

Canadian Family Law Matters

August 2016
Number 361

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WHOSE HOUSE IS IT ANYWAY? THE LATEST ON RESULTING TRUSTS

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At common law, where a property is purchased with one person's money and title is put in the name of another, there is a presumption that the title holder holds title in trust for the person who contributed the money.

This principle was at the basis of a recent Court of Appeal decision in the case of *Andrade v. Andrade*.

Luisa Andrade, a widow and mother of 7, immigrated to Canada from Portugal in 1969 accompanied by her oldest daughter who was then 17. She worked as a cleaner for a number of years saving money for plane tickets to bring over the rest of the children. They finally arrived in 1972.

Luisa stopped working to look after her children. One by one each of the children left school and began working while they were teenagers. While they continued to live at home they gave their earnings to their mother to support the family. This continued until each got married and moved out.

The family lived in a series of apartments but by 1974 Luisa had decided to buy a house. She found a house that would be suitable for her family and bought it for \$58,500. She signed the offer to purchase and borrowed a cash deposit of \$1,000 (which she subsequently repaid). For the most part the balance of the purchase was paid with 2 mortgage loans.

She arranged for title to the house to be put in the names of her oldest son, Henry, and her second daughter, Maria Jesus, both of whom were employed. At the time, Henry was 19 and Maria Jesus was 18. They signed the mortgages.

Five years later, in 1979, at Luisa's direction, Maria Jesus transferred her registered interest to younger brother Joseph. The mortgages were renewed in the names of Henry and Joseph.

The house was large enough to include separate apartments. The apartments generated rental income which was collected by Luisa. At one point Henry and his wife occupied one of the apartments and paid rent to his mother as well.

Joseph died in 2007. At the time he was married to the plaintiff in this action, Manuela Andrade. In 2008, she demanded that the house be sold and that half of the sale proceeds be paid to her, as the beneficiary of Joseph's estate, saying that Joseph had been a beneficial owner of half of the house since it was purchased.

Luisa, supported by everyone else in the family, insisted that Luisa was actually the beneficial owner of the house and that Henry and Maria Jesus, at first, and Joseph, subsequently, only held title as trustees for Luisa.

During the litigation, Luisa passed away. The action continued to trial against Henry and Luisa's estate.

At trial, Manuela was successful. The trial judge ruled that at the time of the purchase, Luisa had no money of her own. She had paid the expenses involved in the house with her children's money and not her own. He found no evidence of a joint intention on the part of Luisa on one hand and Henry and Maria Jesus on the other hand that the latter two would hold title in trust for their mother. The trial judge ordered that the house be sold, half the proceeds be paid to Manuela, and that the estate pay Manuela over \$237,000 in costs.

The matter was appealed to the Court of Appeal. The Court of Appeal reversed the decision, holding that the trial judge had made a number of mistakes.

Firstly, the trial judge erred in concluding that Luisa had no money of her own at the time of the purchase. In fact, she was the one who had borrowed the deposit and she was the one who paid it back. The money that was in her account and used to pay the expenses relating to the purchase and subsequent expenses for maintaining the home may well have been provided to her by her children but the trial judge was wrong in concluding that therefore, this was her children's money. Once her children gave their paycheques to Luisa, it became her money.

Secondly, the trial judge erred in concluding that in order to determine whether or not a trust existed, the court would look for an intention of both Luisa and her children that a trust would exist. In fact, only Luisa's intention was relevant since she was the one paying the money and directing that the title be taken in the names of other people. There was ample evidence in this case that Luisa intended to be the beneficial owner of the property. The evidence obtained from Luisa prior to her death was that she had directed title to be taken in the names of Henry and Maria Jesus because mortgage financing was needed to make the purchase and she could not qualify for a mortgage. As both Henry and Maria Jesus were employed at the time, they could and did qualify for a mortgage. There simply was no other reason for this arrangement.

As a result, the presumption of resulting trust prevailed and Luisa's estate was declared to be the sole beneficial owner of the house.

Unfortunately, it took years and hundreds of thousands of dollars to get this straightened out. It probably also cost this family at least one relationship. The lesson to be learned, as usual, is to make sure these types of arrangements are recorded in writing—if not right at the outset, then as soon as possible thereafter.

This article was originally published at irvinschein.com

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Published bimonthly as the newsletter complement to the *Canadian Family Law Guide* by LexisNexis Canada Inc. For subscription information, see your Account Manager or call 1-800-387-0899.

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