Recent trusts cases

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Deux arrêts ont été brièvement examinées: Carter Estate *c.* Johnston Estate, *et* Pirie *c.* Leslie.

Two cases are briefly reviewed: Carter Estate *v.* Johnston Estate, *and* Pirie *v.* Leslie.

IT HAS BEEN A LONG-ESTABLISHED PRINCIPLE of Equity dating back to the eighteenth century that, if a person purchases property but has it put in another's name, the latter becomes a resulting trustee for the former. Equity has applied this to all kinds of property and not simply to real estate.

Such a principle was used in the recent Manitoban Queen's Bench case of *Carter Estate* v. *Johnston Estate,*[1] where the dispute related to the ownership of a one-half interest in four guaranteed investment certificates totalling $120,000. The deposits were registered in the joint names of two deceased persons, James Robert Johnston and Alice May Carter, who had an enduring relationship over many years, but who never actually lived together. It appeared from the evidence that Ms Carter on four occasions took funds from Johnston's bank account and invested them in certificates with the Canadian Imperial Bank of Commerce Mortgage Corporation. The certificates were then registered in the names of Johnston and Carter "as joint tenants with rights of survivorship." Johnston predeceased Carter by a short period of ten days. The court was satisfied that the funds in question were the property of Johnston and found that he in fact paid income tax on all of the proceeds from these certificates. Furthermore, Johnston left a life interest in a substantial portion of his estate to Ms Carter, which equally pointed towards the resulting trust. The learned judge concluded that, if Johnston had believed Ms Carter was entitled by a right of survivorship to all the proceeds of the investment certificates, he would not have needed to leave her a large life estate in his property, of which the certificates formed the bulk.

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1 (1988), [1989] 55 Man.R. (2d) 158 (Q.B.).

All these circumstances are well marshalled in the judgment of Scott J., leading to the inexorable conclusion that there must indeed be a resulting trust in this case. For the academic, it is good to notice that the learned judge went on to consider the doctrine of advancement in relation to resulting trusts, though this strictly was not necessary in the circumstances. While the word "advancement" is now rather archaic, it means that a person who is, or who stands in the position of, a husband or father is presumed to give part of his property to his wife or child who is financially dependent upon him. Thus, when he puts such property in the name of his wife or child, the presumption of advancement rebuts the original presumption of a resulting trust. In this particular case, Ms Carter was not a member of the Johnston family, nor indeed his wife. Even if they had actually lived in a quasi-marital relationship, there are many Canadian cases that have decided that no presumption of advancement would arise. All in all, this is a helpful and well-reasoned judgment in an area of resulting trusts that does not now too often come before the courts.

The two major types of trusts that arise by operation of law, rather than by express creation of the parties, are resulting and constructive. It is coincidental that, while we have just examined an interesting resulting trust case in Manitoba, the Province has also this year produced a good constructive trust decision. *Pirie* v. *Leslie*[2] was a decision of Oliphant J. sitting in the Brandon Centre of the Queen's Bench. Among other issues, the case involved the distribution of property at the end of a nine-year period of cohabitation between the petitioner and respondent. Apart from maintenance, the petitioner asked for an interest in the assets of respondent through the operation of either a resulting or a constructive trust, as had been established by the Supreme Court of Canada in *Pettkus* v. *Becker*[3] It will be remembered that Dickson J. (as he then was), there writing for the majority, stated that the principle of unjust enrichment lies at the heart of the constructive trust. Therefore, because Mr Pettkus and Miss Becker had lived together for nineteen years and because he had enjoyed the benefit of her unpaid labour, she had the right to receive an interest in property that he had acquired as a result of her contribution, regardless if it took the form of money or labour. In dividing such property, no distinction is to be made between marital and non-marital relationships.

In the Manitoban case of *Pirie* v. *Leslie*[4] the learned judge found that, during the nine-year period of cohabitation, the petitioner had devoted all of her energies to providing the respondent with a com-

2 (1988) 52 Man.R. (2d) 241 (Q.B.).
3 [1980] 2 S.C.R. 834.
4 *Supra*, note 2.

fortable home and to enhancing his financial position. For example, she had been entirely responsible for the operation of the household, as well as caring for the poultry on the farm and driving a grain truck. She received no monetary compensation and held a sincere belief, which the respondent engendered, that they would eventually be married after the respondent's divorce from his wife was finalized. The court held that the petitioner's contribution was substantial and that a proprietary relationship arose from out of the enhancement of the respondent's financial position. Judgment on this claim was therefore given for the petitioner in the sum of $34,000, which was approximately a twenty per cent interest in the respondent's property.

While it is encouraging to see the Manitoban courts so willing to find a constructive trust in a cohabitation case along the lines of the decision in *Pettkus* v. *Becker*,[5] there are two subsidiary questions that are not really answered in *Pirie*.[6] First, why was the petitioner only awarded a twenty per cent interest in the respondent's property? In *Pettkus* v. *Becker*,[7] Dickson J. stated that, while Equity favours equality, it was not every contribution that would entitle a 'spouse' to a one-half interest in the property in question. Obviously, Oliphant J. agreed with this, but one is left wondering how he arrived at a percentage as low as twenty. This may have been quite correct, but one wishes that he had given some little explanation as to how he reached this amount. Secondly, there has been much controversy among academics writing about constructive trusts and as to just when they actually come into being. Is it at the date of the court's judgment, or is it rather when the duty to make restitution arises? Oliphant J. allowed interest on the award from the date of separation, suggesting that he preferred the latter alternative, though he made no actual statement on this question. However, as stated earlier, these are really subsidiary points and do not detract from a good judgment that applies on old Equity concept to achieve justice in new social conditions.

5 *Supra*, note 3.
6 *Supra*, note 2.
7 *Supra*, note 3.

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