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CIRCLE OF FUNDS

The goal of an effective fraudulent debtor is to hide his assets; the more ways he hides them, the better. One of the usual means is by way of a hidden trust. Another is to transfer funds in a circle, pretending something happened when it did not. Both of these methods were employed in Haaksma v. Haaksma, a 2008 decision of the Ontario Superior Court of Justice.

Divorce

Husband was the loser in a bitter matrimonial action, resulting in a judgment against him of about \$925,000. Three months before the trial, he submitted an offer to purchase a new home for himself and his new female companion. The offer was in the name of husband, in trust for husband's brother and sister. The purchase closed just after the completion of the trial, but before the decision was rendered; brother and sister took title without mention of a trust.

Wife knew that the house was in City A, but that brother and sister lived in Cities B and C respectively. She knew that something was rotten in the state of husband's penury and sued husband, brother, and sister for a declaration that the house was fraudulently registered in the names of brother and sister. Not to be outdone, husband's companion sought, and was allowed, to be added as a party to the action; she claimed that the house

was really her house because she paid for most, if not all, of it.

Cave

By the time of trial, brother and sister had given up the fight. They then testified for the wife and their testimony was damning.

According to brother, husband had told him that husband wanted him to hold the house in trust for their mother's estate. Husband then gave the brother \$50,000 and brother paid \$50,000 to husband's lawyer to apply to the purchase of the house. Before closing, brother signed documents at the offices of husband's lawyer, documents that he did not read and that were not explained to him. After wife sued, brother attended the offices of another of husband's lawyers and signed documents that he did not read and that were not explained to him. Brother recalled no discussion about companion or a trust agreement, never lived in the house, and never paid anything towards its upkeep.

According to sister, husband gave her \$25,000, which she then paid to husband's lawyer. She signed documents at the lawyer's office, none of which she read or understood. She never made any payments on the mortgage, never saw the deed, and never saw a reporting letter or bill for legal services. She recalled no discussion about any interest that companion might have

had in the house. She signed a declaration of trust, after she was sued, dealing with an interest that companion may have had in the house, but claimed that she signed the document under duress.

Documents

Husband and companion produced a declaration of trust. This declaration, backdated to the day before closing, indicated that brother and sister owned the house in trust for husband and companion in percentages that were left blank.

Companion testified that she had paid \$90,000 towards the purchase: \$25,000 from the sale of her condominium, \$55,000 from her mother, and \$10,000 from her daughter. The only document she produced in support of this testimony was her mother's bank book, which showed a \$55,000 withdrawal shortly before closing.

Contradictions

Husband had stated in an affidavit and in his statement of defence that the \$75,000 he gave to his siblings was the repayment of his debt to their mother's estate. The debt was \$48,000, he said, but was \$75,000 after interest. At trial, he stated that the \$50,000 he gave to his brother came from husband's corporation and the \$25,000 he gave to his sister came from a bridge loan. He stated that his own statement of defence was false and blamed his then lawyer. His brother and sister testified that husband had repaid the debt to their mother's

estate 5 years earlier.

Husband stated that his corporation moved into the house on closing and that, 6 months later, husband and companion moved in to join his corporation. Further, husband's corporation should have been the beneficiary in the trust agreement, not he. Stop laughing.

Husband stated, contrary to his siblings' testimony, that the trust agreement had already been signed when the judgment in the matrimonial action was handed down.

Finally, husband stated that, ultimately, companion paid all of the purchase price and the subsequent mortgage payments. Companion, however, stated that she could not afford the mortgage payments of \$4,400 per month and that husband gave her money towards them.

Companion's statement of defence stated that, aside from her mother's gift of \$55,000, companion received \$75,000 as a loan from the estate of husband's mother. She had signed a back-dated promissory note to the estate 10 months after closing.

Finally, companion's statement of defence stated that the house was put in the name of brother and sister because husband wanted to protect the house in case he lost the matrimonial action.

Hammer

The judge had no problem holding that the transfer of the house into the names of brother and sister was fraudulent. Its very purpose was to ensure that husband had nothing in his name that wife could seize. The

badges of fraud were legion and we have already mentioned most of them.

The only real issue for the judge was what to make of companion's claim to an interest in the house. He found that companion had invested \$55,000, but disregarded everything else that she claimed because she provided no proof of her assertions and what she did say was contradicted by other evidence.

If companion had an interest in the house, it would have arisen by virtue of a resulting trust. A resulting trust, which is a creation of equity, arises when a person receives a contribution towards property without consideration; that person holds the property in trust for the payor, at least to the extent of the payment.

However, live by the

sword; die by the sword. As a fundamental rule, a person seeking an equitable remedy must come to court with clean hands. The judge stated, "*Not only was she aware of the fraudulent purpose in setting up the transaction in the way it was structured, she was a willing participant in it. Furthermore, she participated in falsely pleading facts and signing backdated documents in a clumsy attempt to retroactively alter the effect of the transaction, in order to make it appear that she was the sole beneficial owner. She has given evidence before me under oath in an attempt to persuade me that she is, in fact, the sole beneficial owner of the property. That evidence was false.*"

The judge held that the companion's hands were not clean and refused to assist her. The judge therefore allowed wife's action in full.

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