

**IN THE DISTRICT COURT  
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE  
KI WAITĀKERE**

**CIV 2025-090-849  
[2025] NZDC 22829**

BETWEEN BAOLIN LI (aka BRYAN LI)  
Plaintiff  
AND YINGYING MA  
Defendant

Hearing: 23 September 2025

Appearances: D Mitchell for Plaintiff  
K Sun for Defendant

Judgment: 6 October 2025

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**JUDGMENT OF JUDGE K D KELLY  
[on application for summary judgment]**

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**Introduction**

[1] Mr Baolin Li and Ms Yingying Ma were once romantically involved and subsequently engaged to be married. Their relationship deteriorated, however, and the engagement was broken off.

[2] While on good terms, Mr Li gave Ms Ma \$100,000.00 in four instalments. Mr Li says this was a loan, verbally agreed to by Ms Ma, to be used towards Ms Ma's development of an investment property. Ms Ma, on the other hand, says that there was no intention to create legal relations in the form of a loan and that money was a betrothal gift from Mr Li.

[3] Mr Li now seeks summary judgment against Ma for the sum of \$100,000.00 plus interest of \$35,948.00, category 2B costs of \$5,539.00 plus disbursements of \$2,260.00 (totalling \$143,747.80).

[4] Ms Ma opposes the application.

### **Background**

[5] Mr Li and Ms Ma met in 2013 while studying at university. In March 2020 they started dating.

[6] In or around September 2020 Mr Li rented a room in Ms Ma's Waipani Road property. At some point in or around February 2021 Mr Li and Ms Ma agreed that Mr Li would stop paying rent and expenses to Ms Ma for a period of three months. The exact circumstances around this are disputed.

[7] In any event, in early 2021 Ms Ma wished to purchase a second property at Divich Avenue as an investment. Not unusually, Ms Ma planned to develop this property and then rent it out to cover her mortgage payments. The purchase was completed on 21 April 2021 and Mr Li transferred to Ms Ma \$50,000.00 for the initial deposit. This money was subsequently repaid by Ms Ma on 4 May 2021.

[8] Later, on 22 July 2021, Mr Li paid Ms Ma a further \$10,000.00. Mr Li says this was the first instalment of the disputed \$100,000.00 loan.

[9] Shortly thereafter, on or about 29 July 2021 Mr Li and Ms Ma became engaged. They tried to register their marriage around this time but had to postpone doing so, it is understood, due to COVID-19 complications.

[10] The following month, on 12 August 2021 at 11:40am, Mr Li emailed Ms Ma saying:

Hi Yingying

I am happy to provide a \$100,000 NZD personal loan to you, and an annual interest rate of 9% as investment return.

Let's discuss this further later today.

Cheers  
Baolin

[11] By way of a second email which appears to have been made three minutes later,<sup>1</sup> Mr Li also sent Ms Ma a near identical email, save for the amount, saying:

Hi Yingying

I am happy to provide a total amount of \$500,000 NZD personal loan to you, and an interest rate of 9% per year as investment return.

Let's discuss this further later today.

Cheers  
Baolin

[12] The same day, Mr Li paid Ms Ma \$60,000.00, recording the transfer on his bank statement as "Investment". Mr Li says this was the second instalment of the disputed loan.

[13] Ms Ma subsequently copied Mr Li into correspondence with her lawyers, real estate agent, and architects/designers regarding the purchase and development plans for the Divich property.

[14] On 16 December 2021 Mr Li made a third payment of \$20,000.00 to Ms Ma, this time recording on his bank statement "90 Divich". Mr Li says this was the third instalment of the disputed loan.

[15] By January 2022 Mr Li's and Ms Ma's relationship had deteriorated due to Mr Li's infidelity. Despite this, on 7 January 2022 Mr Li purchased a brand new Mercedes Benz car in his and Ms Ma's names for the sum of \$151,300.00. The insurance policy addressed to Mr Li records Ms Ma as the second named driver.

[16] Nine days later on 16 January 2022 Ms Ma travelled to China to visit her family.

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<sup>1</sup> The email was sent at 7.43am the same day but apparently does not show New Zealand time

[17] On 21 March 2022, while Ms Ma was still in China, Mr Li made a fourth payment to Ms Ma of \$10,000.00. With this payment, the total sum paid by Mr Li to Ms Ma was \$100,000.00.

[18] Ms Ma says this \$10,000.00 was part of the betrothal gift to her but also that before she left for China, she left approximately \$5,000.00 in the Mercedes which she asked Mr Li to transfer to her by electronic transfer. Accordingly, Ms Ma says that \$5,000.00 of the last \$10,000.00 paid to her by Mr Li, belongs to her anyway.

[19] While in China, Ms Ma visited Mr Li's family and bought gifts for Mr Li's mother. Ms Ma says she was still unsure whether she should end her engagement to Mr Li. Ms Ma eventually returned to New Zealand on or about 22 April 2022 and at or around this time the engagement was formally broken off.

[20] About a week later on or around 27 April 2022, Mr Li moved out of Ms Ma's Waipani property.

[21] Three months later on 2 July 2022, Mr Li says that he discussed repayment of the \$100,000.00 with Ms Ma. In a WeChat message exchange between the parties Ms Ma is recorded as saying, amongst other things:

Sorry, I can't do that right now. Please don't force me anymore. You never truly loved, so can't understand my feelings.

I will try to find a way to repay the money, but I need to get through these two years.

I'm trying very hard to move on, and it's not easy. Please stop messaging me from time to time and disturbing me. We both need to move on.

[22] Fifteen months later on 11 September 2023, Mr Li emailed Ms Ma reminding her to repay the money saying:

Hi Yingying

Your loan repayment is now overdue. It has been over two years (730 days) since your initial borrowing, and I have not received any interest or principal payments. Please see below your outstanding unpaid balance and days in arrears.

...

Please repay the two years overdue principal in 30 days, or I will have to declare you in default. If you have difficulties in meeting the repayment deadline, please inform me formally.

Regards  
Baolin

[23] This email included in it, the email from Mr Li to Ms Ma dated 12 August 2021, referring to the personal loan of \$100,000.00 plus 9% interest.

[24] After a further approximately nineteen months, on 7 April 2025 through his lawyer Mr Li made a formal demand on Ms Ma for \$131,433.42 to be repaid within 10 working days.

[25] Payment has not been forthcoming, hence these proceedings.

#### **Submissions for Mr Li**

[26] Mr Li submits that he loaned Ms Ma \$100,000.00 in four instalments between 22 July 2021 and 21 March 2022 (the Loan Funds) for the purpose of assisting Ms Ma purchase and develop the Divich Avenue property (the Divich property). Despite demanding repayment, Mr Li says that Ms Ma has not repaid any of the money.

[27] Mr Mitchell for Mr Li submits that Ms Ma approached Mr Li verbally asking to borrow \$100,000.00 to cover the deposit and purchasing costs associated with the Divich property and that Mr Li agreed to lend the money on demand on the condition that Ms Ma would pay it back with interest at 9% per annum.

[28] It is submitted that Mr Li and Ms Ma had discussed the Divich property and that Mr Li made two loan proposals in relation to it. The first option proposed was for a loan by Mr Li of \$100,000.00 to cover some of the purchase costs and development design fees. The second option was for Mr Li to loan Ms Ma \$500,000.00 to cover subdivision and construction costs for five new houses that could be built on the Divich property. It is submitted that the first option was agreed between the parties.

[29] Due to the close relationship between the parties, it is submitted that neither party initially thought the loan needed to be in writing but after the first instalment was made Mr Li thought it prudent to record the loan, hence the email of 12 August 2021.

[30] This, Mr Mitchell submits, constitutes contractual 'offer' and 'acceptance.'

[31] In terms of 'consideration', Mr Mitchell submits that on 12 August 2021 Ms Ma verbally told Mr Li that she had received the email of the same date setting out the loan amount and interest rate. It is submitted that Ms Ma told Mr Li that \$100,000.00 would be sufficient to use towards the Divich property and that she would repay the money when this was required by Mr Li.

[32] It is submitted that Mr Li was confident that Ms Ma would repay the money given that she had repaid the \$50,000.00 he earlier loaned her on 21 April 2021.

[33] When Mr Li paid Ms Ma the second instalment of \$60,000.00, recording the transfer on his bank statement as "Investment", it is submitted that Ms Ma then applied the money to the purchase and development of the Divich property.

[34] It is further submitted that neither Mr Li nor Ms Ma made any comment to the effect that the Loan Funds were a gift, and that Ms Ma did not thank Mr Li for the money as one might expect if the money were a gift. Instead, it is submitted that Ms Ma copied Mr Li into correspondence with her lawyers, real estate agent and the architects/designers regarding the purchase and development plans for the Divich property, keeping Mr Li informed of progress given that he had loaned Ms Ma the money.

[35] With the third and fourth instalments having been made, it is submitted it is clear that Mr Li transferred the money by way of a loan, satisfying the need for contractual consideration.

[36] It is further submitted that it is credible that parties in a close relationship like this could have easily talked to each other and verbally agreed on the terms and use of

the Loan Funds. It is submitted that this is confirmed by contemporaneous documentation namely:

- (a) the email of 12 August 2021 which sets out the terms of the agreed loan;
- (b) Mr Li's bank statements that record the purpose for which the money he transferred to Ms Ma was to be used (the bank statements); and
- (c) Mr Li being copied into correspondence regarding progress on the development of the Divich property.

[37] It is submitted that it was only when Ms Ma filed her objection to summary judgment that she mentioned that the Loan Funds were a gift.

[38] It is also submitted that despite the parties' relationship eventually deteriorating, Mr Li kept his side of the bargain he made with Ms Ma by advancing the fourth instalment to her. Ms Ma's post advancement conduct too, it is submitted, was to confirm to Mr Li that she would repay the money but that she needed two years to do so. This behaviour, Mr Mitchell submits, is consistent with Mr Li's claim that the money was a loan.

#### *Submissions for Ms Ma*

[39] Mr Sun for Ms Ma submits that the \$100,000.000 transferred by Mr Li was a gift in anticipation of marriage. Mr Sun submits that Ms Ma has an arguable defence in this regard and that the evidence does not meet the threshold of credibility required for summary judgment. Notably, Mr Sun submits that:

- (a) there is no written agreement regarding the alleged loan;
- (b) if Ms Ma needed the \$100,000.00, she could have borrowed it from a bank at a much lower interest rate;

- (c) it is implausible that Mr Li would have loaned his future wife the money at an 'exorbitant' interest rate, and that Ms Ma would accept such a loan.

[40] Mr Sun submits further that the evidence is conflicting as to the 12 August 2021 emails, and that Mr Li refers to only some selected WeChat messages to support his version of events. Mr Sun says that a discovery order is required to inspect all of the WeChat messages on the plaintiff's phone because Ms Ma has previously destroyed those in her possession.

[41] Mr Sun also submits that as a matter of policy, the Court should encourage Chinese litigants to enter into formal written agreements. Granting summary judgment, it is submitted, would be send a signal to Chinese litigants that it is acceptable for them to enter into transactions without formal written contracts.

[42] Mr Sun submits that Ms Ma's evidence shows that the parties were in the habit of exchanging physical gifts and money and that there was no intention to create legal relations in the form of a loan. The pattern of giving between the parties, it is submitted, includes cash gifts and the gift of the Mercedes Benz car after Ms Ma had discovered Mr Li's infidelity, with cash transfers and gifts being a characteristic feature of their relationship. In the absence of written agreements, it is submitted that in a close relationship transfers of money can presumptively be viewed as gifts.

[43] Mr Sun submits that because Ms Ma chose to end their relationship, what Mr Li is seeking to do is to enforce a non-existing contract in order to retain gifts which he gave to Ms Ma during their relationship.

[44] Mr Sun submits that for the Court to be able to determine whether or not the transfer of the \$100,000.00 was a loan or a gift, cross-examination is required of the parties is necessary and that the dispute cannot be determined based only on the affidavit evidence currently before the Court.

## Discussion

### *Legal principles*

[45] On an application for plaintiff summary judgment, the starting point is rule 12.2 of the District Court Rules 2014 (DCRs) which provides that:

The court may give judgment against the defendant if the plaintiff satisfies the court that the defendant has no defence to any cause of action in the statement of claim or to a particular part of any such cause of action.

[46] As the Court of Appeal said in *Krukziener v Hanover Finance Ltd*:<sup>2</sup>

The principles are well settled. The question on a summary judgment application is whether the defendant has no defence to the claim; that is, that there is no real question to be tried: *Pemberton v Chappell* [1987] 1 NZLR 1 (CA) at 3. The court must be left without any real doubt or uncertainty. The onus is on the plaintiff, but where its evidence is sufficient to show there is no defence, the defendant will have to respond if the application is to be defeated: *MacLean v Stewart* (1997) 11 PRNZ 66 (CA). The court will not normally resolve material conflicts of evidence or assess the credibility of deponents. But it need not accept uncritically evidence that is inherently lacking in credibility, as, for example, where the evidence is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable: *Eng Mee Yong v Letchumanan* [1980] AC 331 (PC) at 341. In the end the court's assessment of the evidence is a matter of judgment. The court may take a robust and realistic approach where the facts warrant it: *Bilbie Dymock Corporation Ltd v Patel* (1987) 1 PRNZ 84 (CA).

[47] As Associate Judge Osborne (as he was then) subsequently said in *Gidden v IAG NZ Limited*:<sup>3</sup>

The starting point for a plaintiff's summary judgment application is ... that the plaintiff satisfy the Court that the defendant has no defence to any cause of action in the statement of claim or to a particular cause of action.

I summarise the general principles which I adopt in relation to this application:

- (a) Commonsense, flexibility and a sense of justice are required.
- (b) The onus is on the plaintiff seeking summary judgment to show that there is no arguable defence. The Court must be left without any real doubt or uncertainty on the matter.
- (c) The Court will not hesitate to decide questions of law where appropriate.

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<sup>2</sup> *Krukziener v Hanover Finance Ltd* [2008] NZCA 1982; [2010] NZAR 307 at [26]

<sup>3</sup> *Gidden v IAG NZ Limited* [2016] NZHC 948 at [60] – [61] (citations omitted)

- (d) The Court will not attempt to resolve genuine conflicts of evidence or to assess the credibility of statements and affidavits.
- (e) In determining whether there is a genuine and relevant conflict of facts, the Court is entitled to examine and reject spurious defences or plainly contrived factual conflicts. It is not required to accept uncritically every statement put before it, however equivocal, imprecise, inconsistent with undisputed contemporary documents or other statements, or inherently improbable.
- (f) In assessing a defence the Court will look for appropriate particulars and a reasonable level of detailed substantiation — the defendant is under an obligation to lay a proper foundation for the defence in the affidavits filed in support of the Notice of Opposition.
- (g) In weighing these matters, the Court will take a robust approach and enter judgment even where there may be differences on certain factual matters if the lack of a tenable defence is plain on the material before the Court.
- (h) The need for judicial caution in summary judgment applications has to be balanced with the appropriateness of a robust and realistic judicial attitude when that is called for by the particular facts of the case. Where a last-minute, unsubstantiated defence is raised and an adjournment would be required, a robust approach may be required for the protection of the integrity of the summary judgment process.
- (i) Once the Court is satisfied that there is no defence, the Court retains a discretion to refuse summary judgment but does so in the context of the general purpose of the [District] Court Rules which provide for the just, speedy and inexpensive determination of proceedings.

[48] Against those principles, the issue in this case is whether a reasonable inference can be drawn that the parties were intending to create a legally enforceable relationship. As between family members and domestic partners, that will not necessarily be the case and in the past, there was some authority to suggest that, subject always to the circumstances of the particular case, there is a presumption that persons in a close familial relationship do not intend to create legally enforceable relations when they undertake business or other financial transactions.

[49] In *Fleming v Beevers*, however, the Court of Appeal said:<sup>4</sup>

The range of circumstances in cases such as these is likely to be so varied that in any particular case a presumption, albeit of fact, is likely to be of limited assistance. Each case will turn on its own facts and there is no substitute for a careful examination of those facts. The subject-matter and attendant circumstances may well suggest that the

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<sup>4</sup> *Fleming v Beevers* [1994] 1 NZLR 385at [389]

parties had no intention of creating a legally enforceable obligation. The converse may equally be true. If a father promises to pay his son an allowance while he attends university, that without more would ordinarily be construed as creating a moral obligation only. If, however, as in this case, a husband and wife (it hardly matters that the relationship is de facto) structure a joint purchase and collateral matters in a formal way with one of the terms of the transaction being the making of corresponding wills the inference that each party intended a legally binding obligation with regard to the wills is, we would have thought, a strong one. Obviously, all relevant circumstances must be examined before a final conclusion can be reached. The plaintiff has the onus of satisfying the Court on the balance of probabilities that it is proper to draw the necessary inference.

[50] In light of this, a careful examination of the facts is required.

### *Analysis*

[51] At the outset I accept Ms Sun's submission that that there is no document which contains Ms Ma's express acknowledgment or acceptance of the alleged loan terms including the principal sum, the interest rate and the repayment date. It is trite to say that if there were such a document this matter would not be before the Court.

[52] Nevertheless, the evidence includes the WeChat message of 2 July 2022 in which Ms Ma says she needs a further two years to 'repay the money.'

[53] Ms Ma's evidence about this message is that Mr Li was harassing her for payment and that because she was heartbroken and wanted him to stop harassing her, she responded in the way she did, in an effort to get Mr Li to stop contacting him. Ms Ma says too that in this message she does not acknowledge that she owed Mr Li \$100,000.00.

[54] I do not find Ms Ma's explanation to be inherently probable. The message makes no mention of the money being a gift, and nor is there any suggestion that the money being referred to was anything other than the \$100,000.00 in question. There is no evidence from Ms Ma about other sums being provided to her by Mr Li to provide her explanation with a contextual foundation. Nor is Ms Ma's explanation a persuasive response to being 'harassed' as she says she was.

[55] I am satisfied this WeChat message is sufficient to establish that Ms Ma considered herself bound to repay the money so as to constitute a mutual contractual intention around the money being a loan.

[56] This too was not the first loan made by Mr Li to Ms Ma. It is clear that the first \$50,000.00 advance made to Ms Ma was a loan made to her to assist her to pay the deposit on the Divich property. This is evidenced by Ms Ma's repayment of the sum on 4 May 2021. That Ms Ma says it was not a loan is inconsistent with her repaying it. The only difference between that loan and the advance of the \$100,00.00 is that there was no suggestion of the \$50,000.00 being repaid with interest.

[57] Ms Ma says that she gave gifts and Mr Li gave gifts to each other including in December 2020 when she paid for flights, accommodation, a rental car and other expenses as part of a Christmas holiday.

[58] Mr Li acknowledges that he gave gifts of money to Mr Li from time to time but says that these were modest in comparison to the \$100,000.00.

[59] In relation to the December 2020 payments referred to by Ms Ma as payment of a holiday, Ms Ma's evidence is of bookings made in her name amounting to \$1,562.50. Mr Li's evidence, on the other hand, is of a bank statement which shows that he transferred \$3,000.00 to Ms Ma on 12 November 2020 with the notation 'Xmas Trip n Gift.' I accept Mr Li's evidence that this was paid by him to Ms Ma in anticipation of the Christmas period trip.

[60] I do not find Ms Ma's evidence complete or credible in this respect, and I am satisfied that the sums paid by way of gifts were, as Mr Li says, modest compared to the \$100,000.00 in question.

[61] In relation to the purchase of the Mercedes Benz, Ms Ma says that Mr Li asked his best friend, Mr Gong, to convince her to accept the car and his apology for his infidelity but that she declined both. Ms Ma's evidence is of WeChat correspondence between herself and Mr Gong as well as photo of her and Mr Li in front of the vehicle. The WeChat message reads:

The way he mentally, spiritually betrayed and destroyed me and yet he is trying to make up for it with money, he is trying to buy me back, that just means he doesn't know me at all.

Sorry abt that I know it might be your idea. But it's his panic move and it's not wise.

[62] The evidence also includes a copy of the purchase agreement, a copy of the insurance policy. The agreement for the purchase of the Mercedes is in Mr Li's and Ms Ma's names. The insurance policy is addressed to Mr Li has Ms Ma listed as the second named driver (with Mr Li being the first named driver).

[63] At the time of the purchase of the vehicle, the parties were still in a relationship and were engaged.

[64] While their relationship may have been starting to deteriorate, Ms Ma says she was still unsure whether she should end her engagement to Mr Li when she went to China, and that it was not until 22 April that she broke off the engagement.

[65] While Mr Li's evidence is silent on this point, I am not satisfied that the evidence unequivocally supports the contention that car was being given to Ms Ma by way of a gift.

[66] There is also no correspondence or other documentation at all between the parties suggesting that the \$100,000.00 was a betrothal gift, or any other gift for that matter. I agree with Mr Mitchell that the first time this appears to be suggested is in Ms Ma's opposition to summary judgment. I find it inherently improbable that the Loan Funds were a betrothal gift given there is no evidence of this ever having been discussed. The evidence, such as it is, tends to suggest the opposite, that the money was being advanced subject to interest.

[67] While there is dispute that the terms of the payment were agreed, these are set out in the 12 August 2021 email which preceded the second to fourth instalments amounting to \$90,000.00. I find it plausible that after the first \$10,000.00 instalment Mr Li thought it prudent to record the terms of the payment, that is that it be subject to 9% interest per annum.

[68] In relation to Ms Ma being in a position to borrow the \$100,000.00 at a lower interest rate than that offered, if she needed it, I prefer the evidence of Mr Li that the market interest rate for secure personal loans in August 2021 was 13% and the rate for unsecured personal loans from banks, building societies, credit unions, and finance companies, at or around 9 August 2021, ranged from 8.99% - 29.99%.

[69] Given the money was not secured, I do not agree that 9% is not an exorbitant rate as Ms Ma submits. In light of Mr Li's evidence as to what interest rates were at the time, I do not find the suggestion credible that 'no reasonable person would have accepted a loan with an interest rate of 9% when the banks were offering loans at half that rate'.

[70] I note too that Ms Ma's evidence is that when she settled the purchase of the Divich property, she was short \$60,000.00 due to an error on the part of her mortgage broker. Ms Ma says that she then covered this from her own savings but that when Mr Li found out he offered to gift her the \$60,000.00 as an advance on the betrothal gift. This evidence appears to be at odds with the WeChat exchange between Mr Li and Ms Ma dated 12 August 2021 where Ms Ma says to Mr Li, in reply to him saying he had to go into the bank in person to transfer the money, that "you only need to transfer \$60,000".

[71] That is an unusual way to express receipt of a gift and is at odds with Mr Li recording the transfer on his bank statement as "Investment". Moreover, while mortgage rates may have been lower than 9%, the evidence does not support Ms Ma contemplating exploring this as an option to cover the shortfall she says she covered from her savings. Equally, if Ms Ma did cover this shortfall from her savings, it is hard to understand why Ms Ma would have then said that Mr Li only had to transfer her \$60,000.00.

[72] Mr Li has also put in evidence a WeChat exchange dated 20 February 2022 between Ms Ma and himself in which Ms Ma appears to have requested Mr Li lend her \$20,000.00. This chat reads as follows:

Mr Li: Please put the property design on hold if you are short on cash.

The subsequent civil planning work could also be put on hold for now. The previous \$20,000NZD design fee can be used for expenses. I assume you will have cash flow shortages if the GST is not refunded.

Ms Ma: Do not beat around the bush. If you are not going to lend me money, just say so directly. I will find another way myself.

[73] This exchange was made after Mr Li paid Ms Ma \$20,000.000 on 16 December 2021 and before Mr Li's payment final \$10,000.00 on 21 March 2022. The exchange is consistent with Ms Ma borrowing money, or seeking to do so, from Mr Li.

[74] Further, if the last instalment on 21 March 2022 was part of a betrothal gift, it is odd that part of this sum sought by Ms Ma a month earlier did not include any reference to such a gift, or include reference to part of this payment being considered as part of the \$100,000.00.

[75] The \$10,000.00 paid on 21 March 2022, however, was also discussed in a later WeChat exchange which reads as follows:

Ms Ma: Could you transfer \$20,000 to me? I will pay you back next month when I get my salary. I just paid over \$10,000 NZD design fees for civil development.

Mr Li: I transferred \$10,000NZD to you, which is equivalent to \$40,000 to \$50,000 RMB.

[76] This exchange too is consistent with Ms Ma borrowing money from Mr Li and Mr Li paying Ms Ma for development of the Divich property as he has submitted.

[77] Turning to Ms Ma's allegations of perjury and fraud on Mr Li's part, Ms Ma says that Mr Li forged the email of 12 August 2021 and that the only email she saw was the one referring to the \$500,000.00 'option', the implication being that the email referring to \$500,00.00.00 was amended to read \$100,000.00 for the purpose of these proceedings.

[78] In relation to pleadings alleging some element of dishonesty, the Court of Appeal said in *Schmidt v Pepper New Zealand (Custodians Ltd)*:<sup>5</sup>

Allegations of fraud or dishonesty are very serious. They must be pleaded with care and particularity. As the authors of *Bullen & Leake & Jacobs Precedents of Pleadings* emphasise, counsel must not draft any originating process or pleading containing an allegation of fraud unless they have reasonably credible material which, as it stands, establishes a prima facie case of fraud — that is, material of such a character which would lead to the conclusion that serious allegations could properly be based upon it. Fraud cannot be left to be inferred from the facts — fraudulent conduct must be distinctly alleged and as distinctly proved. General allegations, however strong the words may appear to be, are insufficient to amount to a proper allegation of fraud.

[79] Elsewhere, in *Commissioner of Inland Revenue v Redcliff Forestry Venture Ltd* in the context of proceedings to set aside a judgment on the ground that it was fraudulently obtained, the Supreme Court took a similar position, saying that the claim must be one that is fully and precisely pleaded and particularised and of sufficient cogency that it should go to trial. There must be an evidential foundation amounting to a prima facie case of fraud.<sup>6</sup>

[80] Insofar as Ms Ma considers that the second email of 12 August 2021 is evidence of fraud or dishonesty on Mr Li's part, it falls well short of being fully and precisely pleaded and particularised to be of sufficient cogency that it means this matter should go to trial.

[81] For his part Mr Li acknowledges that two versions of the email were sent prior to discussions with Ms Ma later that day. Mr Li has provided an email from Bobby Gong to himself and Ms Ma dated 27 November 2021. This email refers to quotes for architecture, project management civil planning and structural engineering in relation to a proposal for five lots at the Divich property. Attached to this email is a contract for architectural design services signed by Ms Ma on 12 December 2021.

[82] The email is consistent with Mr Li's evidence that a proposal was being considered for a more substantial development. Consistent with this, Mr Li has also

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<sup>5</sup> *Schmidt v Pepper New Zealand (Custodians Ltd)* [2012] NZCA 565 at [15]

<sup>6</sup> *Commissioner of Inland Revenue v Redcliff Forestry Venture Ltd* [2012] NZSC 94; [2013] NZLR 804, at [33]

provided the final design concept for the Divich property showing five individual houses to be built on the section.

[83] Given this, I accept that the second email of 12 August 2021 indicates that Mr Li was willing to advance Ms Ma more money than \$100,000.00 eventually advanced, on the same terms as the email referring to the \$100,000.00.

[84] That Mr Li did not refer to the second email offering the \$500,000.00 in his affidavit in support of summary judgment is perhaps unsurprising given that he says the loan was for \$100,000.00 and not the larger sum.

[85] In short, the evidence does not establish a prima facie case of fraud or dishonesty on Mr Li's part but is consistent with his version of events.

[86] That Ms Ma was already living in her Waipani Road property makes it clear too that she was purchasing the Divich property as an investment rather than for her own home. It is not inconceivable that if she was intending to develop her own property portfolio that the financial arrangements between her and Mr Li would be on some sort of commercial terms, including the payment of interest. I do not accept the submission that because the parties were in a close relationship they would not have considered the purchase of the Divich property to be on the terms suggested by Mr Li.

[87] Ms Ma also suggests that the \$10,000.00 transferred to her on or about 22 July 2021 was to cover the period of missing rent and expenses for the time that Mr Li stopped contributing to her Waipani house. Ms Ma says that she did not expect this to be paid back to him but that she accepted it as part of the betrothal gift made by Mr Li. I am not persuaded by this.

[88] The evidence is that Mr Li sought a deferral of rent for the period between January and March 2021 but that he paid this back on 9 April 2021. Mr Li's evidence includes a copy of his bank statement recording a payment of \$2,500.00 made to Mr Li on 9 April 2025. While this payment has no accompanying narration, I accept that this equates to \$200.00 rent for 11 weeks, plus \$300.00 for expenses. More relevantly,

there is nothing in the evidence from either Ms Ma or Mr Li to indicate that this sum somehow formed part of a betrothal gift.

### **Conclusion**

[89] Standing back and considering the circumstances in the round, on the balance of probabilities I am satisfied that Mr Li has established that Ms Ma has no defence to the claim.

### **Orders**

[90] For the reasons stated, I grant summary judgment in favour of the plaintiff, Baolin Li, for the sum of \$100,000.00 plus interest of \$35,948.00, category 2B costs of \$5,539.00 plus disbursements of \$2,260.00 (totalling \$143,747.80).

A handwritten signature in black ink, appearing to read 'K D Kelly', with a long, sweeping underline.

K D Kelly  
District Court Judge