

COURT OF APPEAL FOR ONTARIO

CITATION: Karatzoglou v. Commisso, 2023 ONCA 738

DATE: 20231108

DOCKET: COA-23-CV-0085

Gillese, Benotto and Trotter JJ.A.

BETWEEN

Philip Karatzoglou

Applicant (Respondent)

and

Rosetta Commisso

Respondent (Appellant)

and

Evangelia Karatzoglou

Respondent (Respondent)

Elliot Birnboim and Hailey Corrigan, for the appellant

Jared Teitel, for the respondent, Evangelia Karatzoglou

Jerrod Grossman, for the respondent, Philip Karatzoglou<sup>1</sup>

Heard: September 8, 2023

On appeal from the order of Justice Joseph Di Luca of the Superior Court of Justice, dated January 3, 2023, with reasons reported at 2023 ONSC 58.

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<sup>1</sup> Mr. Grossman appeared but made no written or oral submissions on behalf of the respondent, Philip Karatzoglou.

**Benotto J.A.:**

[1] The appellant was involved in divorce proceedings. She added her mother-in-law to the proceedings, claiming that her mother-in-law held two properties in trust for her spouse that should be included in his net family property and subject to equalization. The motion judge granted partial summary judgment dismissing the claims against the mother-in-law. The appellant appeals this decision. For the reasons that follow, I would dismiss the appeal.

**A. BACKGROUND**

[2] The appellant, Rosetta Commisso, and the respondent, Philip Karatzoglou, are former spouses. Evangelia “Lisa” Karatzoglou, is Philip’s mother.<sup>2</sup>

[3] Rosetta and Philip were married in 1997 and separated in 2014. They have one son, Lucas, who is now an adult. Philip started divorce proceedings in 2017. In turn, Rosetta claimed support and equalization of property from Philip. Neither Rosetta nor Philip had title to property, but Rosetta brought a claim against Lisa, alleging that she held two properties in trust for Philip. The two properties were known as “Rainbow Valley,” which Rosetta claimed was the matrimonial home, and “Bullock Drive” where Philip’s business was located. Rosetta claimed that the

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<sup>2</sup> As did the motion judge, for ease of reference, I refer to the parties using their first names.

value of these properties should be included in Philip's net family property and therefore subject to equalization.

**(1) The Rainbow Valley Property**

[4] Lisa and her late husband, Christos, emigrated from Greece to Canada in the 1960s. Lisa was a schoolteacher and Christos ran a car repair shop. They had two children, Philip and his older brother Bruce. They worked hard and saved money for investments.

[5] In 2004, Lisa and Christos purchased Rainbow Valley for \$230,999.00 and registered title to it in both of their names. It was not their principal residence. At the time, Philip and Rosetta were living in subsidized housing, unable to purchase a home. At some point, Lisa and Christos allowed Philip, Rosetta, and Lucas to live in the Rainbow Valley home, which Lisa and Christos would keep as an investment. Philip signed a rental agreement with Lisa and Christos (the "Lease"). Philip, Rosetta, and Lucas then moved in. The Lease provided that the premises "shall" only be occupied by Philip and Lucas, though Lisa acknowledges that she was aware that Rosetta would be living there too. Philip paid rent to Lisa and Christos, first \$1800 per month, then eventually \$2000 per month. The rent covered utilities, property taxes, insurance, and mortgage payments on the home. Lisa and Christos did not significantly profit from the rent. Christos died in 2006, and Lisa became the sole owner of the Rainbow Valley property.

[6] Rosetta moved out of the home in 2014, and Philip and Lucas continued to reside there until Lisa sold the home in 2021 for \$1,000,000.00. On the sale, she gifted \$503,246.47 to Philip as an advance on his inheritance. Philip used this money as a down payment on another home.

**(2) The Bullock Drive Property**

[7] In August 1990, Lisa and Christos purchased a business property on Bullock Drive. Philip was 15 at the time. It was here that Christos operated his car repair business, "Almost Racing." When he died, title to the property passed solely to Lisa and Philip then took over running the car repair business. Philip does not pay rent to Lisa for occupying the property, though he pays property taxes, maintenance fees, and condo shop fees.

**B. SUMMARY JUDGMENT**

[8] By 2022, five years after it was started, this proceeding had not reached trial. The case management judge directed that a summary judgment motion be heard on a peremptory basis to address Rosetta's claim that Lisa held title to both properties in trust for Philip.

[9] The motion judge concluded that there was no evidence of a trust of any sort (express, resulting, or constructive) with respect to either property. In any event, he also concluded that Rosetta lacked standing to pursue the trust claims against Lisa. He dismissed Rosetta's claims against Lisa.

[10] The motion judge adopted the reasoning in *Morris v. Nicolaidis*, 2021 ONSC 2957, at para. 38, where McGee J. states:

A claim that a third person holds property in trust for a non-titled spouse, or that a non-titled spouse has a beneficial interest in property, or a monetary claim arising from the acquisition, maintenance or use of that property can only arise from the personal, direct deprivation of the non-titled spouse. An equalization claim is, at best, an indirect legal interest. It is therefore insufficient to confer standing to a person to make a trust claim on behalf of a non-titled spouse or former spouse.

**C. ISSUE**

[11] The sole issue on this appeal is whether the motion judge erred by granting partial summary judgment.

**D. ANALYSIS**

[12] The appellant submits that the motion judge erred in law by determining that this was a suitable case for summary judgment because there was inconsistent evidence concerning beneficial ownership, which would require a trial to resolve. She also submits that it was an error to grant partial summary judgment.

[13] I do not accept these submissions.

[14] I conclude that the appeal must fail for two reasons. Each reason independently is fatal to the appeal. First, the motion judge found that there was no evidence of Philip's beneficial ownership of either the Rainbow Valley property or the Bullock Drive property. The motion judge was clearly correct in his

conclusion that there was simply no evidence before the court of any express trust agreement in relation to either property. The motion judge was also clearly correct that there was no need for a trial on the issues of resulting trust or constructive trust. No financial contribution was ever made to the purchase price of either property. And neither Rosetta nor Philip made any other form of significant contribution to the properties that could lead to a finding of unjust enrichment and support a remedy of constructive trust. These findings are solidly based in the evidence. Second, a person does not have standing to advance a trust claim on behalf of a former spouse for equalization purposes. Consequently, summary judgment, as authorized by the *Family Law Rules*, O. Reg. 114/99, r. 16, was appropriate.

**(1) There is no evidence of Philip's beneficial ownership of either property**

**(a) Rainbow Valley Property**

[15] The motion judge found that Rosetta did not establish that she or Philip made any contribution to the purchase price of Rainbow Valley property. He also found that there was no evidence of contributions to the property's increase in value that could support a finding of unjust enrichment and remedy of constructive trust. When the home was purchased, Philip and Rosetta were living in subsidized housing and subsisting on Philip's modest income. They could not afford to

purchase a home. The appellant submits that Lisa originally stated that Philip contributed to the downpayment but then corrected this to say there was no financial contribution. The motion judge was aware of both statements. He concluded that there was no corroborating evidence to substantiate the claim of any financial contribution. He stated that “ultimately, the whole of the evidence suggests that there was simply no way for Phil and Rosa to own this home on their own.” The motion judge’s conclusion that there was no financial contribution to the purchase price of the property was entirely supported by the evidence and is entitled to deference.

[16] There was similarly no evidence that could give rise to a constructive trust interest. To establish unjust enrichment and a potential constructive trust remedy, Rosetta would have to establish three things: (1) an enrichment of, or benefit to, Lisa; (2) a corresponding deprivation to Rosa or Philip, and (3) the absence of a juristic reason for the enrichments, see *Kerr v. Baranow*, 2011 SCC 10 at paras. 36-37, and *Martin v. Sansome*, 2014 ONCA 14 at para. 52. Rosetta’s claim for unjust enrichment was entirely based on the fact that she contributed furniture, some uncertain amount of money for “renovations”, cared for Lucas while Phil was able to work, and undertook ordinary domestic duties around the house. He correctly concluded that none of these claims amounted to an enrichment of or benefit to Lisa, who had no use of the home during this time.

[17] Rosetta submits that the fact that the Lease was in only Philip's name and did not refer to her discloses an animus on Lisa's part. I do not accept that this discloses animus. However, whether there was animus to Rosetta is irrelevant. It is not connected to the issue of beneficial interest in the properties. There was no evidence of contribution, financial or otherwise, by either Philip or Rosetta to the properties that could give rise to Philip's beneficial interest.

[18] Rosetta further submits that the fact that Lisa gave Philip some of the money from the eventual sale of Rainbow Valley suggests that it was intended to be his all along. The gift to Philip was approximately seven years after his separation from Rosetta. The motion judge accepted the evidence that the money was a gift to her son against a future inheritance. This conclusion was further supported by the fact that Lisa had arranged to leave her current home to her other son on her death. Under the *Family Law Act*, R.S.O. 1990, c. F.3 (*FLA*), s. 4(2)1, gifts and inheritances acquired after the date of marriage are excluded from net family property and from equalization. Rosetta would have no entitlement to share in the value of such a gift.

[19] I note in passing that the appellant continually referred to Rainbow Valley as a matrimonial home. The property was not a matrimonial home because neither spouse held an interest in it at the time of separation: *FLA*, s. 18(1).

**(b) Bullock Drive Property**

[20] There was no evidence to substantiate a claim by Rosetta against Lisa in relation to the Bullock Drive property. Christos and Lisa purchased this property when Philip was 15 years old. Christos operated his car repair business on the property until his death. Philip continued to operate the business after his father died. Philip now owns the business, and Lisa continues to own the property. The agreement between Philip and Lisa is that he pays the expenses of the premises directly (not through Lisa) in exchange for using the property. Philip explained that this was how Christos operated. Rosetta had no involvement with either the business or the property and has put forth no evidence of any contribution that would give rise to a trust interest.

[21] The appellant's submission that there were credibility issues requiring a trial fail in light of the lack of evidence supporting her claims.

**(2) Rosetta does not have standing**

[22] The motion judge concluded that Rosetta lacks standing to advance a trust claim on behalf of Philip. He commented that, although he was not bound by *Morris*, he found it persuasive and relied on it. He considered Rosetta's submission that *Morris* should be restricted to trust claims based on resulting or constructive trust principles and wrote, at para. 34, "I disagree. Regardless of whether the scope of *Morris* should be so restricted, this is simply not an express trust case."

[23] I agree with the motion judge that there was no evidence of an express trust. Furthermore, there is no reason to restrict the *Morris* principles as suggested by the appellant.

[24] In my view, *Morris* accurately sets out the law. A person does not have standing to advance a trust claim on behalf of a former spouse for equalization purposes. In so concluding, I adopt the reasoning of McGee J. in *Morris*, at paras. 32-33 and 36-40:

At the heart of this motion is an interesting question. Can a person advance a trust claim on behalf of a former spouse in order to increase that spouse's net family property and consequently, benefit the person's claim for, or defense to an equalization payment?

A claim for a constructive trust is a claim in equity that is privately held. It is not a public interest claim. The common law principle relating to private interest standing states that "one cannot sue upon an interest that one does not have." (Watson, McKay & McGowan, Ontario Civil Procedure, at §11 Standing to Sue).

...

Can an equalization claim create a direct personal legal interest that confers standing to make a trust claim on behalf of a spouse or a former spouse?

I find that it cannot. An equalization payment cannot change the titled or beneficial ownership of property between spouses. The equalization scheme in Ontario is not based upon a division of property, but rather, it recognizes a spouse's non-financial contributions to a marriage by equalizing the increase in value in each party's net family property between the date of marriage and the date of separation, subject to variation per section 5(6) of the *Family Law Act*.

A claim that a third person holds property in trust for a non-titled spouse, or that a non-titled spouse has a beneficial interest in property, or a monetary claim arising from the acquisition, maintenance or use of that property can only arise from the personal, direct deprivation of the non-titled spouse. An equalization claim is, at best, an indirect legal interest. It is therefore insufficient to confer standing to a person to make a trust claim on behalf of a non-titled spouse or former spouse.

Even trust claims between married persons are exceptional because "[i]n the vast majority of cases any unjust enrichment that arises as a result of the marriage will be fully addressed through the operation of the equalization provisions of the *Family Law Act*," see *Martin v. Sansome*, [2014 ONCA 14, 118 O.R. (3d) 522, at para. 64.] Writing for a unanimous court, Justice Hoy envisions in *Martin, supra*, that it will be a rare case in which monetary damages for unjust enrichment cannot be adequately addressed by an equalization payment; and in those cases, a variation of share per section 5(6) of the *Family Law Act*, should be invoked before consideration of a trust claim.

Although not in evidence here, there may be a situation in which a meritorious trust claim is not advanced by a non-titled spouse. In such a case, the other spouse cannot step into the non-titled spouse's shoes and advance the claim himself because he has no direct personal legal interest in the trust claim; but he could seek to vary the equalization between he and the non-titled spouse if the resulting payment is found to be unconscionable per section 5(6) of the *Family Law Act*.

[25] In summary, a non-titled spouse cannot assert a trust claim against a third party on behalf of a spouse for equalization purposes.

**(3) Summary judgment was appropriate**

[26] The appellant submits that it was inappropriate to order partial summary judgment. She relies primarily on civil law cases.

[27] This was a family law action, and the *Family Law Rules*, O.Reg. 114/99, apply. By the time the motion was heard, the parties had been in litigation for six years.<sup>3</sup> Rule 2(5) of the *Family Law Rules* imposes a duty on the court to manage cases, having regard to the objective in r. 2(3) to save time and expense. Rule 17(8) authorizes the case management judge to give directions to narrow the issues. The case management judge scheduled the motion for summary judgment to address Rosetta's claims against Lisa. This was the appropriate procedure.

[28] The appellant further submits that there is a risk of inconsistent findings by the trial judge on her claims for support. I would not give effect to this submission and fail to see how her continuing claim for support would risk an inconsistent finding.

[29] Finally, the appellant submits that the motion judge erred in his application of the *Statute of Frauds*, R.S.O. 1990, c. S.19. It is not necessary to address this

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<sup>3</sup> The case management judge stated that the matter has been outstanding for 1757 days when she directed the summary judgment motion.

issue, and nothing in these reasons is to be taken as approving this aspect of the motion judge's reasons.

**E. CONCLUSION**

[30] For these reasons, I would dismiss the appeal.

[31] There are currently \$5,000 in costs owing from a previous order of this court. In addition to those costs, I would order costs of the appeal in the agreed upon amount of \$15,000 inclusive of disbursements and HST. The appellant has paid \$15,000 into this court pursuant to a security for costs order related to this appeal. I would require that the costs paid into court be released to the respondent forthwith.

Released: November 8, 2023 "E.E.G"

"M.L. Benotto J.A."  
"I agree. E.E. Gillese J.A."  
"I agree. Gary Trotter J.A."