

TECHNICAL INSIGHTS

Issue 2 - 2016

Encounters with resulting trusts in insolvency administrations

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Introduction

Under traditional legal analysis where A pays for the purchase of property which is vested in the name of B a resulting trust arises in favour of A. In these circumstances there is a presumption that A did not intend to make a gift to B. The property is held on trust for A, if A is the sole provider of the money, or in the case of a joint purchase by A and B, in shares proportionate to their contributions.

Note: The resulting trust arising in these circumstances is capable of being displaced, either as a result of evidence of an outright gift from the transferor to the transferee, or a presumption of advancement in favour of the transferee (in this last respect see BRI Ferrier technical insight, "Bankruptcy and the presumption of advancement").

Resulting trusts arising in insolvency administrations

It is widely acknowledged that the direct impact of a resulting trust is often suffered by creditors of a bankrupt or company in liquidation. Typically such adverse outcomes are experienced where, by virtue of a resulting trust, a third party claims beneficial ownership of property which the bankrupt or company in liquidation is alleged to hold in the capacity of a bare trustee. As a consequence if the third party's claim is upheld the trustee in bankruptcy or liquidator

of the company will be deprived of the right to deal with the property for the benefit of creditors.

On occasions, however, the resulting trust may operate for the benefit of the trustee in bankruptcy or liquidator and creditors in their administrations. This will occur where a person becomes bankrupt or a company proceeds into liquidation, with the trustee in bankruptcy or liquidator asserting that particular property vested in a third party is subject to a resulting trust in favour of the bankrupt or company in liquidation.

Recently, the Federal Circuit Court in *Aravanis v Studwell Pty Ltd* (2015) FCCA 2102, 7/8/2015 has had occasion to determine whether under resulting trusts the bankrupt in that case held the beneficial interests in particular goods such that on becoming bankrupt the beneficial interests in the goods vested in the trustee in bankruptcy for the benefit of creditors pursuant to section 58(1), Bankruptcy Act.

Aravanis v Studwell Pty Ltd

Facts

Mr Studwell was the sole director of Studwell Pty Ltd which conducted an earthmoving business. With respect to four pieces of equipment, the subject of these proceedings, the court found that the equipment was purchased in the name of and for use in the company's business, and was included in

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the company's depreciation work sheet. Mr Studwell became bankrupt on 22/4/2015 on his own petition.

Was the equipment part of the estate of the bankrupt?

The court found that although the equipment was purchased in the company's business name and not in the name of Mr Studwell, the equipment was purchased with money Mr Studwell provided. Moreover, Mr Studwell provided the purchase monies from loans under which Mr Studwell was the borrower.

In those circumstances the court concluded that the company held the equipment as trustee under a resulting trust in favour of Mr Studwell. That conclusion was based on the legal presumption that Mr Studwell having met the purchase price of the equipment did not intend to make a gift of the property to his company which, as a consequence, held the property on a resulting trust for Mr Studwell.

Was the presumption rebutted?

Having determined the existence of a rebuttable resulting trust the next question for the court was whether on the evidence before it the presumption had been rebutted.

The court concluded that the presumption had not been rebutted. Two reasons were provided by the court:

- ▲ Mr Studwell at all times had remained the debtor of the loans used to purchase the equipment. There was no evidence he and the lender had agreed to novate the loan debt so as to make the company the debtor under the loan agreement. The court observed:

"If, as I find, Mr Studwell remained the debtor... it is unlikely he would have intended to make a gift of the equipment; for he would have given away the very assets for which he incurred debts to purchase. It is unlikely that Mr Studwell would have borrowed money to purchase business assets, only to give the assets away and remain liable on the debt he incurred." (para 18)

- ▲ In a declaration prepared by Mr Studwell the assets of the company were stated to be valued at less than \$1,000. The court observed:

"From the declaration, and from the trustee's belief that the equipment may have a combined value of at least \$25,000, I infer Mr Studwell did not intend to include in the assets of [the company] the equipment. That in turn supports the conclusion that Mr Studwell intended to hold the beneficial interest in the equipment." (para 19)

Final result

In concluding that Mr Studwell did not intend to make a gift of the equipment, his company held the equipment as a bare trustee under a resulting trust of which Mr Studwell was the sole beneficiary. Mr Studwell therefore had the right to terminate the resulting trust simply by obtaining possession of the equipment from the company. That right was vested in the trustee in bankruptcy under section 58(1), Bankruptcy Act as a result of Mr Studwell becoming bankrupt.

Accordingly it was open to the trustee in bankruptcy to terminate the resulting trust in relation to the equipment by taking possession of the equipment, and on doing so legal title in the equipment vested in the trustee in bankruptcy.

Concluding observations

Under trust law the resulting trust is a significant category of implied or informal trust giving effect to the intention of the parties involved. However, a common experience of insolvency practitioners is that resulting trusts are often concealed interests made known after their appointment, giving rise to difficult questions of proof as to the circumstances of the transaction involved, and the intention of the parties when entering into the transaction. As one commentator has observed:

"The direct impact of these claimed trust interests is suffered by creditors for whom we are trying to recover as much as possible. It could even be suggested that trusts are apparently being used as

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schemes to the detriment of creditors and other stakeholders with the knowledge that they are unlikely to be challenged due to associated costs and risks. There is also a good chance of settlement where there is a contrived trust claim.”

Although concealed trusts are a concern, it is well to recognise that the resulting trust arises by operation of law and is a two-edged sword which on occasions is capable of delivering significant beneficial outcomes for creditors in much the manner that the *Aravanis* case demonstrates.

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