

When does a bankrupt have an interest in land solely held by the bankrupt's spouse?

Silvia (Trustee) v Williams, in the matter of Williams (Bankrupt) [2018] FCA 189 (2 March 2018)

Millie Garvin | May 2018 | Commercial Disputes & Transactions

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Summary

A bankrupt may have a beneficial interest in matrimonial or other property (or their proceeds of sale) which is registered solely in the name of their spouse (or former spouse) or partner. If so, the bankrupt's interest will vest in the trustee upon the bankruptcy of the bankrupt and be a welcome addition to the assets available to the trustee for realisation for the benefit of creditors.

In a recent case, the Federal Court of Australia considered whether a husband of a bankrupt wife held the family home in trust for his wife.

Bankrupt Estate of Georgia Williams

In 2014, Mrs Williams became bankrupt.

The bankrupt jointly owned a home with her husband which they sold in 2012. The net sale proceeds were paid into an account in Mr Williams' name only.

A new home was purchased in Mr Williams' name solely some 4 months after the sale of the old home. The deposit was paid by Mr Williams and a bank loan taken out in his name only.

The bankruptcy trustee issued proceedings against Mr Williams seeking:

- 1) recovery of a sum of money equalling half the sale proceeds of the old home on the basis that Mr Williams held the money in a deemed trust for his bankrupt wife; and
- 2) realisation of the new property for the benefit of the bankrupt's creditors on the basis that half the property was held in a deemed trust for the bankrupt.

Court Findings

The Court dismissed the trustee's application with costs.

Importantly, the Court held that:

- The trustee is not entitled to the sale proceeds of the old property as it was sold years prior to the bankruptcy and the sale proceeds had been dissipated, including to accounts in the bankrupt's name. The trustee had failed to trace the money initially into any asset or fund held by Mr Williams at the time the bankrupt was declared bankrupt.
- There was no evidence to show that any money from the sale of the old property deposited into the husband's account was directly used to acquire the new property. This was despite:
 - the entirety of the old property sale proceeds being deposited into Mr Williams' bank account; and
 - about 4 months after settlement of the old home, a cheque being drawn for payment of the deposit on the new property by Mr Williams from his bank account.

Helpfully, the Court detailed the principles it considered crucial in determining whether a trust arises if there is a common intention that property be held by one upon trust for the other:

- Any claim to a beneficial interest in real property by a person in whom the legal title is not vested must be based upon a trust - either express, resulting (implied) or constructive.
- A resulting or implied trust arises where the legal owner has provided none or only part of the purchase price so that a resulting trust is presumed in favour of the party who provided the money.

- Where the legal owner is a wife and the purchase price is provided by the husband, there is a countervailing presumption that the wife takes the beneficial interest as a gift (presumption of advancement).
- The presumptions of resulting trust and advancement are rebuttable and will accede to evidence of the actual intentions of the parties.
- Unlike an express or resulting trust, the intentions of the parties are generally irrelevant for a constructive trust which is a trust imposed by law and based largely on the parties' financial and non-financial contributions.
- In the absence of writing to prove an express trust, the court will give effect to an agreement or common intention (either oral or as inferred from the parties' conduct) that if the party contributes as contemplated, the beneficial interest will be held as agreed or intended.
- For a trust to arise from a common intention, the party in whom the title is not vested must have contributed in some way (either monetary or non-monetary) towards the acquisition of the property.

In this instance, the Court rejected the trustee's contention that Mr Williams held the new home on trust for the bankrupt because, whilst it was undisputed that the new home was acquired while Mr Williams and the bankrupt were married and it was intended to be the matrimonial home, the trustee failed to show that the bankrupt contributed to the purchase price. There was no suggestion or evidence that the bankrupt was liable, or would contribute, to the repayment of the loan and no attempt had been made by the trustee to trace any of the old home's proceeds of sale into the money used by Mr Williams to acquire the new home.

Implications

Trustees bear the onus of proving that the bankrupt has a beneficial interest in the relevant property. Trustees should thus obtain as much information as possible and undertake a tracing exercise in an attempt to properly identify and trace contributions (including proceeds of sale of previous property and payments into and out of bank accounts) used to acquire the property in which the trustee believes the bankrupt has an interest.

For more information, please contact:



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