Lexis®Nexis Case Summaries

Re Hussain – a bankrupt; Grant and another v Hussain and another

[2023] EWHC 493 (Ch), [2023] All ER (D) 51 (Apr)

The Chancery Division stayed an application by the joint trustees in bankruptcy of Mr H, in which they applied for the sale of the family home of Mr and Mrs H for the purposes of the bankruptcy, as 50% beneficial owners. The court held that the trustees had not proved on the balance of probability that the transaction had been at an undervalue. Mrs H's oral evidence that there had been an agreement at the date of the letter resulting in good consideration for the release could not be rejected.

Catchwords

BANKRUPTCY – TRUSTEE IN BANKRUPTCY – LETTER OF SEVERANCE

Background

The joint trustees in bankruptcy of Mr H (the trustees) applied for the sale of the family home of Mr and Mrs H for the purposes of the bankruptcy, as 50% beneficial owners. The issue was whether a transaction by a letter of severance dated 4 October 2017 (the letter), that resulted in Mrs H holding a 98% beneficial interest, should be set aside as a release of an equitable interest at an undervalue. The letter had the effect of Mr H releasing 48% of his equity (the 48%).

While the trustees had originally challenged the validity of the letter, they accepted that it was a genuine document, and a valid severance and effective declaration of the beneficial interest. The burden of proof to establish there had been a transaction at an undervalue was upon the trustees.

Issues and decisions

Whether the application would be allowed. The case turned upon whether Mrs H was to be believed when she stated that the letter had been made to give effect to an agreement concerning a re-mortgage of the property for the purpose of releasing £152,000 from the equity for the sole use of Mr H.

Looking at the evidence other than Mrs H's, there was nothing to establish that the purchase of the 48% had not been in return for the £152,000 odd (see [60] of the judgment).

Weighing all of the factors, Mrs H's oral evidence that there had been an agreement at the date of the letter resulting in good consideration for the release could not be rejected. The trustees had not proved on the balance of probability that the transaction had been at an undervalue when it had been agreed that the release of 48% was in return for Mr H having use of the £152,000 for his own purposes, whether to pay his liabilities or household bills or otherwise (see [66] of the judgment).

Those facts and matters did not weigh against the existence of the agreement sufficient to shift the evidential burden. The agreement that Mrs H claimed satisfied the evidential burden (see [67] of the judgment).

It was to be expected that the question of payment of the remaining 2% of the beneficial interest would be resolved. The application could be stayed for that purpose (see [69] of the judgment).

Judgment date
10 March 2023

Judge
ICC Judge Jones (Chancery Division)

Representation
Govinder Chambay (instructed by Brachers LLP) for the trustees.
Miles Croally (instructed by Mono Law) for Mr and Mrs H.

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