



HIGH COURT OF AUSTRALIA

12 October 2022

BOSANAC v COMMISSION OF TAXATION & ANOR
[2022] HCA 34

Today, the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia. The appeal concerned whether the appellant ("Ms Bosanac") held half of her interest in a residential property ("the Property") on trust for her husband, the second respondent ("Mr Bosanac"), where the purchase money was paid jointly by Ms and Mr Bosanac.

Ms Bosanac purchased the Property with loans held and taken out jointly with Mr Bosanac, secured against properties they each separately owned. The Property was registered in Ms Bosanac's name alone and used as the matrimonial home of the Bosanacs. Mr Bosanac never claimed an interest in the Property. Ms and Mr Bosanac had a history of holding their substantial real and other properties in their own names and using them as security for joint loans.

The first respondent ("the Commissioner") is a creditor of Mr Bosanac. The Commissioner, relying upon the presumption of resulting trust, sought a declaration that Ms Bosanac holds half of her interest in the Property on trust for Mr Bosanac. The Commissioner argued that the presumption of advancement of a wife by her husband, which operates to preclude a resulting trust from arising, is no longer part of the law of Australia in relation to the matrimonial home. The primary judge dismissed the Commissioner's application, holding that the presumption of advancement arose in Ms Bosanac's favour, and that the evidence did not support an inference that Mr Bosanac intended to have an interest in the Property. The Full Court allowed an appeal, holding that the presumption was rebutted by the evidence in this case.

The High Court held the presumption of resulting trust will not arise where there is evidence from which it may be inferred that the parties' objective intention is inconsistent with the person providing the purchase money obtaining an interest in a property. The "presumption" of advancement allows an inference to be drawn from the fact of certain relationships, such as husband and wife, that the presumption of resulting trust will not arise. When evidence of the way in which the spouses deal with their property is given, inferences to the contrary of the presumption may readily be drawn. Both presumptions cease to be of practical significance other than in a rare case where the totality of evidence is incapable of founding an inference as to what the purchaser intended. The question of intention as to whether a trust arises is entirely one of fact, and the facts of this case do not give rise to such an intention. The proper inference to be drawn from the objective facts was that the parties objectively intended Ms Bosanac to be the sole beneficial owner of the Property, and that Mr Bosanac was merely facilitating Ms Bosanac's acquisition of the Property.

The Commissioner invited the Court to abolish the presumption of advancement as having no acceptable rationale and being anomalous, anachronistic, and discriminatory. The Court refused, observing the "presumption" of advancement is an entrenched "land-mark" of the law in Australia.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.