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Re Hurst Allen (as trustee in bankruptcy of Ann Stephanie Hurst) v Hurst (in bankruptcy) and others

[2022] EWHC 2204 (Ch), [2022] All ER (D) 04 (Sep)

The Chancery Division granted a declaration that a Declaration of Trust executed by the first and second respondents in respect of property had amounted to a transaction at an undervalue and had been executed for the purpose of putting assets beyond the reach of their creditors or of otherwise prejudicing the interests of such a person for the purposes of s 423(1) and (3) of the Insolvency Act 1986.

Catchwords

INSOLVENCY – BANKRUPTCY – TRANSACTIONS AT AN UNDERVALUE

Background

The first and second respondents (Mrs H and Mr H) were the owners of property (the property). Mr H was made bankrupt following unsuccessful litigation. A charging order was made against the property by one of the parties who had been successful against Mr H in those proceedings (T). During the course of a number of years following that, various orders were made against both Mr H and Mrs H and T sought to enforce the charging order and seek possession. Other individuals were also involved in proceedings against them, during the course of which Mr H and Mrs H executed a Declaration of Trust in respect of the beneficial ownership of the property in favour of their children, the third, fourth and fifth respondents. Subsequently, Mr H was made bankrupt for a second time, and a petition was presented for Mrs H's bankruptcy. The instant application was for a declaration that the Declaration of Trust constituted a transaction at an undervalue intended to put assets beyond the reach of a person who was making or might at some time make a claim against Mr H and Mrs H or otherwise prejudicing the interests of such a person in relation to the claim within the meaning of s 423 of the Insolvency Act 1986 (IA 1986).

Issues and decisions

Whether a declaration should be made that the Declaration of Trust was a transaction at an undervalue made to prejudice the interests of creditors.

There was no evidence that the beneficiaries provided any consideration. In the absence of such evidence, it was legitimate to conclude that they did not. The requirements of s 423(1) had been made out. Accordingly, the Declaration of Trust was a transaction at an undervalue for the purposes of s 423(1). Further, the evidence pointed overwhelmingly in favour of a conclusion that Mr H and Mrs H each executed the Declaration of Trust for the purpose of putting assets beyond the reach of their creditors or of otherwise prejudicing the interests of such a person in relation to the claim that he was making or might make. On the evidence, in executing the Declaration of Trust, Mr H and Mrs H were substantially motivated for that purpose. Accordingly, the requirement of s 423(3) had also been made out and the declaration sought would be granted (see [83], [84], [101]-[103], [108], [119], [131] of the judgment).

Declaration granted.

Judgment date
26 August 2022

Judge
ICC Judge Barber (Chancery Division Court)

Representation
Andrew Mace (instructed by Kingsley Napley LLP) for the applicant.
The first and second respondent did not appear and were not represented.
Daniel Warents (instructed by Longmores Solicitors) for the third, fourth and fifth respondent.
Barrister.

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