

In determining whether a debt is a "marital debt" for equitable distribution purposes, a loan obtained by one spouse for the benefit of both may be held to be a marital debt even if the other spouse knew nothing of the loan beforehand. That is what occurred in a recent case decided by the Virginia Court of Appeals.

In that case, the husband had unilaterally borrowed a sum of money from his family's trust to pay off marital loans on real estate. Although he did not consult his wife beforehand, husband did use the money for the purpose of paying off marital debt, which the wife acknowledged. However, the trial court agreed with the wife that the loan was husband's personal debt because she was not obligated on it or agreed to it.

The Court of Appeals disagreed with the trial court's ruling. In its review of the case, the Court of Appeals found that the trial court erred when it failed to consider the presumption that debt incurred during the marriage is marital debt. Combined with wife's concession, the trial court incorrectly classified the loan as husband's separate debt. Since the \$90,000 that husband borrowed from the family trust was used to repay marital expenses, the loan benefited both husband and wife and therefore is a marital debt.