest situation, there was no reason for her to have contributed hard-earned cash and incurred a substantial liability — or for Mr and Mrs Liao to let her do that — merely for the benefit of "improv[ing] her credit score" (which Ms Liao flatly denied saying). We see this aspect of Mr and Mrs Liao's account as implausible. Although the Judge made no explicit finding on it, he too must have regarded it as inherently unlikely.

[72] Thirdly, as noted earlier, of the \$52,050 Mr and Mrs Liao advanced to Ms Liao, \$20,000 had come from Jimmy and in 2014 Mrs Liao asked Ms Liao to repay Jimmy that amount directly, which she did. There was no obvious reason for this request or for Ms Liao to have repaid her brother if she had no interest in the property herself. Mr Jeffs accepted that there was no apparent explanation.

[73] Thirdly, and contrary to Mr and Mrs Liao's case, the evidence shows that, on the balance of probabilities, it was Ms Liao and Mr Lam who met the shortfall between the rent and the mortgage. Mr and Mrs Liao adduced evidence from an accountant, Mr McLennan, that between 2013 and 2016 the shortfall was funded by payments totalling \$71,661.76, comprising \$15,441 attributable to Ms Liao, a single deposit of \$25,000 on 18 March 2015 from Mrs Liao's account into Ms Liao's account, and \$31,220 from an unidentified source.

[74] The money attributed to Ms Liao was presumed to be sourced both from the rent from the property and from her wages. The \$25,000 was clearly the payment the Judge found was a gift from Mrs Liao for the birth of Ms Liao's baby. And while Mr McLennan was unable to identify the source of the balance, Mr Lam gave unchallenged evidence that he had assisted Ms Liao with the mortgage payments. It is therefore reasonable to infer that Mr Lam was the source of the unidentified contributions. It is completely implausible that Ms Liao would take on a liability that could not be met from the rental income alone and that she and her husband would then proceed to meet the substantial shortfall without having a beneficial interest in the property.

[75] Fourthly, we see no significance in Mr Jeffs' point that there was no contemporaneous document describing the payment as a gift. There was no mention of the earlier gift to buy the East Tāmaki property being documented, so the lack of any contemporaneous documentation in relation to the Glen Innes property is neither surprising, nor significant.

[76] Finally, we come to Mr Jeffs' submission that statements made by Ms Liao in LINE messages between the parties in 2021 were inconsistent with the advance being a gift. The messages between Ms Liao and her parents are not directed solely towards the Glen Innes property. They show a general rupture between the parties, with the underlying themes being Ms Liao's perception that her parents favoured her brother, Josh, over her and her children, and Mr and Mrs Liao's anger at Ms Liao's failure to do what they are asking of her. There was some evidence suggesting a cultural overlay in terms of a preference in Asian families for sons over daughters, especially after a

daughter marries. However, the case was not argued on this basis. It would therefore be inappropriate to draw an inference of that kind.

[77] The high point of the LINE messages is the following exchange between Mr Liao and Ms Liao on 26 April 2021:

[Mr Liao] As your parents, we are here to advise you and your husband — don't be excessive as human beings or when handling affairs. You will be damned by the wrath of heaven when you have the audacity to gobble up assets of your own parents. Please think, don't get pushy. I am your [parent].

...

[Ms Liao] ... regarding the house in Glen [I]nnes, you only paid \$52050.00 as 10% deposit, and the other 10% deposit was paid by me, and I borrowed the remaining 80% on my own.

Regarding the 10%, do you want to treat it as either:

1. You guys' investment of 10% shareholding, or
2. a loan of \$52,050 from you guys to me?

...

[Mr Liao] ...What's the argument among you [children] got to do with my house in Glen [Innes]? That house was bought by me from the get-go, except that your name was borrowed for the loan. What's that to do with the ten percent? Besides, where did you come up with the money back then to buy the house?

...

[Ms Liao] ... What does "my name was borrowed for the loan" mean? Back then, you guys initially said "no, don't want it", and then you guys said yourself "why bother buying so many houses, too troublesome". Then I said that or else I want to buy. I asked to borrow the deposit from you guys. I would get myself a loan for the remainder and then make the repayments by myself.

[78] Mr Jeffs submitted that the lack of any reference by Ms Liao to the advance from her parents being a gift undermined her claim that it was a gift — had she believed it had been a gift she would have said that.

[79] Ms Liao was asked about her message in cross-examination and said that her message had been couched in those terms because Mr Liao had been verbally abusive and threatened to come and talk to her at her children's school.

[80] Looking at these (and the other) messages in their totality, we do not see any real significance in Ms Liao responding as she did. To the contrary, her suggestion that the advance be treated as either an investment by her parents or a loan reflected what (on her account) she had originally proposed to Mrs Liao, before Mrs Liao (again on Ms Liao's account) offered to gift her the money. Given the extremely angry tone of Mr Liao's messages, it was understandable that Ms Liao might have wanted to find a way to take some of the heat out of the situation.

[81] In our view, the overall effect of the evidence was to easily displace the presumption of a resulting trust, without recourse to the presumption of advancement.

Result

[82] The appeal is dismissed.

[83] The appellants must pay the respondent costs for a standard appeal on a band A basis together with usual disbursements.

Solicitors:
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