



Insolvency Act 1985

1985 CHAPTER 65

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

212 Transactions defrauding creditors

(1) Where—

- (a) a person (" the relevant person ") has entered into a transaction with any other person at an undervalue; and
- (b) the court is satisfied that the transaction was entered into for the purpose of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the relevant person or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make,

the court may make such order as it thinks fit for restoring the position to what it would have been if the transaction had not been entered into and of protecting the interests of the persons on whose behalf the application is treated as made.

(2) An application for an order under this section shall not be made in relation to a transaction except—

- (a) in a case where the relevant person has been adjudged bankrupt or is a body corporate which is being wound up or in relation to which an administration order is in force, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or, with the leave of the court, by a person who is, or is capable of being, prejudiced by the transaction;
- (b) in a case where a person who is, or is capable of being, prejudiced by the transaction is bound by a composition or scheme approved under Chapter II of Part II or Chapter I of Part III of this Act, by the supervisor of the composition or scheme or by any person who (whether or not so bound) is, or is capable of being, so prejudiced; or

Status: This is the original version (as it was originally enacted).

- (c) in any other case, by a person who is, or is capable of being, so prejudiced ; and an application made under any of the preceding paragraphs in relation to a transaction shall be treated as made on behalf of every person who is, or is capable of being, prejudiced by the transaction.
- (3) For the purposes of this section a person enters into a transaction with another person at an undervalue if—
- (a) he makes a gift to that other person or he otherwise enters into a transaction with that other person on terms that provide for him to receive no consideration ;
 - (b) he enters into a transaction with that other person in consideration of marriage ; or
 - (c) he enters into a transaction with that other person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the relevant person.
- (4) Without prejudice to the generality of the preceding provisions of this section, an order made under this section with respect to any transaction may, subject to subsection (5) below—
- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
 - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the relevant person ;
 - (d) require any person to pay to any other person in respect of benefits received from the relevant person such sums as the court may direct;
 - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
- (5) An order under this section may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the relevant person entered into the transaction ; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the relevant person and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who received a benefit from that transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (6) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under this section may be made in respect of the transaction.

(7) In this section—

" the court" means the High Court or—

- (a) if the relevant person is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to the relevant person ;
- (b) if the relevant person is not an individual, any other court having jurisdiction to wind up the relevant person under Part XX or XXI of the 1985 Act;

" security" means any mortgage, charge, lien or other security.