CESTNICK

TAX MATTERS

When helping your children financially, it pays to leave a paper trail behind

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Life is expensive and becoming more so by the day – particularly when it comes to buying a home. And despite the promise of political parties – as we head toward the election – to make home ownership and life in general more affordable, the solutions are not simple.

And so, it's increasingly common to see parents helping their children financially if they can. The problem? When parents are gone, the kids can end up battling each other over who got what when Mom and Dad were around. A recent B.C. court case, Cadwell Estate v. Martin 2021 BCSC 1089, serves as a good reminder of what can go wrong, and how to avoid problems.

THE STORY

Bill and Ruth Cadwell were a couple who had five children – four daughters and a son. It was 2004 when the Cadwells paid $170,000 to one of their daughters and her husband (the Martins). The younger couple used the funds to help purchase and construct a new home, which they modified to create a basement suite for Bill and Ruth to live in. The Cadwells and Martins moved into the new home together in the fall of 2005.

Bill had been quite ill at the time, and he had wanted to move in with one of his daughters to ensure that Ruth would receive the help she needed if he was gone. It was in 2007 that Bill passed away. Ruth continued to live in the suite for another 12 years until she died in 2019.

It's sad fact that the money advanced to the Martins had created quite a bit of friction in the family over the years, and ultimately led to litigation after Ruth passed away.

THE ARGUMENTS

The big dispute was over the nature of the $170,000. The executor of Ruth's estate argued that the $170,000 should be part of the estate (and therefore should be available for distribution to the beneficiaries) in that the amount was an equity investment made by Bill and Ruth in the home, or that a “resulting trust” in the property was created.

As an aside, a resulting trust arises where legal title may be in one person’s name, but the courts presume there was a decision to create a trust so that the equitable or beneficial ownership belongs to another person.

In the event that the court didn’t buy this argument, Ruth’s executor claimed, in the alternative, in unjust enrichment, or for repayment of the amount as a loan, with interest. The Martins insisted that the $170,000 was a loan and that it was paid back (supposedly at an agreed rate of $1,200 a month for “notional rent,” which was not evidently paid in cash by the Cadwells to them) – or alternatively that the loan claim is statute-barred – in other words, too much time has passed – and is no longer collectable.

What’s clear from the evidence is that there was no written agreement or consensus as to the terms surrounding the $170,000. The Martins had prepared a memorandum in November, 2004, that proposed some terms, but there was no discussion with the Cadwells about it. Ruth had apparently disagreed with the terms but didn’t discuss this with the Martins or present a counterproposal.

In the end, the judge ruled that the $170,000 was not an equity investment, and no resulting trust was created. The judge also concluded that there was no unjust enrichment since the Cadwells received good value over time for the amount they paid. The judge said, “I find that the Cadwells intended the payment to be a loan, and that the parties agreed it was such. The issue is whether the Martins have established the repayment agreement they assert. I am not persuaded that the Cadwells ever made any such agreement.” So, the judge concluded that the amount was a demand loan and that it was not repaid. But he also concluded that, under the Limitation Act in force at the time, enforcement of the loan was statute-barred as of Jan. 31, 2010, and could no longer be collected.

THE MORAL

The saddest part of this story is that family relationships have been hurt. Like so many families, the Cadwells were content to sort out the terms of their agreement with the Martins at a later time. This is common where there’s a trusting family relationship. The problem? These agreements are often poorly documented – or never documented at all.

I don’t think it’s a fair conclusion that parents should avoid helping their kids for fear that things can go wrong. But if you’re going to transfer cash or other assets to your kids, make sure you’re clear on whether it’s a gift or loan – and document this properly and store it with your will. If it’s a loan, visit a lawyer to have a proper loan agreement prepared.

Court Case:

https://www.bccourts.ca/jdb-txt/sc/21/10/2021BCSC1089.htm

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