



EL-HUSSEINY V INVEST BANK PSC

[2025] UKSC 4

KEY TAKEAWAYS:

1. A "transaction" within section 423(1) of the Insolvency Act 1986 is not confined to a dealing with an asset owned by the debtor.
2. Capacity Point - A debtor does not "enter into a transaction" for the purposes of s423 when all his actions are carried out in his capacity as a director or other organ of the company which owns and transfers the relevant assets (basis of final appeal).
3. Beneficial Interest Point - The fact that the relevant assets were not legally or beneficially owned by the judgment debtor but instead controlled by him did not in law prevent the transfer from falling within the scope of s423 (not part of final appeal).
4. Both the language and purpose of s423 point clearly to the provision applying to a transaction whereby a debtor agrees to procure a company which he owned to transfer a valuable asset for no consideration or at an undervalue.

ISSUE

Whether section 423 of the Insolvency Act (IA) 1986 can apply to a transaction whereby a debtor agrees to procure a company which he owns to transfer a valuable asset for no consideration or at an undervalue, thereby reducing or eliminating the value of his shares in the company to the prejudice of his creditors, or whether such a transaction falls outside section 423 because the debtor does not personally own the asset.

FACTUAL BACKGROUND

The issue arose in proceedings commenced by the High Court in July 2021 to enforce judgments previously obtained in Abu Dhabi by Invest Bank PSC against Mr Ahmad El-Husseini. The Bank identified valuable assets in this jurisdiction against which it wished to enforce those judgments. It alleged that Mr El-Husseini had arranged for these assets to be transferred to other people in order to put them beyond the reach of the Bank and its judgment debt or to reduce the value of the companies which owned them. The Bank sought relief under section 423.

SECTION 423 INSOLVENCY ACT 1986

(1) This section relates to a transaction entered into at an undervalue; and a person enters into such a transaction with another person if -

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

...

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose -

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

THE SUPREME COURT FOUND IT USEFUL TO FOCUS ON ONE PARTICULAR TRANSFER AS A GOOD EXAMPLE:

This is a transaction involving a property at 9 Hyde Park Garden Mews.

For the purpose of the appeal, the Supreme Court assumed the following facts:

Before 9 Hyde Park was transferred, it was legally and beneficially owned by a Jersey Company, Marquee Holdings Limited, and was worth about £4.5 million.

At the time of the transfer, Mr El-Husseini was the beneficial owner of all the shares in Marquee.

Mr El-Husseini arranged with one of his sons, Ziad Ahmad El-Husseini, that he would cause Marquee to transfer the legal and beneficial ownership of 9 Hyde Park to Ziad for no consideration.

In June 2017, Mr El-Husseini caused Marquee to transfer the legal and beneficial title to 9 Hyde Park to Ziad.

Ziad did not pay any money or provide any other consideration either to Marquee or to Mr El-Husseini in return for the house.

The effect of this transaction, on the assumed facts, was the Marquee transferred a valuable asset to Ziad and received nothing in return, with the result that Mr El-Husseini's shareholding in Marquee was correspondingly reduced in value.

FIRST INSTANCE HIGH COURT

Andrew Baker J

Determined two points of law relating to the interpretation of section 423:

Beneficial Interest Point

The fact that the relevant assets were not legally or beneficially owned by the judgment debtor but instead by a company owned or controlled by him did not in law prevent the transfer from falling within the scope of s423.

Capacity Point

A debtor does not "enter into a transaction" for the purposes of s423 when all his actions are carried out in his capacity as a director or other organ of the company which owns and transfers the relevant assets.

FIRST APPEAL COURT OF APPEAL

Singh LJ, with whom Males LJ and Popplewell LJ agreed

Dismissed the Appellant's appeal on the Beneficial Interest Point.

Allowed the Bank's appeal on the Capacity Point.

FINAL APPEAL SUPREME COURT

Lady Rose and Lord Richards, with whom the other Justices agreed

Unanimously dismissed the appeal.

THE COURT FOUND THAT BOTH THE LANGUAGE AND PURPOSE OF SECTION 423 POINT CLEARLY TO THE CONCLUSION THAT A "TRANSACTION" WITHIN SECTION 423(1) IS NOT CONFINED TO A DEALING WITH AN ASSET OWNED BY THE DEBTOR BUT EXTENDS TO THE TYPE OF TRANSACTION IN THIS CASE.

REASONS FOR THE JUDGMENT

On the Bank's pleaded case, the transaction in question fell within the terms of [section 423\(1\)](#) ("actus reus"), and [section 423\(3\)](#) ("mens rea") would also have been satisfied.

Although [section 423](#) does not expressly provide that property disposed of must belong to the debtor, the Appellants argued that the transfer of the property in this case could not fall within [section 423](#) because the debtor, [Mr El-Husseini](#), did not transfer any property that he legally or beneficially owned.

Lady Rose and Lord Richards [rejected](#) the Appellants' submissions.

INDICATIONS IN THE WORDING OF SECTIONS 423-425

[Section 423\(1\)](#) does [not](#) contain any requirement for a transaction to involve disposal of property belonging to the debtor.

There is [nothing in the wording of s423\(1\)\(a\)](#) that suggests that the word "gift" limits the transactions to which the second limb of [s423\(1\)\(a\)](#) applies, namely where a person "otherwise" enters into a transaction for no consideration.

The Court held that ["consideration" in s423\(1\) does have a narrower scope](#) than in contract law and found that [Mr El-Husseini had provided consideration](#) in the form of his undertaking to Ziad to procure Marquee to transfer the property to Ziad.

Despite the [limited bona fide purchaser defence in section 425\(2\) IA 1986](#) only being available if the asset was acquired from a person "other than the debtor", it does [not](#) mean that the drafter assumed that the first transfer made as a result of the transaction must be from the debtor.

If this was the drafter's assumption, [s423\(1\)](#) would have been drafted to include it [expressly](#).

THE PURPOSE OF SECTION 423

The Court held that the [purpose](#) of [s423](#) is made apparent by [s423\(3\)](#).

[Section 423](#) is intended to apply to transactions entered into for the purpose of [putting assets beyond the reach of a creditor or otherwise prejudicing the creditor's interests](#).

Restricting [s423](#) to transactions directly involving property owned by the debtor would not only [require an implied restriction to be read into the provision](#), but that such an implied restriction would also [seriously undermine the purpose](#) of the provision itself.

THE INTERRELATIONSHIP BETWEEN SECTIONS 423, 238 AND 339 IA 1986

[Sections 238 and 339 IA 1986](#) also apply to transactions at an undervalue and are [defined in substantially the same terms](#) as [s423](#).

The [main difference](#) between them is that [sections 238 and 339 do not depend on establishing the mental element](#) required by [s423\(3\)](#).

The Court saw [no good reason for giving different meanings](#) to transactions at an undervalue in [sections 238, 339 and 423](#).

The regimes for transactions at an undervalue and for preferences are clearly [separate](#).

In any event, the [IA 1986 expressly contemplates](#) that a transaction may be [both a preference and a transaction at an undervalue](#).

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