RECTIFICATION OF ASSET PROTECTION POST BOSANAC V FCT

Succession, SMSF, Asset Protection and Estate Planning Specialist with LightYear Docs, Abbott & Mourly and Eventum Optimum







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The Problem – Bosanac Case Blows the Lid on Spouse Holding Assets

Have you heard or read this before:

"It is important to be able to identify which individuals or entities are considered 'high risk' (and are hence more likely to be at the mercy of creditors in difficult times) and which ones are 'low-risk'. Upon making this risk assessment, ideally the 'high-risk' individuals or entities are divested of any valuable assets so to try and keep them out of the creditors' reach. In turn, the group's 'low-risk' individuals or entities would be best to hold these assets. In the end, if the 'high-risk' individual or entity is pursued by creditors then further losses may be kept to a minimum where the individual or entity does not actually have any assets for the taking."

The Problem – Bosanac Case Blows the Lid on Spouse Holding Assets

FEDERAL COURT OF AUSTRALIA

Commissioner	of Taxation	v Bosanac	[2021] FCA]

Appeal from:

Commissioner of Taxation v Bosanac (<u>No 7</u>) [2021] FCA 249

File number:

Judgment of:

KENNY, DAVIES AND THAWLEY JJ

Date of judgment:

Catchwords:

31 August 2021

WAD 82 of 2021

EQUITY – presumption of advancement – purchase of property by husband and wife – title registered in wife's name only – whether presumption of advancement is qualified by statements in *Trustees of*

FC 158

Let's look at what we need to look at...

- 1. Look at who is impacted and why
- 2. Methods of rectification
- 3. Two solutions to tighten up asset protection
- 4. How the decision impacts on estate planning for clients affected

BOSANAC FACTS

"The issue in this appeal is whether, contrary to the judgment of the primary judge, Mr Bosanac held an equitable interest in residential property purchased for \$4.5 million in the name of Ms Bosanac only. The deposit of \$250,000 was paid with funds from a joint loan account. Mr and Ms Bosanac then jointly borrowed \$4.5 million from Westpac and this was used to pay the balance of the purchase price."

BOSANAC THE ISSUE

- property
- There were two choices:
- party to gift to the other

OR

arrangement fashioned by the Courts

• There were no documents or evidence to show what was going on in terms of the ownership of the

• Advancement: This is an equitable principle the same as a gift and assumes that there was an intent for one

• Resulting Trust: This is also an equitable principle whereby the owner of the property holds that property on behalf of another in a bare trust

BOSANAC THE RESULT

"27. It seems to us that, ultimately, the most significant fact in favour of the operation of the presumption of advancement in this case was simply that, at the time of purchase, the Dalkeith Property was put into Ms Bosanac's name, notwithstanding that Mr Bosanac contributed half the purchase price. This was, of course, sufficient to attract the presumption, absent rebutting evidence. For the reasons we have stated, we have concluded that in this case the evidence and the facts as found by the primary judge based on that evidence rebutted the presumption. We infer from these facts that at the time of the purchase Mr Bosanac and Ms Bosanac intended that Mr Bosanac would have a 50% beneficial interest in the property that was to be their matrimonial home.

28. For the reasons stated, we would allow the appeal and make the declaration sought by the appellant in his notice of appeal. The parties will be given an opportunity to make submissions as to costs."

THE SOLUTIONS

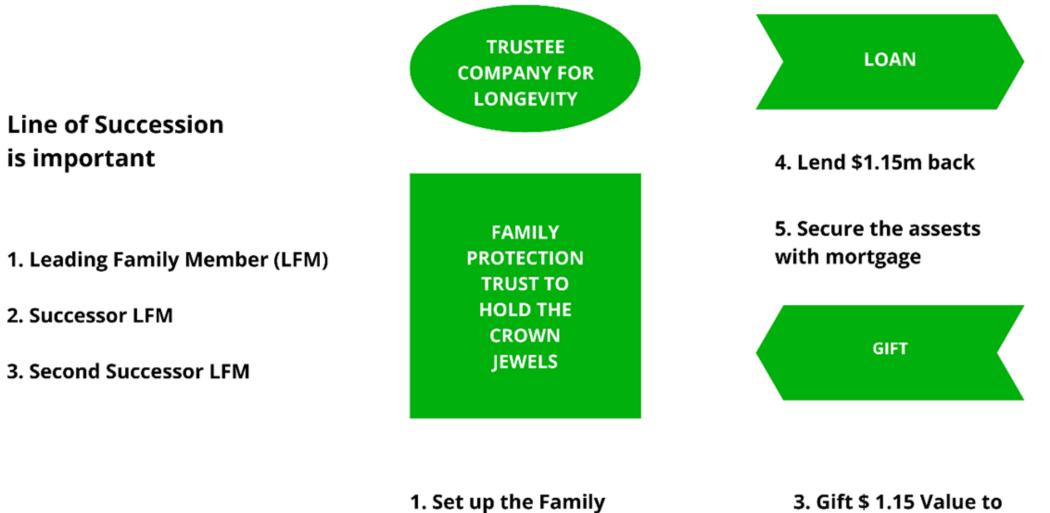
to a legal solution based on the evidence

protecting the whole family and to be preferred a related party partnership agreement

<u>Remember without a document the Court needs to come</u>

Solution One: Deed of Rectification and Gift: This is an old school method of evidencing the intervention of the parties and would have made a big difference with the Court. Abbott & Mourly offer this service which is separate to LYD packages Solution Two: The Protector: Enables the equity from the spouse to be gifted to the Family Protection Trust in toto Important: Make sure any common ownership is evidence by

PROTECTING FAMILY WEALTH WITH THE PROTECTOR



Protection Trust (FPT)

the FPT with Cheque



Value = \$1m



Value = \$150,000

2. Value assests less money owing

Client Booklet



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UPCOMING

- session and launch of LYD 2
- On 2 December there will be a launch of the Advisers Association
- accreditation course

• 2 December in Brisbane and 3 December in the Gold Coast we are having our Strategy Breakfast

Succession, Asset Protection and Estate Planning

• 19-21 January 2022 is our next three day SAPEPAA

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