HOW OTHER AREAS OF LAW MAY INTERACT WITH FAMILY LAW: A FAMILY LAW LAWYER REVIEWS A RECENT HIGH COURT DECISION

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Family law lawyers across Australia have been reminded of the need to consider the application of equitable principles when providing legal advice concerning property management. The recent decision in *Bosanac v Commissioner of Taxation & Anor* brought this consideration to the attention of many legal experts, including family law lawyers.

The Case:

The High Court referred to two equitable principles. The first was the presumption of a resulting trust. This basically states that in a court of equity it is presumed that people do not intend to gift someone real property. Instead, the recipient of the property is said to hold it on trust for the donor unless the presumption is rebutted on the facts.

The second principle referred to, was the presumption of advancement. This occurs where the property is recognised as being gifted to the recipient and the recipient assumes full legal title of it (i.e. they do not hold it on trust for the donor). Generally, this presumption is present in cases where a parent transfers a property to their child or a spouse transfers it to the other spouse.

Importantly, these two types of trusts can be rebutted (i.e. not applied) if the court is satisfied by evidence that supports an alternative intention of the donor at the time of the transaction.

The Facts

The Bosanac's former matrimonial home was purchased in Ms Bosanac's name in 2006. Mr Bosanac moved out of the property in 2015. The Commissioner of Taxation ('CoT') audited Mr Bosanac at this time and discovered that he owed over $9 million in tax debt. Mr Bosanac declared bankruptcy and the CoT as his creditor sought to take possession of the former matrimonial home. However, since Mr Bosanac was not a registered proprietor on the title of the home, the CoT could not enforce their interest against the property.

The CoT sought a declaration that a resulting trust existed over the property and therefore Mr Bosanac owned half of the property. The Full Court of the Federal Court found that Ms Bosanac held 50% of the property on trust for her ex-husband.

On appeal to the High Court, Ms Bosanac argued that there was no resulting trust and the High Court agreed based on the following key facts:

1. Ms Bosanac was an intelligent businesswoman who would appreciate the significance and effect of one sole proprietor.

2. Historically, the couple's assets were purchased and kept separately throughout their marriage.
3. Ms Bosanac initiated the purchase alone, she made the offer solely and there were no other facts to indicate that it was instigated by Mr Bosanac.

The interplay between equity and family law is not uncommon. In cases where the parties have separated and one may fall into debt, it is important to understand the basic principles of equity which may arise when matrimonial assets are sought after by a third party.

Such matters are complex and subject to principles which are consistently interpreted by the courts. The equitable principles in this article stand in legal discourse and as such it is important to seek legal advice from a family law lawyer.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.