



Corporate Recovery Alert

Haliwells' Electronic Alert from the Corporate Recovery Group

Families Come First!

Matrimonial property adjustment order is not a transaction at an undervalue

Haines -v- Hill [2007] EWCA Civ 1284

The Court of Appeal yesterday allowed Mrs Haines' appeal from the decision of the High Court earlier this year and held that for the purposes of a property adjustment order made in matrimonial proceedings there had been valuable consideration and so the property transfer could not be set aside by Mr Haines' Trustee in Bankruptcy as a transaction at an undervalue under Section 339 of the Insolvency Act 1986.

Mr and Mrs Haines were the joint owners of a farm acquired in 2002. In 2003 Mrs Haines petitioned for divorce and commenced ancillary relief proceedings. The matrimonial court ordered Mr Haines to transfer his interest in the farm to Mrs Haines. A few months later, a Bankruptcy Order was made against Mr Haines on his own petition. The farm was subsequently sold and Mr Haines' share would have been £120,000, available to his creditors. Mr Haines' Trustee in Bankruptcy applied for an Order that the property adjustment order was a transaction at an undervalue.

In the leading judgment of Sir Andrew Morritt (the Chancellor of the High Court), the Court of Appeal considered that the High Court "was wrong in law... [to have] concluded that parties to an order of the Court granting some form of ancillary relief do not give consideration at all for the purposes of Section 339(3)(a)" Insolvency Act 1986. The consideration for an order made in ancillary relief proceedings, either following a contested hearing or by way of a compromise, will be sufficient where the matrimonial court has valued the applicant's claim against the value of the money or property ordered to be transferred and one balances the other. Nevertheless, the Court of Appeal still recognised that a property adjustment order may still be liable to be set aside where there has been some dishonest collusion between the parties to prejudice the bankrupt's creditors or some other vitiating factor such as fraud, mistake or misrepresentation. A compromise agreement not embodied in a court order does not amount to a "transaction" for the purposes of the Section 339.

The Court of Appeal recognised the tension between the competing claims of creditors and a bankrupt's former wife and children but concluded that the "automatic nullification" of ancillary relief orders could not have been what Parliament ever intended. Whilst the Trustee and the bankrupt's creditors will not welcome the decision, it may be seen to be a fair resolution of the competing policy issues between the claims of a bankrupt's family and his or her creditors. Indeed the public policy implications of the case in depriving families of financial provision up to 5 years after the making of an order will have had a bearing.

The High Court's decision was followed in the case of *Segal v Pasram [2007] BPIR 881* which determined that a compromise of ancillary relief claims amounted to a transaction at undervalue. The Court of Appeal's decision now casts that decision in to doubt.

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