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13 October 2022

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Accountant's breathe a sigh of relief after High Court decision

ATO loses important asset protection case

Brisbane — 13 October 2022 — Asset protection is a vital tool for all business and property owners. With increasing litigation and the expense of defending a suit, whether negligence or regulatory, and perhaps with insolvency on the door, good asset protection strategies can work to protect family wealth.

“For a long time, accountants have been the driver of asset protection strategies using discretionary trusts or placing assets in the risk-free spouse’s name.” said Grant Abbott, Chairman of the Succession, Asset Protection and Estate Planning Advisers Association. “This was turned on its head with the Full Federal Court decision in *FCT v Bosanac* when the Court declared that although title was in Mrs Bosanac’s name really she was holding 50% on trust for Mr Bosanac. No doubt the Commissioner and insolvency practitioners were happy with the decision.”

The brief facts of the case was that a \$4.5M home in Dalkeith Perth was purchased in 2006 with money from the joint account of the Bosanacs and a joint \$4.5M loan. The home was placed in the name of Mrs Bosanac with her gross income of \$56,900 and Mr Bosanac using the property as security for margin equities loans in his name.

On 12 October the High Court handed down its decision on appeal by Mrs Bosanac - *Bosanac v Commissioner of Taxation*[2022] HCA 34 with Mrs Bosanac winning.

Chair Abbott says “This is a big case because the Full Federal Court used long held equity principles including resulting trusts and advancement to make it’s decision. But the High Court did not buy into using 16th century ideas for modern finance and business. It is a landmark decision and very welcome.”

Importantly the High Court stated that “the finding by the primary judge that Mr Bosanac was a sophisticated businessman who must have appreciated the significance of property being held in Ms Bosanac's name is not unimportant. His Honour was correct to

conclude that that understanding did not support an inference that Mr Bosanac intended to have a beneficial interest in the Dalkeith property.”

SAPEPAA Chair Abbott notes “This is a seminal asset protection case and all our SAPEPAA advisers will have a chance to pull it apart in detail at the upcoming Fiji conference. It is not all plain sailing and a lot depends on structuring asset protection properly from the get go. But I am sure the Commissioner will take it on the chin and a lot of accountants who have given similar advice are breathing a collective sigh of relief.”

For more information, press only:

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