

No Paper, No Problem? Oral Trusts and Informal Property Arrangements in Ontario

Commercial Real Estate | Trusts

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Informal property arrangements between family members – such as one person holding title because a relative cannot qualify for a mortgage – are more common than many people think. These deals often rest on verbal understandings. While they may work smoothly for years, disputes can arise when circumstances change.

In *Meehan v Swartzentruber* [1], the Ontario Superior Court of Justice addressed exactly this scenario – and its decision offers important guidance on how courts may protect informal trust arrangements over real property, even without a written agreement.

The Facts

In 2012, Mr. Meehan wanted to buy a residential property but could not qualify for a mortgage. He asked his brother-in-law, Mr. Swartzentruber, to take title on his behalf. The agreement of purchase and sale was amended to show Mr. Swartzentruber as the buyer. A \$47,000 down payment was provided by Mr. Meehan's parents and presented to the lender as a "gift" to Mr. Swartzentruber, who also signed on as mortgagor.

Mr. Meehan lived in the home and paid all ongoing costs (mortgage payments, taxes, insurance, utilities, etc.) and made improvements at his own expense.

In 2017, following the death of Mr. Swartzentruber's wife (Mr. Meehan's sister), Mr. Swartzentruber no longer wished to hold title. The property was briefly transferred to friends of Mr. Meehan under a similar arrangement. In 2018, at Mr. Meehan's request, the property was transferred back to Mr. Swartzentruber, who this time funded the \$42,512.03 down payment himself, with an understanding that he would be repaid with interest.

To satisfy lender requirements, the parties signed a tenancy agreement portraying Mr. Meehan as a conventional tenant. However, Mr. Meehan continued to pay all property expenses – often exceeding the stated "rent" – and made substantial improvements without seeking permission. The parties' text messages in 2023 reflected ongoing discussions about transferring ownership to Mr. Meehan or his children. In August 2024, Mr. Swartzentruber reversed course, claiming sole ownership and announcing his intention to sell and keep the equity. Litigation followed.

The Court's Analysis

Mr. Meehan applied for a declaration that Mr. Swartzentruber held the property in trust for him. Justice R.B. Reid found that the facts during both periods of ownership – Mr. Meehan's payment of all costs, his improvements to the property, his continuous residence, and the parties' communications – strongly supported his claim to beneficial ownership.

The Court first considered whether a "bare trust" (a type of express trust) had been created. While the parties had capacity, shared a clear intention, and had identified the property and beneficiary, the arrangement failed on formalities: section 11 of Ontario's *Statute of Frauds* [2] requires that trusts in land be in writing, and the agreement here was purely oral.

The Court then turned to the doctrine of constructive trust – a trust imposed by law to give effect to the parties' intentions. Citing the Supreme Court of Canada in *Soulos v Korkontzilas* [3], Justice Reid explained that constructive trusts are not limited to cases of unjust enrichment. They also serve a "perfectionary" function: ensuring that stated intentions are fulfilled. Put simply, a constructive trust can hold people to their word.

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Crucially, the Court applied the principle that the *Statute of Frauds* cannot be used as an “instrument of fraud.” As the Supreme Court held in *Pahara v Pahara* [4], a person who accepts title knowing it is held in trust cannot later rely on the absence of writing to deny the trust and keep the property.

The Court declared a constructive trust: Mr. Meehan was the beneficial owner, entitled to conveyance on demand. However, the order was conditional – Mr. Meehan was required to reimburse Mr. Swartzentruber for the \$42,512.03 down payment plus interest at the rate earned on Mr. Swartzentruber’s investment portfolio since August 2018, as well as any other costs or debts arising from ownership. Having reached this conclusion, the Court found it unnecessary to consider Mr. Meehan’s alternative claim based on unjust enrichment.

Key Takeaways

This decision carries practical lessons for anyone involved in informal property arrangements. Verbal agreements about property ownership can be legally enforceable where one party has relied on them over many years. Courts may look beyond documentary formalities – such as tenancy agreements prepared for lender purposes – to the substance of the parties’ actual arrangement.

That said, constructive trusts are not automatic. The party claiming beneficial ownership must show credible evidence of the original common understanding and that the titleholder knew at the time of conveyance that the property was to be held in trust. The absence of written documentation increases risk – what begins as a family favour can become a contested legal dispute. A written trust agreement recording each party’s rights and obligations remains the strongest protection. A PDF version is available for download [here](#).

[1] *Meehan v Swartzentruber*, 2026 ONSC 736.

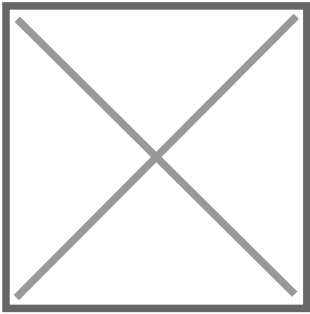
[2] *Statute of Frauds*, RSO 1990, c S-19, s 11.

[3] *Soulos v Korkontzilas*, [1997] 2 SCR 217.

[4] *Pahara v Pahara*, [1946] SCR 89.

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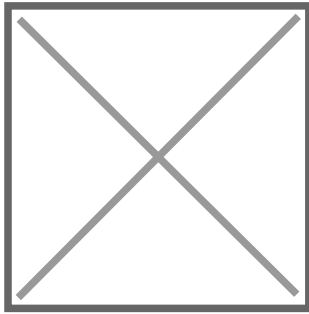


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