Lexis®Nexis Case Summaries

Re Wotherspoon (in bankruptcy); Hinton (as trustee in bankruptcy of John Wotherspoon) v Wotherspoon

[2022] EWHC 2083 (Ch), [2022] All ER (D) 67 (Aug)

The Chancery Division dismissed the claim, brought by the Trustee in Bankruptcy of the respondent's husband, which alleged that s 423 of the Insolvency Act 1986 (the 1986 Act) had applied where: (i) in order to put the home beyond the reach of creditors, the respondent's husband had transferred his half of the beneficial interest in the matrimonial home to the respondent in 2008, with a restriction that he had a life-time right to prevent disposition of the property (the restriction); or (ii) the husband had released the restriction for no consideration when the home was sold in 2013. In relation to the 2008 transfer, the court held that: (i) there was no evidence that the husband was or should have been concerned about his general financial position prior to the transfer; and (ii) at the time of the transfer, there was no specific creditor and insufficient evidence that the Revenue and Customs Commissioners may have become a creditor. As for the release of the restriction, the court held that it had not amounted to a transaction, for the purpose of s 423 of the 1986 Act, given that the husband's contractual right under the restriction had been a personal right and there had been no provision for consideration to be paid upon its exercise.

Catchwords

INSOLVENCY – TRANSACTIONS DEFRAUDING CREDITORS – TRANSFER OF BENEFICIAL INTEREST IN MATRIMONIAL HOME

Background

In September 1992, the respondent (JW) purchased a property (Strand House) in his sole name. In July 1993, he married his wife (GW), from which date she moved there and it became the matrimonial home.

In April 2001, the legal title of Strand House was transferred by JW into the joint names of himself and his wife. In addition, a Form 62 restriction (the original restriction) was registered against the title at Her Majesty's Land Registry. That form was usually used when parties held the beneficial interest of the property as tenants in common rather than as joint tenants, when it would not be needed.

In June 2008, the unencumbered, legal title of Strand House was transferred by JW and GW as joint owners into the sole name of GW. Two documents were executed for that purpose: (i) A TR1 transfer form, which did not refer to the beneficial ownership; and (ii) a side agreement (the side agreement) for a restriction that: 'No disposition (including a legal charge) of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by [JW] or his conveyancer' (the restriction). The original restriction was not removed.

From about February 2009, JW failed to pay his tax liabilities and subsequently breached a time to pay agreement he had entered into with HMRC on 24 March 2009.

In November 2013, JW was served with a statutory demand by HMRC for a sum of £1,846,587.45 of which £337,492.26 dated back to the 2009/10 tax year. Whilst (as alleged) JW remained an equal beneficial owner, Strand House was sold for £2m and the net proceeds used to purchase a property in Leatherhead (Crabapple Court) in GW's sole name and without an equivalent of the restriction. That was a sale at an undervalue, the market value being in the region of £2.2m.

In February 2014 HMRC presented a bankruptcy petition and, in June, JW was declared bankrupt. Creditors' claims in the bankruptcy totalled £1,965,161.69, of which HMRC claimed £1,932,420.48.

The appellant, who was JW's trustee in bankruptcy, commenced proceedings. The appellant contended that JW had remained a beneficial owner of Strand House at the date of its sale on 29 November 2013. As a result: (i) he had relinquished his interest to GW on sale for no consideration, which had been a transfer at an undervalue to which s 339 of the Insolvency Act 1986 (IA 1986) applied; or (ii) GW held JW's overreached share of the net proceeds on trust for him and had to account for those proceeds to the bankruptcy estate. Furthermore, the sale itself had been at an undervalue.

Alternatively, the trustee contended that GW had become the sole legal and beneficial owner of Strand House on 12 June 2008. If so, either: (i) it was to be inferred that JW had entered into the 2008 transfer with an aim of putting Strand House beyond the reach of creditors and IA 1986 s 423 applied; or (ii) JW had released the restriction for no consideration when Strand House had been sold in 2013 and IA 1986 s 339 applied.

Issues and decisions

(1) Whether GW had become the sole legal and beneficial owner of Strand House upon execution of the 2008 transfer.

On the evidence, JW's intention as implemented by his solicitors and as executed by him, had been to transfer his legal and beneficial interest in Strand House to GW. There was no room in the evidence for a suggestion that that transfer had been intended to leave the position as it had been, namely, that JW and GW had held Strand House on trust for themselves. The evidence also established that the restriction had not been intended to create any proprietary interest (see [37], [39] of the judgment).

As at 12 June 2008, JW had gifted his half share of the beneficial interest in Strand House to GW (see [42] of the judgment).

The June 2008 transfer did not leave open any route or reason for suggesting that the or a purpose of the 2008 transfer had been to fulfil a promise made on engagement that JW would transfer Strand House to GW once he could do so because the mortgage had been redeemed (see [46] of the judgment).

Hill v Spread Trustee Co Ltd [2006] All ER (D) 202 (May), [2007] 1 All ER 1106, [2006] EWCA Civ 542 considered

Feakins v Department for Environment Food and Rural Affairs [2007] BCC 54 considered

JSC BTA Bank v Ablyazov and another [2018] All ER (D) 125 (May), [2018] EWCA Civ 1176 considered

(2) Whether a claim could not be brought in respect of the 2008 transfer under s 339, 341 and/or 423 of the Insolvency Act 1986 (IA 1986).

A claim could not be brought in respect of the 2008 transfer under IA 1986 s 339 because that gift, although a transaction at an undervalue, had not been made at a relevant time applying the definition in IA 1986 s 341. IA 1986 s 423 did not apply to the 2008 transfer, because it had not been proved on the balance of probability that JW had entered into it for a prohibited purpose. IA 1986 s 339 did not apply to JW's decision pursuant to the restriction to consent to the disposition of Strand House in 2013 (see [127] of the judgment).

The application would be dismissed (see [127] of the judgment).

IRC v Hashmi [2002] All ER (D) 71 (May), [2002] 2 BCLC 489, [2002] EWCA Civ 981 considered

BTI 2014 LLC v Sequana SA and others; B.A.T. Industries plc v Sequana SA and another [2016] All ER (D) 96 (Jul), [2016] EWHC 1686 (Ch) considered

Judgment date
16 August 2022

Judge
Insolvency and Companies Court Judge Jones

Representation
Rowena Page (instructed by Charles Russell Speechlys) for the applicant.
Hugh Miall (instructed by Cadence Solicitors LLP) for GW.

This Digest was first published on Lexis®PSL and Lexis®Library.