VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

REAL PROPERTY LIST VCAT REFERENCE NO: W85//2013

CATCHWORDS

CO-OWNERSHIP –Part IV of the *Property Law Act 1958*, whether express trust established, whether resulting trust created; whether presumption of advancement displaced. Factors to consider if domestic arrangement intended to be legally binding.

FIRST APPLICANT	Marion Eileen Taylor
SECOND APPLICANT	Albert Edward Taylor
FIRST RESPONDENT	Kevin Albert Taylor
SECOND RESPONDENT	Marion Catherine Taylor
WHERE HELD	Melbourne
BEFORE	Senior Member E. Riegler
HEARING TYPE	Hearing
DATE OF HEARING	20 and 21 May 2013
DATE OF ORDER	30 June 2014
CITATION	Taylor v Taylor (Real Property) [2014] VCAT 796

ORDER

1. **This proceeding is listed for a further directions hearing before Senior Member E. Riegler at 9.30 on 24 July 2014, at which time the parties are to make further submissions as to the form of orders to be made by the Tribunal, having regard to the *Reasons* attached these orders.**
2. Costs reserved.

SENIOR MEMBER E. RIEGLER

APPEARANCES:

For the Applicants	Mr M Black of counsel
For the First Respondent	Mr K Taylor in person
For the Second Respondent	Mrs M Taylor in person

REASONS

INTRODUCTION

1. This proceeding concerns a dispute over the beneficial interests in a residential property located in Moe, Victoria (**'the Property'**). The Respondents are the registered proprietors of the Property. However, the Applicants claim a 15/65th interest in the Property by virtue of an express or resulting trust.

2. The Applicants seek an order pursuant to Part IV of the *Property Law Act 1958* (**'the Act'**) that the Property be sold and that the proceeds of sale be distributed in a ratio of 15:65 between the Applicants and the Respondents. The Respondents dispute that the Applicants have any interest in the Property.

THE ISSUES

3. The Applicants (**'the Parents'**) are husband and wife and have four children, three boys and one girl. The First Respondent (**'Kevin Taylor'**) is their eldest son. The Second Respondent is his wife.

4. In the 1970s, the Parents developed an interest in breeding and racing greyhounds. In early 1981, the second applicant (**'the Father'**) became aware that the then registered owner of the Property was proposing to sell the Property. The Father was interested in purchasing the Property because it had been previously used to breed and train greyhounds and already had facilities in place for that purpose. The Father saw the purchase of the Property as an opportunity to embark on a new business venture, namely, the breeding and racing of greyhounds.

5. However, the Parents did not have sufficient funds to purchase the Property in their own right, given the limited equity they had in their existing home and the fact that they were both on social security pensions at that time. Therefore, the Property could only be purchased with the assistance of other parties.

6. As a consequence, the purchase of the Property was funded partly from the sale of the Parent's family home and partly from the parties' contributions, together with personal and mortgage loans. It is the parties' contributions that lie at the heart of the current dispute. In essence, the Parents contend that they contributed $15,000 towards the purchase of the Property for a contract price of $65,000. By contrast, Kevin Taylor contends that the $15,000 was gifted to him as an incentive for him to purchase the Property in his own right. He further contends that the actual purchase price for the Property was $55,000 and that the remaining $10,000 paid to the vendor related solely to the purchase of the greyhound facilities left on the Property, rather than forming part of the purchase price of the Property.

7. The Parents contend that they are the beneficiaries under a resulting or express trust to the extent of their $15,000 contribution to the purchase price of $65,000. Hence, they argue that they are beneficially entitled to a 15/65th share in the Property.

8. As is often the case in co-ownership disputes, the parties' recollection of past events differs. In the present case, the purchase of the Property occurred in 1981 and each party has a differing account as to what was agreed at the time of purchase.

The Respondent's version of events

9. In early 1981, Kevin Taylor was working in Western Australia. He recounted that his Father contacted him and told him that an ideal property had come up for sale. He said that he told his Father that he was not interested in purchasing the Property. However, his Father persisted in trying to persuade him to change his mind. He recounted that his Father told him that he had worked out a proposal that would suit the whole family. In essence, the proposal was that two properties would be purchased with the first property belonging to Kevin Taylor and a second property belonging to David Taylor, his younger brother. The plan was that the Parents would sell their family home located in Scotts Avenue, Moe, pay out their mortgage and then gift the bulk of the net proceeds of sale to Kevin Taylor, as an incentive for him to buy the Property.

10. He said that the plan was for his Parents to keep approximately $5,000 from the sale of the Scott Avenue family home to assist them in setting up the greyhound breeding and racing business. According to Kevin Taylor, the purchase price of the Property was $55,000, with an additional $10,000 used to purchase the existing greyhound facilities. He said that the purchase of the Property was to be funded as follows:

    (a) $15,000 by way of a gift from the Applicants;

    (b) $10,000 by way of a loan from David Taylor;

    (c) $6,000 from personal savings; and

    (d) the balance sourced from a bank loan.

11. According to Kevin Taylor, it was envisaged that once the bank loan had been paid out, he would assist his brother, David Taylor, to purchase the second property.

12. Kevin Taylor said that that it was agreed that the Parents and his youngest sibling, Barry Taylor, would live in the Property as a family home for a number of years, while he travelled and worked interstate and overseas. He said that the Parents would purchase all of the greyhound equipment and have use of the Property in order to conduct their greyhound breeding and racing business. He said that he agreed

with the proposal on the understanding that the Property would be his and that is why his name was first registered on the title.

13. The Parents subsequently sold the Scott Avenue family home for $32,000, paid out their mortgage of about $12,000 and, according to Kevin Taylor, gifted $15,000 to him. Settlement of the Property occurred shortly thereafter. Initially, Kevin Taylor, his two brothers and the Parents all moved into the Property. Kevin Taylor recounted that he and his brothers each contributed $50 per week towards the household bills but that he made all repayments of the mortgage loan.

14. The Property also comprised a small self-contained bungalow unit (‘**the Bungalow’**). According to Kevin Taylor, he renovated the Bungalow in the years following settlement of the Property and then moved into it, leaving the Parents and his two brothers in the main house.

15. In September 1984, Kevin Taylor paid out the mortgage loan after he borrowed $4,500 from the Parents. He said that the Parents had won substantial prize money in a major greyhound race and were therefore able to assist him in paying out the mortgage loan. He said that after the mortgage loan had been paid out, he and David Taylor started looking at places that would be suitable for him to purchase. However, he believed that his brother was not really interested in buying a property at that time.

16. Kevin Taylor also said that around that time, the Father had asked him to repay the $15,000 that he had previously gifted to him. He recounted that the Father had told him that it was really an interest free loan. In response, Kevin Taylor offered to repay the money on one condition, namely; that the Parents start paying rent for living in the Property and using it for their greyhound business. Ultimately, he said, it was agreed between him and the Father that the $15,000 would be considered as a lump sum rent payment for as long as they were living in the Property.

17. According to Kevin Taylor, arguments arose in 1987 concerning the original plan to purchase two properties. As a result, he and David Taylor agreed that the *house deal* would be concluded by making a lump sun payment to David Taylor of $30,000. This amount was said to comprise the original loan from David Taylor plus $5,000 representing interest.[1]

18. In early 1989, the Parents decided to give up the greyhound racing and breeding business. They then moved into the Bungalow for a period of time before eventually buying a caravan and then travelling around Australia. According to Kevin Taylor, around this time Barry Taylor also moved out of the Property, with David Taylor moving out in 1992 or 1993.

[1] Witness statement of Kevin Taylor dated 9 December 2013 at paragraph 27.

19. Between 1989 and 2003, Kevin Taylor said that he removed all of the greyhound facilities, renovated the house and carried out major landscaping of the Property.

20. He recounted that in January 2003, he met his wife, the Second Respondent. Shortly after meeting her, he decided to move into her house. He said that at that time, he was uncertain as to what to do with the Property. Rather than rent the Property, he asked the Parents whether they wanted to move into the main house until he decided what to do with it. He said that it was agreed that the Parents could continue to live in the Property rent free for as long as they wanted and that the Mother could also use the Bungalow as an art studio on the basis that they paid all the bills and kept the Property maintained.

21. Kevin Taylor recounted that in 2006, David Taylor asked whether he wanted to sell the Property. He said that David Taylor offered 50/65th on the basis that the Parents had a 15/65th share of the Property. This offer was rejected and according to Kevin Taylor, this was the first time that he became aware that the Parents claimed any interest in the the Property.

22. In April 2009, Kevin Taylor transferred his interest to the Second Respondent as a joint tenant. As it currently stands, they are the only registered owners of the Property. They hold their respective interests in the Property as joint tenants.

Applicant's version of events

23. The Mother, David Taylor and Barry Taylor all gave evidence that the $15,000 sourced from the sale of the Scott Avenue family home was used as a contribution to the purchase of the Property and was not gifted to Kevin Taylor. Regrettably, the Father was unable to give evidence because he had suffered a stroke in August 2008 and now lacked capacity to stand the rigours of giving evidence.

24. In his witness statement, David Taylor recounts what he recalls occurred when the Father's proposal was first sounded:

> 4. My parents were unable to buy the property outright themselves, as they were not working. My father spoke to Kevin and me and said words to the effect "Would we like to invest in the property with them?" Kevin and I said, "Yes".
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> 5. None of us was able to purchase the property on our own. My parents had capital in the family home at Scott Avenue but no source of income. Kevin had a full-time job with no savings. I had $10,000 from a TAC compensation payout but I was only earning in apprentice's wage at the time.
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> 6. My father sat down with Kevin and me around the kitchen table in Scott Avenue. He said words to the effect that we were all investing in the property together. He said that the bank would

only lend to someone with a 20% deposit and a full-time job. He said to us that he would sell the family home in Scott Avenue and give the proceeds of sale to Kevin to enable Kevin to meet the banks requirement of a 20% deposit on the purchase price. He said, “That money doesn't belong to Kevin”. He said words to the effect that it was necessary to go down this road of giving the money to Kevin so that someone in the group would qualify for a loan from the bank. He said that the bank would only lend to Kevin because he was the only one with a job.

25. Barry Taylor gave the following evidence:

> 3. One day in early 1981, Krytenberg [the vendor of the Property] had returned from a visit to Queensland. My father said he was going up to see the Krytenbergs and I decided to go along with him. I was 16 years old at the time. When we got there, my father had a conversation with Krytenberg. Krytenberg said that he had decided to move the family up to Queensland permanently. My father asked, “You're pretty keen to go?” Krytenberg said, “Yes”. My father then said words to the effect that he was interested in purchasing the property. I remember that the figure of $60,000 was discussed. My father said, “No worries. What are you taking with you?” The property had a lot of infrastructure for training greyhounds and house hold furnishings. Krytenberg said that he was taking “whatever I can fit in the boat and the two cars”. My father said “Ok, we'll buy the place. I just need time to organise the money”. My father and Krytenberg shook hands. In the car, Dad said, “How much money have you got?” I laughed and said, “Not enough for you”.
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> 4. One day, my father came home and I heard him tell my mother that Krytenberg wanted a further $5000 for the stuff that was left there. My mother said, “Is it worth $5000?”.
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> 5. At the time, Kevin was working in Kalgoorlie in Western Australia. He was a fully qualified tradesman and had a permanent job. Kevin was called back and came back. David Taylor, my older brother, (“David”) was an apprentice at Newport railway.
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> 6. Shortly thereafter, I remember a conversation around the kitchen table. Present were my father, Kevin, David and me sitting around the table and my mother working in the kitchen. My father said, “This property will be the new family home”. He said words to the effect that he would be able to breed greyhounds and the property had a large workshop, more space and would better support the families growing needs, it would also be a good investment for us. He said words to the effect that he wanted to split the purchase of the house equally three ways between my parents, Kevin and David. My father said he would sell our current house in Scott Avenue. He did some calculations and said that he thought that the sale would raise

about $20,000. My father said, “David, you've got $10,000 cash. We’ll have to give that money to Tony ASAP to secure the deal”.

7. My father also said words to the effect that we needed to put the title into one person's name to be eligible for the Home Savings Grant. Kevin had a full-time permanent job. David was only an apprentice on an apprentice’s wage. My father was unemployed. My father said words to the effect that it would be better to put the property into Kevin's name as the bank would more readily give him a loan.

26. The Mother also gave evidence corroborating evidence both David and Barry Taylor’s evidence. In her witness statement dated 13 November 2013, she stated:

4. In about the 70s, Bert and I developed an interest in breeding and racing greyhounds. Bert knew the Krytenbergs who at that time owned … (“the property”). The property sits on 3 acres and the Krytenbergs had set it up with facilities for greyhound breeding. There was a house on the property as well is a small unit.

5. Bert and I thought that the property was ideal for the family as it could accommodate our interest in greyhounds and the boys who enjoyed motorbiking. Bert told the Krytenbergs to give us the first option if they ever decide to sell. In about 1981, the Krytenbergs offered the property to us and Bert entered into a contract of sale to buy the property for $65,000.

6. Bert and I contributed $15,000 to the purchase price. Kevin and David each contributed $25,000.

7. In order to purchase the property, Bert and I sold the family home and the proceeds made up our initial 15,000 contribution. David contributed $10,000 in cash and took a loan of $15,000. Kevin borrowed $25,000.

Was the $15,000 gifted to Kevin absolutely?

27. The critical issue is whether there ever was an agreement that the net proceeds of sale from the Scott Avenue family home would be gifted to Kevin or alternatively, used by the Parents as their contribution to the purchase price of the Property. The evidence of Kevin Taylor going to that issue is confined to telephone conversations that he had with the Father, while he was working in Western Australia. Regrettably, the Father is unable to give evidence confirming or denying the existence of any such conversation or agreement.

28. Contrary evidence is given by David Taylor, Barry Taylor and the Mother, when they recount the conversation that occurred around the kitchen table in Scott Avenue. There is no evidence from any of the parties or witnesses that what may have been discussed as between Kevin Taylor and the Father over the telephone was reiterated in face-

to-face discussions that occurred around the kitchen table. Indeed the evidence of David and Barry Taylor as to what was discussed around the kitchen table contradicts Kevin's account of his telephone discussion with the Father.

29. In my view, the difficulty in accepting Kevin Taylor's evidence over that of David and Barry Taylor is that it appears that whatever was discussed over telephone between Kevin Taylor and the Father, in an attempt to lure Kevin Taylor back to Victoria, was dispelled during the subsequent discussions over the kitchen table. Both David and Barry Taylor recounted that the discussion focused on there being joint ownership. Nothing was mentioned about gifting money to Kevin Taylor or a deal to first buy a property for Kevin and then, at some future point in time, buy another property for David Taylor.

30. The difficulty common with many domestic and non-commercial arrangements is establishing whether there was intent to create some form of legal relations. In the present case, the question arises whether the Father intended that the proceeds of sale from the Scott Avenue family home would be gifted to Kevin Taylor on condition that he purchased the Property, without the Parents having any beneficial interest in the Property.

31. In *Sharp v Anderson*,[2] Santow J set out a useful guide to the kind of factors that may be weighed in the balance in ascertaining the intention of parties to a domestic arrangement. His Honour listed such matters as:

    (a) the number of people who were told of the arrangement;

    (b) whether the undertaking was given in writing;

    (c) the nature of any consideration provided by the promise (if any);

    (d) the number of times the promise was made;

    (e) the language and context in which the promise was made; and

    (f) the nature of the relationship between the parties.[3]

32. The evidence in this proceeding is that the promise made by the Father took place over the telephone while Kevin Taylor resided in Western Australia. No other person was privy to that conversation. Nothing was documented in writing. Moreover, it does not appear from the evidence that the promise was repeatedly made.

33. Importantly, Kevin Taylor has not denied the discussions that took place over the kitchen table. In that respect, I note that the interlocutory orders made by the Tribunal allowed the parties to file and serve reply

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[2] *Sharp v Anderson* [1995] Australian Contract Rep ¶90-051.
[3] Ibid at at 90,223-4.

witness statements. The allegations regarding the discussions which occurred over the kitchen table were first raised in an affidavit of David Taylor dated 26 July 2013 and in the subsequent witness statements of Barry and David Taylor dated 13 November 2013. However, no reply witness statement was filed by Kevin Taylor disputing that the conversations around the kitchen table took place; nor did he contradict those statements when he gave oral evidence during the course of the hearing.

34. That being the case, and having regard to the context in which the Father's statements were made, I am not persuaded that the Father was serious when he proposed that the net proceeds of sale would be gifted to Kevin Taylor and that he and the Mother would share no interest in the Property after it was purchased. In my view, the statements made by the Father to Kevin Taylor over the telephone may have simply been the genesis of a proposal that was being thought through but had not yet been finalised.

35. Although Kevin Taylor was adamant that an agreement was reached between him and the Father, I am not persuaded that Kevin Taylor's evidence accurately recounts the spirit of those conversations, especially when weighed up against Barry and David Taylor's evidence. That said, I am mindful of the fact that the telephone conversations between Kevin Taylor and the Father took place more than 30 years ago. It is possible or even likely that Kevin Taylor's memory of what may have been said, or the context in which it was said, has diminished over time or has been tainted by the disputation that has clearly overshadowed family relations in more recent years.

36. As explained by McClelland CJ in *Watson v Foxman*,[4] the process of reconstructing a past event does not necessarily mean that the party intentionally told an untruth. In *Watson v Foxman* allegations were made that certain words were spoken, which were said to constitute misleading and deceptive conduct. His Honour made the following observation:

> In many cases (but not all) the question whether spoken words were misleading may depend upon what, if examined at the time, may have been seen to be relatively subtle nuances flowing from the use of one word, phrase or grammatical construction rather than another, or the presence or absence of some qualifying word or phrase, or condition. Furthermore, human memory of what was said in a conversation is fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time, particularly where disputes and litigation intervene, and the processes of memory are overlaid, often subconsciously, by perceptions of self-interest as well is conscious consideration of what should have been said or could have been said.

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[4] *Watson v Foxman* (2000) 49 NSW LR 315 (adopted by Collier J in *Citrus Queensland Pty Ltd v Sunstate Orchards Pty Ltd (No 7)* [2008] FCA 1364).

> All too often what is actually remembered is little more than an impression from which plausible details are then, again often subconsciously, constructed. All this is a matter of ordinary human experience.[5]

37. There are other aspects of Kevin Taylor's evidence which further illustrate this point. In particular, his explanation as to how the purchase price was sourced appears somewhat unclear. For example, in his witness statement he details that he received $16,000 from Dave Taylor by way of a loan.[6] However, later in his witness statement he states:

> 25. … I left in Aug 1985 and travelled to the United Kingdom where I worked in different jobs for about two years. I returned in July 1987. While I was away Dave had quit being a tradesman and had started a garbage removal business that he was operating from the property. I was keen to complete the house deal. While in the UK I had saved about $30,000, which I planned to use to help to purchase Dave's property. At the time Dave was still not interested in buying a property; however he [David Taylor] asked if I could repay the money that I had borrowed. By this time, if interest were added, I owed Dave about $24-$25,000. [emphasis added]
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> …
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> 27. Dave and I decided to finish the house deal with a lump sum payment. This was made of the original loan plus interest around $5,000 because I was supposed to assist in buying his place – a total of $30,000... [emphasis added]

38. In my view, it is unlikely that interest alone would increase a loan of $16,000 to $30,000 within seven years. That represents close to a 90% increase in a relatively short period of time.

39. By contrast, Dave Taylor's evidence is that he contributed $25,000 to the purchase price of the Property and that in late 1986 or early 1987, he sold his share in the Property to Kevin Taylor for $30,000. His evidence is corroborated by the Mother and by documentation, comprising a loan repayment book. I consider David Taylor's version of those events to be more likely.

40. Although, neither version has any direct influence on the matters for determination (as David Taylor asserts no interest in the Property), this example of conflicting evidence further demonstrates how the passage of time may influence one's recollection of past events.

41. Having regard to my comments above, I am of the view that the discussion that took place over the kitchen table, with all parties

[5] (2000) 49 NSW LR 315 at 318-319.
[6] Paragraph 9 and 22 of the witness statement of Kevin Taylor dated 9 December 2013.

present, represented a further consolidation of the Father's ideas, leading to the proposal that was eventually agreed upon or acted upon.

42. Therefore, I find that the $15,000 represents a contribution to the purchase price by the Parents. That also seems to be the more probable scenario as it is unlikely that the Parents would give away all of their equity in the Scott Avenue family home, leaving them without any substantial assets or security of tenure.

Was there an express trust

43. Mr Black of counsel, who appeared on behalf of the Parents, submitted that the evidence of the Mother, David Taylor and Barry Taylor establishes that there was an express oral agreement that Kevin Taylor (and now jointly with his wife) hold a 15/65th share of the Property on trust for the Parents. Mr Black referred me to a number of authorities in support of that proposition.

44. In *Rasmussen v Rasmussen*,[7] Coldrey J summarised the legal principles relating to constructive trusts as follows:

> In *Hohol v Hohol* [1981] VR 221 O'Bryan J identified three essential elements of a common intention constructive trust. In that case his Honour said at 225:
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> > From the cases I have referred to it can be said that the essential elements of the trust are, first, that the parties formed a common intention as to the ownership of the beneficial interest. This will usually be formed at the time of the transaction and may be inferred as a matter of fact from the words or conduct of the parties. Secondly, that the party claiming a beneficial interest must show that he, or she, has acted to his, or her, detriment. Thirdly, that it would be a fraud on the claimant for the other party to assert that the claimant had no beneficial interest in the property…

45. Leaving aside the issue of whether the purported trust fails by reason of it not being evidenced in writing,[8] I am of the view that the discussion between the parties and in particular, the discussion around the kitchen table was too imprecise and uncertain to establish an express trust.

46. In *Bloch v Bloch & Anor*,[9] the High Court considered whether a conversation between a father and son relating to the purchase of an investment property could be construed as giving rise to a constructive trust. The facts in *Bloch v Bloch* have some similarity with the present facts. In that case, the father suggested that he and his son purchase an investment property, to be partly financed by the proceeds of sale of a property owned by the Father, partly funded by cash contributions and partly funded by a mortgage loan. The property was purchased in the son's name because, as the father said 'I wanted him secure so I could

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[7] [1995] 1 VR 613 at 615.
[8] Section 53(1)(b) *Property law Act 1958*.
[9] (1981) 37 ALR 55.

not cheat and sell the flats'. The arrangement was that whatever the parties had contributed, that was what they would receive from the proceeds of sale when re-sold. After the property was re-sold, the son refused to acknowledge that the father had any interest in the property. It was argued on behalf of the father, that an express trust had been established based on the conversation between the parties. The High Court did not accept an express trust had been established:

> This conversation must be seen in its context. It was directed entirely to the future, there being no particular property in contemplation, and no discussion as to the person or persons to whom the conveyance would be taken. It was some months after the appellant had left the country that his father found and purchased the flats in Gresham Street. It was the father's decision to put the property in the son's name because "I wanted him secure so I could not cheat him and sell the flats". While it is true that no particular form is necessary for the creation of an express trust, the intention of the settlor to create a trust must be explicit. In every case it is a question of fact for the court to determine whether an intention to create a trust is sufficiently evinced...
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> His Honour decided that the circumstances were such to give rise to a resulting trust. He had already found the presumption of advancement to be rebutted, and no criticism is offered of that finding.
>
> With respect, I do not think that his Honour's reasoning can be faulted in any way. The circumstances surrounding the acquisition of the flats do not yield with sufficient certainty the expression of an intention to create a trust.[10]

47. In the present case, I am not satisfied that there was enough clarity to the conversation around the kitchen table in order to create an express trust. In particular, there is no direct evidence that Kevin Taylor even agreed to what was discussed around the kitchen table. Moreover, his prior telephone conversation with the Father is at odds with what was discussed around the kitchen table. In my opinion, it is uncertain whether Kevin Taylor expressly agreed that his Parents were to hold an <u>undisclosed</u> proportionate share of the Property upon purchase, sufficient to establish the existence of an express trust.

Was there a resulting trust?

48. Mr Black submitted that an alternative analysis was that Kevin Taylor and his wife held a 15/65th share of the Property on resulting trust for the Parents. Mr Black referred to the judgment Gibbs CJ in *Delahunt v Carmody*,[11] where his Honour stated:

> When a purchase is made in the name of one or two or more persons who contributed to the purchase price, and the relationship between the

[10] Ibid at 59-60.
[11] (1986) 68 ALR 253 at 257.

> parties does not give rise to a presumption of advancement, the property will be held on a resulting trust for the person to pay the price. Quite clearly, where the contributions to the purchase price had been made in unequal shares the property will be held on a resulting trust for the contributors as tenants in common in proportion to the amounts which each contributed: *Caverley v Green* (1984) 155 CLR 242 at 246-7, 258; 56 ALR 483.

49. Mr Black submitted that there was clear evidence that the presumption of advancement was displaced in the present case. For the reasons which I have already outlined, I accept that to be the case. In particular, I have already found that the contribution of $15,000 made by the Parents was not intended to be a gift to Kevin Taylor, despite what may have been said by the Father prior to the meeting around the kitchen table. Moreover, as pointed out by Mr Black, many of the uncontested facts elicited in this proceeding clearly lead to an inference that the $15,000 was not intended as an advancement:

    (a) the written contract of sale originally named the Father as purchaser;

    (b) the Parents lived continuously in the Property from the time of purchase until 2011;

    (c) the entire proceeds of the Scott Avenue family home were applied to the purchase of the Property;

    (d) the Scott Avenue family home represented almost all of the Parent's assets;

    (e) the Property was integral to the Parent's business venture; and

    (f) the Parents ultimately moved into the Bungalow, with a separate driveway, separately metered electricity and fenced off portion of land, roughly equivalent to their commensurate claimed interest.

50. In addition to the above, I note Barry Taylor's evidence that his Father had told him words to the effect that the Property was to be registered in one person's name in order to be eligible for the Home Savings Grant. In my view, that may well have been a motivating factor to register the title in the name of Kevin Taylor as sole proprietor.

51. All of these factors, together with the evidence of the Mother, David Taylor and Barry Taylor, lead me to conclude that the $15,000 contribution was never intended as an advancement.

52. Adopting the expression of Wilson J in *Bloch and Bloch* cited above, I am of the opinion the facts in this case *present a classic illustration of the creation of a resulting trust*:

> On the other hand, the facts present a classic illustration of the creation of a resulting trust. The property was conveyed into the name of the son, but the father having contributed part of the purchase price in

> circumstances which rebutted the presumption that the contribution was intended to advance or benefit the son. The contribution was not a gift. It was not a loan. The inference that arises that the father intended the son to hold the property in trust for him in a proportion corresponding to the proportion of the purchase price which was contributed by him…[12]

53. Accordingly, I find that a resulting trust arose commensurate with the Parent's $15,000 contribution to the purchase price of the Property. In that respect, the Parents only claim a proportionate beneficial interest based on a contract price of $65,000. Kevin Taylor disputes that the purchase price was $65,000 and refers to the written contract which expressly states that the purchase price is $55,000.

54. In my view, it is unnecessary to decide whether the contract price was $65,000 or $55,000 given that the Parents only claim 15/65th of an interest in the Property.

55. Accordingly, I find that the parties' respective interests in the Property should be adjusted such that the Parents and the Respondents each hold the Property as tenants in common in the following proportions:

    (a) The Parents as to a 15/65th share; and

    (b) The Respondents as to a 50/65th share (as joint tenants).

56. In passing, I note that the Second Respondent also gave evidence in this proceeding. Although, I have not made reference to her evidence in these *Reasons*; that does not mean that I have not considered what she has said. However, I note that she did not have any direct involvement in the events concerning the purchase of the Property, given that she first met Kevin Taylor approximately 12 years after that had occurred. In that sense, her evidence concerning that period of time essentially comprises what she understood from Kevin Taylor. Therefore, I do not consider her indirect evidence to be as probative as the evidence of those persons who had direct knowledge of what transpired.

57. Although the relief sought by the Parents is for an order that the Property be sold, no submissions were made as to the when the Property is to be sold, the mode of sale or other relevant factors to the proposed sale. Therefore, I will direct the principal registrar to list this proceeding for a further directions hearing at which time I will hear submissions as to the final form of orders to be made, having regard to my findings.

SENIOR MEMBER E. RIEGLER

[12] (1981) 37 ALR 55 at 60.