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Family trust disputes – October and November 2022

With:

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Information provided is general in nature; precise application depends on specific circumstances



Owies v JJE Nominees Pty Ltd

- [2022] VSCA 142
- John and Eva (the parents and deceased)
- Michael, Deborah and Paul (the children)
- Mr Sampson (the solicitor)
- JJE Nominees Pty Ltd (the trustee) of which John and Eva held the two issued shares and were directors until their deaths in 2020 and 2018 respectively
- Noted Mr Sampson purportedly was appointed as a director in December 2017 (that was held to be invalid), before being validly appointed from 10 March 2020
- Michael was also appointed a director from 2019



Owies v JJE Nominees Pty Ltd

- Trust assets valued at \$23m
- Annual income in the \$000,000
- Primary beneficiaries were John, Eva, Michael, Deborah and Paul
- Standard trust deed with default beneficiaries being Michael, Deborah and Paul
- Distributions from 2011 to 2018 were split between John (40%), Michael (40%) and Eva (20%)
- After Eva's death in 2019, Deborah threatened a family provision claim against Eva's death before receiving a capital distribution from the trust of a residential unit in South Yarra (~\$750,000) that she had been living in since 1984



Owies v JJE Nominees Pty Ltd

- Important to note regarding Deborah:
 - Deborah was a doctor but suffered multiple medical conditions resulting in her inability to work full-time for extended periods
 - Deborah's taxable income from 2013 to 2017 was between \$39,000 and \$44,000 with her incurring medical expenses in excess of \$20,000
 - The South Yarra apartment given to Deborah required substantial maintenance
 - Deborah paid rent on the South Yarra apartment of \$55/week from 1984 until 2006
 - Deborah was estranged from Eva from 1986 until 1998 before reconnecting between 2006 and 2012.
 - Deborah was estranged from John from 1984 until 2012 but reconnected in 2017
 - Mr Sampson noted Deborah's letter accepting the South Yarra apartment as being 'bad-tempered, ungracious'



Owies v JJE Nominees Pty Ltd

- Important to note regarding Paul:
 - Various periods of estrangement between Paul and his parents and other periods of reconnected relations whereby he would share updates on his life
 - In 2013, Paul made a request for a copy of the trust deed and made enquiries about the trust's assets which went unanswered
 - Later in 2013, Paul wrote a letter recording his repeated attempts to access trust documents
 - On 9 December 2016, Paul's solicitors sent a letter to Michael requesting specific information in relation to his parents and that he be provided with a copy of the trust deed and accounts of the trust which was refused by Mr Sampson



Owies v JJE Nominees Pty Ltd

- Deborah and Paul sought to challenge the following for the period between 2010 and 2019:
 - Numerous variations which had been made to the trust deed
 - Whether distributions of income had been made
 - That the trustee failed to give real and genuine consideration to the objects of the trust
 - The removal of the trustee and the declaration that the appointment of Mr Sampson was void
- Mixed success in the first instance and sought an appeal



Owies v JJE Nominees Pty Ltd

- 11 grounds summarised into 3 issues:
 - Claimed trustee did not give real and genuine consideration to Paul and Deborah's positions in 2017 to 2019 based on the fact the trustee had sufficient information when making the decisions (noting a payment of approximately \$1,000,000 to John in 2019 as 'grotesque' given that John was 96 and in full-time care)
 - Appropriate relief for the failure to exercise real and genuine consideration of a potential beneficiary is for the distribution to be set aside on it being void or invalid
 - The trustee should also be removed



Owies v JJE Nominees Pty Ltd

- Real and genuine consideration
 - Trustee must act in good faith, responsibly and reasonably.
 - Trustee must properly inform themselves of matters relevant to the decision to distribute before such a decision is made
 - Court determined trustee failed to act in this manner and to properly inform itself before distributions were made for the 2015-2019 period
 - References to *Karger v Paul [1984] VR 161* and *Wareham v Marella (2020) 61 VR 262* rejecting need for 'bad faith'
- Key to consider for the Court:
 - What are the relevant matters that must be considered?
 - What standard of review should the Court adopt in assessing whether there has been non-compliance with the obligation?
 - What is the consequence of a failure by the trustee to give real and genuine consideration?



Owies v JJE Nominees Pty Ltd

- Real and genuine consideration: **background considerations**
 - *“One cannot ordinarily decide a question of fact in good faith and give it real and genuine consideration without conducting some investigation and in some cases that will entail making an inquiry of a person who is willing to provide information and is in the best position to do so. It is not a matter of natural justice but bona fide inquiry and genuine decision making” [97]*
 - *“In the case of some trusts, the number of potential objects might be very large and a requirement to undertake a detailed analysis of the identity and needs of each would be unworkable.” [95]*
 - *“what is needed is an appreciating of the width of the field and thus whether a selection is to be made merely from a dozen, or, instead, from thousands or millions....Only when the trustee has applied his mind to the 'size of the problem' should he then consider in individual cases whether, in relation other possible claimants, a particular grant is appropriate. In doing this, no doubt he should not prefer the undeserving to the deserving” [96]*



Owies v JJE Nominees Pty Ltd

- Real and genuine consideration: **Court comments**
 - *In considering the nature of the power to distribute annual income, the starting point must be the nature and purpose of the trust having regard to the terms of the trust deed. The trust deed is by settlement, and as the preamble records, the settlor settled the sum 'being desirous of making provision for the Primary Beneficiaries and the General Beneficiaries'. [110]*
 - *Given its terms, it would have been expected that the class of general beneficiaries would not be particularly large and would continue to revolve around the three Owies children. An obvious, but unstated, premise on which the trustee would be expected to discharge its duties is that it would generally be informed about the differing circumstances, needs and desires of each beneficiary as an incident of the familial bonds that underpin the trust and explain its purpose. It is not to be supposed that, when those familial bonds become strained or broken, the purpose of the trust to provide for the family as a whole would change or that the trustee would be relieved of the obligation to properly inform itself. [111]*



Owies v JJE Nominees Pty Ltd

- Real and genuine consideration: **Court comments**
 - *In looking at the nature and purpose of the power to distribute income, it is also relevant that the trust deed provides, in default of appointment of income, and assuming they are living, that the three children hold the income pursuant to an express trust in equal shares. The intention that the primary beneficiaries take any non-applied or accumulated income in the same manner as will occur with respect to the whole fund on vesting, reinforces the general default structure of the trust deed as one providing for the benefit of the children in equal shares. That does not mean that the trust deed does not contemplate unequal distributions across the beneficiaries, an outcome made possible by the width of the discretionary powers. However, the exercise of all of the powers has to take into account the purpose of the trust and the default position just described. [113]*



Owies v JJE Nominees Pty Ltd

- Real and genuine consideration: **Court decision**
 - Noted trustee made no direct enquiries of Paul or Deborah before making any distributions (evidenced through lack of, or minimal contact between parties)
 - Noted bizarre distributions to John and Eva who had no obvious need for the distributions as opposed to Paul and Deborah
 - Noted there was a lack of an exercise of an independent mind to the trustee decisions and the interests of John and Eva did not correspond with the best interests of the beneficiaries
 - Patterned nature of distributions criticised as trustee reached a 'policy of distributions with a settled ration that was inconsistent with a continuing obligation to consider the distribution of income for each accounting period'.
 - Also, by not explaining reasons for distributions, it left a 'stark pattern of distributions to speak for itself' in determining that no reasonable person would have made the same decisions as those of the trustee
 - Focus on 2019 distribution distributing 100% to John



Owies v JJE Nominees Pty Ltd

- Takeaways:
 - Wording of the trust deed matters
 - Naming of primary beneficiaries can make a difference
 - Not an automatic 'tick'
 - Care and thought of key beneficiaries of the trust crucial
- Other things to note:
 - Breach of fiduciary duty means distributions may be voidable but not void (i.e. needs to be requested as part of dispute)
 - Trustee was removed as they failed to act impartially
 - Case to be challenged?

BBlood Enterprises Pty Ltd v FCT



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- [2022] FCA 1112
- Section 100A case
- The arrangement was a red zone scenario 4 example for PCG 2022/D1 (example 10 in the PCG):
 - Trust enters into share buy-back whereby sale proceeds received resulted in a deemed dividend to the Trust equal to \$10m under a share buy-back arrangement (fully-franked)
 - Trust receives \$300,000 of other ordinary income from other entities within a group
 - Trust deed amended to redefine trust income from section 95 income to income according to ordinary concepts
 - Bucket Company incorporated prior to end of financial year and receives \$300,000 ordinary income
 - Applying *Bamford*, Bucket Company assessed on \$10m proceeds despite \$10m proceeds from share buy-back classified as capital under income definition change
 - Bucket Company used franking credits to offset tax payable and because \$10m proceeds classified as capital, they remained in Trust 'tax free'

BBlood Enterprises Pty Ltd v FCT



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- Ordinary family or commercial dealing comments
- *In analysing the statutory question, it might be relevant to consider whether individual steps were “entered into in the course of an ordinary family or commercial dealing” or were an “ordinary family or commercial dealing”. However, the statutory question is different [92]*
- *In amplification of the last point, but expressed in simple terms, it is not sufficient to reason that, because each step in a series of connected transactions is capable of being described individually as “ordinary”, therefore the whole agreement is “ordinary”. [93]*

BBlood Enterprises Pty Ltd v FCT



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- Ordinary family or commercial dealing comments
- *A dealing might not be an “ordinary family or commercial dealing” if the dealing, or the agreement which arose out of the dealing, is contrived or artificial or **involved more than was required to achieve the relevant objective**. The fact that the objective is achieved through numerous transactions, or that the transactions are complex, is not of itself sufficient to show that the dealing is not “ordinary”. Many ordinary commercial transactions are effected by an interlocking set of documents that might be characterised as complex. Likewise, agreements entered in the course of a family dealing can be complex. [95]*
- *On the other hand, if the dealing, or the agreement which arose out of the dealing, is **overly** complex, involving more than is needed to achieve the relevant objective, or includes additional steps which are not necessary to achieving the objective, then the dealing might more readily be seen as not being “ordinary” [96]*

BBlood Enterprises Pty Ltd v FCT



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- Ordinary family or commercial dealing comments
- *The agreement comprising the Illuka Park steps as a whole was not an agreement “entered into in the course of ordinary family or commercial dealing”. Nor was the agreement to implement the Illuka Park steps. Whether the agreement is viewed as the agreement to enter into the steps, or the steps as a whole, the agreement was unusual. Its complexity was not shown to be necessary to achieving a specific outcome sought to be achieved by a dealing aptly described as “an ordinary family or commercial dealing”. It was not explicable, for example, as having been entered into for family succession purposes. Nor was it explicable as having been entered into as part of an ordinary commercial dealing. [100]*

BBlood Enterprises Pty Ltd v FCT



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- Ordinary family or commercial dealing comments
- Noted:
 - Distributing \$300,000 might be considered ordinary, apart from the fact that it was the first time this occurred
 - Share buy-backs can be ordinary, however, viewed as part of the agreement as a whole, it may not be. Further, taxpayers could not establish a sensible commercial or family rationale for adopting the procedure (buy-back was not for the purpose of simplifying the structure nor for succession planning)
 - Variation to the Trust deed may, in isolation, be ordinary; but the step must be viewed in the context of the agreement as a whole

BBlood Enterprises Pty Ltd v FCT



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- Other aspects to note from the case regarding section 100A:
 - Agreement is intended to be broad
 - Does not require the strict definition of reimbursement (intended to capture all manner of arrangements)
 - If 100A did not apply, dividend stripping provisions may have applied
- Practically:
 - Consider intent behind decisions
 - Evidence to prove intentions and objectives
 - Do the claimed intentions and objectives 'make sense'?

Hoefl and Secretary, Department of Social Services



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- [2022] AATA 2130
- Case a good summary on the effect of a 'private trust' to a person's eligibility to be paid the Age Pension
- Assets and income of a designated private company or designated private trust will be attributed to a person who controls or has contributed to the structures
 - Designated private company/trust
 - Control of private company/trust
 - Attributable stakeholder of company/trust
- Will consider with respect of discretionary trusts

Hoefl and Secretary, Department of Social Services



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- Section 1207N *Social Security Act 1991 (Cth)*
- Designated private trust unless:
 - All of the following are satisfied:
 - Trust is a fixed trust;
 - Units held are held by 50 or more persons
 - Trust was not created as part of anti-avoidance
 - Trust is a complying superannuation fund
 - Trust is an excluded trust (being community trusts, certain court order statutory trusts and indigenous trusts)
- Note that testamentary trusts, trusts created by Family Court or property settlement are not excluded trusts
- Note an individual and their associates are taken to be one person

Hoefl and Secretary, Department of Social Services



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- Section 1207C *Social Security Act 1991 (Cth)*
- Control of private trust is passed if any of the following applies:
 - An individual or an associate of the individual is the trustee or any of the trustees of the trust
 - A group in relation to the individual was able to remove or appoint the trustee or any of the trustees of the trust
 - A group in relation to the individual was able to vary the trust deed or to veto decisions of the trustee
 - Reasonable to expect the trustee of the trust would distribute to the individual if the individual could not meet his or her reasonable costs of living
 - Aggregate of the beneficial interests in the corpus or income of the trust by the individual, their associates is more than 50%
 - ...and more
- Associate is defined to include a relative of the individual which extends to second cousins (broader than the family trust election)

Hoefl and Secretary, Department of Social Services



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- Section 1207X *Social Security Act 1991 (Cth)*
- An individual will be an attributable stakeholder of the trust if the trust is a controlled private trust in relation to an individual and unless the 'Secretary' otherwise determines

Hoefl and Secretary, Department of Social Services



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- *Social Security (Attributable Stakeholders and Attribution Percentages) Principles 2017 (Cth)*
- Following considered in determining if an individual **is not** an attributable stakeholder:
 - Relationship between individual and entity including circumstances arising from legal structure, administrative arrangements and influence of control
 - Whether individual contributed to the assets of the structure and the effect of the contribution on the financial position of the structure
 - Past benefits from structure including value and frequency
 - Future benefit from distributions and likely ability
 - Other circumstances Secretary considers



Lee v Li

- [2022] NSWSC 1336
- Dispute between Jenny Lee and her youngest sister, Cheryl Li
- Jenny argued registered title of two properties did not reflect true beneficial ownership
- Cheryl cross-claimed arguing two other properties did not reflect true beneficial ownership
- *“Given the homophonous quality of the sisters’ surnames and the approach taken at the trial, I will refer to them by first name, without intending any disrespect”* [3]



Lee v Li

- Arncliffe:
 - Cheryl as sole registered proprietor
 - Jenny claimed owned 10% Cheryl/90% Jenny based on cash contribution
 - Cheryl claimed Jenny only provided a loan for 90% of the purchase price
- Arthur Street
 - Cheryl and Jenny as joint tenants
 - Jenny argues property is 100% beneficially owned by her and Cheryl's name was placed on title only so that Jenny could borrow more money by using Arncliffe as security
- Belmore Street:
 - Jenny 99%/Cheryl 1%
 - Cheryl argues parties agreed property be owned 50/50 and Jenny did not have authority to reduce Cheryl's ownership to 1%
- Mooltan Avenue
 - Jenny as sole proprietor
 - Cheryl claim property owned 50/50 due to joint funds used to purchase the property



Lee v Li

- Hard to find the truth when conversations disputed
- *“The case was complicated by the fact that the sisters used various joint bank accounts, being loan accounts and offset accounts and refinanced the mortgage loans from time to time. In addition, it appears the sisters had personal accounts and credit card accounts. There was no comprehensive or expert analysis of all the movement of money between the accounts or an agreed position in relation to the source and purpose of funds paid in and out of the joint accounts.” [16]*
- Noted Jenny used offset accounts for personal use and had wages deposited into those accounts
- Jenny hence argues money in such joint accounts were hers
- Dispute resolved based on credibility of sisters considered with very little documentary evidence and the inherent probability of each sister's argument



Lee v Li

- Arncliffe:
 - Cheryl paid 10% deposit
 - Jenny provided 90% balance of purchase price
 - Question whether it was a loan or investment by Jenny
 - No documents as “*Jenny was happy to provide Cheryl with an unsecured short-term loan for an unspecified period for the almost \$450,000 because they were sisters in a close relationship (that had not yet broken down) and it was a reciprocation for Cheryl’s 1999 loan to Jenny of about \$30,000 to assist Jenny with her mortgage for a property*”
 - Accepted possible for undocumented loan by considered implausible as:
 - No documents to evidence a loan, nor documents to evidence an investment
 - No contemporary evidence of witness accounts and Mother did not agree that Cheryl lent Jenny money
 - Court did not believe Cheryl loan of \$30,000 as motivation for Jenny to provide Cheryl with a loan of about 15 times
 - Cheryl had insufficient funds for the purchase and a lack of income
 - Jenny’s transfer of the balance constituted of almost Jenny’s entire life savings.
 - Evidence that Arncliffe property had increased in value which suggests investment as a better choice



Lee v Li

- Arncliffe:
 - Court appreciated that evidence provided by elderly parents should be considered in the context that they may not appreciate the distinction between a 'loan' and an 'investment', particularly when they use such terms interchangeably.
 - Considered comments made by parents noting that there was evidence that "*Cheryl said to Jenny that "It is also your investment. We will share the profit after selling the property"*".
 - Court noted Cheryl an unimpressive witness as she was argumentative (called her sister as 'ugly face'), asked for simple questions to be repeated and took a long time to answer
 - Cheryl's ex-partner also provided evidence which is contrary to Cheryl's position – evidence accepted as Court trusted his version
 - NB case of *Bao v Li* [2022] NSWSC 1335 where Cheryl holds two other properties on trust for Mr Tao
 - Court also noted Jenny as a more credible witness than Cheryl, despite objections from Cheryl's lawyers
 - Court held Cheryl held 90% of Arncliffe on constructive trust for Jenny



Lee v Li

- Above background explains Jenny's sole use of the offset accounts (as they were predominantly Jenny's)
- Cheryl only used joint bank accounts sparingly
- Cheryl's claims largely fails
- Interesting to note:
"I note that neither sister appears to have paid capital gains tax in relation to the properties that have been sold and Cheryl never declared in her tax returns foreign income she stated she had received."



Erceg v Erceg & Anor

- [2022] QSC 198
- Similar to prior case in that applicant and her husband paid for the purchase of land (4 Anne Street, Smithfield) in their daughter's name
- Deed of trust dated 14 December 1988 and a further declaration dated 31 January 1989.
- Issue was daughter's mental health declined and a guardian was appointed who sought to evict the applicant from the property
- Mother and daughter lived together at 4 Anne Street until 29 April 2022 when the daughter moved to live with the guardian
- Despite there being a 'trust deed', the provisions are lacking
- Consideration on daughter's health (given guardianship) but noted that pending a trial, the mother should not be evicted



Treichel & Anor v Treichel

- [2022] QDC 181
- Rene and Leanne (who were in a de-facto relationship, married and then divorced) claims that Leslie (Rene's father) held 7 Melaleuca Street, Kuluin on trust for Rene and Leanne due to payments they made over the years, as well as renovation costs
- Alleged by Rene and Leanne that an oral agreement was made with Leslie in April 1998 to sell the property for \$120,000
- If the purchase price was not paid, then weekly payments of \$125 would be paid
- Alleged that Leslie would transfer beneficial ownership for the above payments and 'Paperwork', including a formal transfer, would be completed at a later time



Treichel & Anor v Treichel

- Noted Rene and Leanne made regular monthly payments totalling \$167,180
- Leslie paid amounts to Westpac totalling \$189,543.55 for the mortgage and renovations
- Leslie rejects and property agreement or common intention argued.
- Before Rene and Leanne, Leslie rented the house to other tenants (who left the house in a poor state)



Treichel & Anor v Treichel

- Various evidentiary considerations were had including, but not limited to:
 - Reviewing rental payments made compared to market rental figures
 - \$125/week paid v \$200/week market value in April 1998
 - \$215/week paid v \$420/week market value in October 2011
 - Noting information provided to Centrelink regarding rent assistance payments
 - Monies spent to improve the property
 - Revisiting Leanne's diary notes from 1998 to argue the existence/non-existence of conversations or effects of transactions occurring
 - I.e. diary notes about moving into Leslie's property suggests agreement struck
 - Alternatively, the lack of a diary note about an oral agreement acts to the contrary
- Was noted that Queensland law requires property transfer to be prepared in a certain way that was not conformed
- Consideration was had as to party evidence



Treichel & Anor v Treichel

- *The following are examples of distinct types of informal property sharing arrangements, each giving rise to the imposition of a constructive trust:*
 - *(a) Where the parties have agreed to share a common intention that a beneficial interest in the property would be conferred on one of the parties, and that party relies, to their own detriment, on that common intention.*
 - *(b) Where parties have made contributions to the property, pursuant to a joint endeavour, which has, as its object, that the property be owned by them.*
 - *(c) Where the legal owner's conduct has encouraged the other party to believe, or has induced the other party to assume, that an interest in the property would be conferred on it, such that it would be unjust for the legal owner to be allowed to depart from it. [119]*



Treichel & Anor v Treichel

- Following needs to be satisfied before common intention can be established:
 - A common intention between the legal owner of the property and the person who purports to have a beneficial interest in the property. Such an intention is to be inferred from the words or conduct of the parties.
 - Detrimental reliance on the faith of the common intention.
 - It would be unconscionable for the party holding legal title to assert that the other person does not have a beneficial interest in the property.
- Court could not believe:
 - Leslie intended for the property to pass to Rene and Leanne but rather it was his intention to rent for substantially below market rent
 - There was negligible detriment suffered by Rene and Leanne as money spent on improvements was for their own benefit and enjoyment and not for substantially increasing the value of the property
 - Not considered unconscionable as Rene and Leanne enjoyed the benefit of living on the property for 21 years at a significantly reduced rent



Lin v Lin (No 2)

- [2022] VSC 542
- Family dispute where deed of change of appointor argued as being invalid as not having been made pursuant to a trust deed
- Failing the above argument, argued that retiring appointor either lacked capacity or was under undue influence
- 62 page judgement (without addressing 6 other issues)
- Held that deed of change of appointor valid and no lack of capacity or undue influences
- Mention case in light of increased disputes for family trusts



Lee v Ling

- [2022] VSC 471
- Dispute relating to Lee and Lim (No. 2) Family Trust
- Initial trust deed stated:
 - Daughter and Mother joint trustees
 - Father was sole appointor
- Deed of variation dated 23 March 2008:
 - Father was appointed as joint trustees with Daughter and Mother
 - Daughter and Mother appointed as joint appointors with Father
- Father, Mother and Daughter named specified beneficiaries



Lee v Ling

- Trust acquired two commercial properties in Richmond
- Daughter (the plaintiff) alleged on January 2018 that the other trustees withdrew funds from the Trust from the existing account into a new account solely controlled by Father and Mother
- Trial commenced on 28 April 2021
- Father died on 30 September 2021
- Accounts of the trust were considered and Father and Mother argued amounts were payment of expenses
- Daughter argued contrary stating lack of supporting documentation and therefore such amounts paid were loans owed by beneficiaries



Lee v Ling

- Noted:
 - *Usually, [the] accountant should have some supporting documents for the transaction recorded. If there are no supporting invoices, then usually [the] accountant records it as loan accounts to beneficiaries to avoid increasing expense, decreasing trust profit and tax liabilities, which is the prudence approach.*
- Determined Father and Mother were lent up to \$350,000 each and therefore Daughter's entitlement to proceeds increased to \$700,000

Bosanac v Commissioner of Taxation



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- [2022] HCA 34
- Wife owned home in her sole name which was purchased using funds from a pre-existing and new joint loan accounts in the name of Wife and Husband
- Husband owed the ATO a significant tax debt
- ATO argued that the 'presumption of advancement' does not apply
- Presumption of advancement: Due to a certain relationship between A and B, it is presumed A intended to gift to B
- Where presumption of advance does not apply, a presumption of a resulting trust may arise whereby equity presumes B holds the property on resulting trust for A
- ATO succeeded at the Federal Court that the presumption of advancement did not apply

Bosanac v Commissioner of Taxation



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- On appeal to High Court:
 - No presumption of advancement from Husband to Wife
 - No presumption of resulting trust in Husband's favour
- History of Husband and Wife holding their substantial assets in their own names
- History that Husband and Wife would take out joint loans and use the other's properties as security
- Evidence produced confirming intention of Wife to have the home registered in her name only (else they would have acquired it jointly)
- Evidence that Husband was a 'sophisticated businessman' who must have understood the consequences of having the Home in the Wife's name only
- Evidence Wife took the risk with the vendor of the Home solely

Bosanac v Commissioner of Taxation



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- Court noted:
 - Parliament should change the presumptions, not the Courts
 - Presumptions considered 'anachronistic' and 'weak' and only relevant in rare cases after considering all evidence
 - Distinguished an earlier case where couple contributed unequally to the purchase of a property despite being bought by the couple jointly before the husband transferred his share to the wife to defeat creditors (i.e. title was acquired jointly initially)
 - Where presumption of advancement remains, questions remains whether it should apply to transfers of property from wife to husband (rather than the archaic husband to wife)

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