

MIRROR TRUSTS AND OCCUPATION ORDERS

Recently we have assisted a client who with their former spouse had mirror trusts. The family home was owned by the Trusts. The wife applied for an occupation order – an order granting her and the children sole occupation of the family home to the exclusion of the husband. Previous case law has indicated that an occupation order cannot be obtained where the home is owned by mirror trusts. In this case though an occupation order was made in favour of the wife. This granting of an occupation order for the wife, when the home is owned in fact by mirror trusts has turned the law on its head. A range of issues were identified in the judgment as having a bearing on the outcome of the case. These include a written resolution providing for the parties to have the right to occupy the original home which was then sold. The right to occupy was held to have been transferred to the new home in which the parties lived, despite their having been no written resolution about the right to occupy that property. The factors of the existence of a partnership between the two trusts, the effective control held by each party in their respective trust, the fact that each party was a beneficiary of each other's trust and the trustee's decision after separation were also seen as relevant. Shortly after this decision was issued a further Family Court decision was delivered. In that case, where the property was owned by a family trust, the application for an occupation order was dismissed. This was because on the evidence, the applicant had failed to establish that she had any relationship property interest in the family trust.

It is clear that this area of the law is in a state of change and previously held assumptions about the inability to obtain an occupation order over trust owned property have been challenged. While in many cases it will be the wording of the particular trust deed which is relevant, it is worth noting that in some situations occupation orders can be obtained even when the home where the parties reside is owned by mirror trusts.

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