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Constructive Trusts in Life Insurance Cases: Supreme Court to Clarify Remedies for Disappointed Beneficiary Case

“Disappointed beneficiary” claims over life insurance proceeds have resulted in a complex body of case law combining elements of family law, trusts and insurance law.

The split decision of the Court of Appeal in *Moore v Sweet* addressed whether a constructive trust should be imposed on life insurance proceeds for the benefit of the former beneficiary, but left some issues begging for further clarity. The recent grant of leave to appeal the decision to the Supreme Court is welcome, as the court will hopefully clarify two important issues:

- When should a prior agreement between the insured and former beneficiary prevail over a later designation of an irrevocable beneficiary under the *Insurance Act*; and can such an irrevocable beneficiary designation constitute a juristic reason for enrichment?
- Are remedial constructive trusts limited to unjust enrichment and wrongful acts, or can they also apply where good conscience requires the establishment of such a trust?

In *Moore v Sweet*, the dispute concerned entitlement to the proceeds of the life insurance policy of Lawrence Moore. Married to Mr. Moore for more than 20 years, Michelle Moore was the original beneficiary of that policy, with premiums being paid out of their joint bank account. On separation, the couple agreed that Ms. Moore would continue to pay the premiums on the policy, and ultimately be entitled to the proceeds. While Ms. Moore continued to pay the premiums, Mr. Moore later irrevocably designated his new partner Risa Sweet as the beneficiary of the policy. After Mr. Moore’s death, Ms. Moore brought an action for proceeds of the policy.

The applications judge ruled in favour of Ms. Moore, finding that the couple’s oral agreement constituted an equitable assignment of Mr. Moore’s interest in the policy, in return for payment of the premiums. The court held that the proceeds were held in trust for Ms. Moore on the basis of unjust enrichment.

The Court of Appeal overturned this ruling in a split decision. The judges all agreed that the concept of equitable assignment could not be applied to the dispute, as it was neither pleaded nor argued.

The majority held that there was no unjust enrichment. While there had been enrichment and deprivation, the irrevocable designation of Ms. Sweet as beneficiary of the policy provided a juristic reason for that enrichment. The *Insurance Act* protected the later beneficiary designation, and the court noted that irrevocable designations are “normally unassailable”. Furthermore, the oral agreement did not stipulate that Ms. Moore’s designation could not be revoked. Consequently, the majority ruled against Ms. Moore.

In dissent, Lauwers J.A. disagreed that the irrevocable designation constituted a juristic reason for the enrichment, holding that courts may override a beneficiary designation on the basis of a prior contract. The provisions of the *Insurance Act* cited by the majority assumed that the deceased had the right to irrevocably designate a new beneficiary in the first place. However, in coming to a binding agreement with Ms. Moore, Mr. Moore had relinquished his ability to designate another beneficiary.

The majority also dismissed the argument that a remedial constructive trust should apply in the circumstances. It held that the circumstances did not support establishment of such a trust and there was no need to resolve the debate about whether the Supreme Court of Canada’s decision of *Soulos v Korkontzilas* had restricted a remedial constructive trust to incidences of unjust enrichment and wrongful acts. Considering the needs of the parties, the majority noted that although Ms. Moore had paid the premiums, Ms. Sweet was in dire financial need and had cared for the deceased in the last 13 years of his life. The majority did not feel that the equities strongly favoured either party.

In dissent, Lauwers J.A. held that the appeal squarely raised whether the Supreme Court intended in *Soulos* to confine the availability of remedial constructive trusts to instances of unjust enrichment and wrongful gains only. The judge held that *Soulos* also permitted for trusts “where good conscience otherwise demands it”, and that good conscience required imposition of a constructive trust in this case.

While the majority held that there was no equitable assignment, unjust enrichment, or remedial constructive trust, it did allow that Ms. Moore should recover all the premiums paid after her separation from Mr. Moore, in the amount of $7,000. The precise legal basis for this repayment is not clear, and one is struck that the court's decision appears to have been influenced overall by a perception of relative need and equities between the parties.

Ultimately, the decision raises many important issues which the Supreme Court will now fortunately grapple with.

With notes from Zachary Rosen