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PRESS SUMMARY

Brown and another, the Joint Administrators of Loanwell Limited (Respondents) v Stonegale Limited (Appellant) (Scotland) [2016] UKSC 30

Brown and another, the Joint Administrators of Oceancrown Limited (Respondents) v Stonegale Limited (Appellant) (Scotland) [2016] UKSC 30

Brown and another, the Joint Administrators of Questway Limited (Respondents) v Pelosi (Appellant) (Scotland) [2016] UKSC 30

On appeal from [2015] CSIH 12

JUSTICES: Lord Neuberger (President), Lord Sumption, Lord Reed, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEALS

Oceancrown Ltd, Loanwell Ltd and Questway Ltd were part of a group of companies controlled by Ralph Norman Pelosi (“Mr Pelosi senior”). Norman Ralph Pelosi (“Mr Pelosi junior”) was the sole shareholder and director of Stonegale Ltd. The three companies controlled by Mr Pelosi senior went into administration in 2011. In November 2010, nine months prior to the companies entering administration, three properties were transferred to Stonegale Ltd and one property was transferred to Mr Pelosi junior directly.

Conjoined proceedings were brought by the joint administrators of the three companies in respect of these alienations under section 242 of the Insolvency Act 1986, on the basis that these were gratuitous alienations (in lay terms, a gift by the insolvent party challengeable by liquidators or administrators). Stonegale Ltd and Mr Pelosi junior argued that the four dispositions under challenge were made by the companies for adequate consideration (a reasonable price). The Lord Ordinary held that the dispositions were gratuitous alienations, setting aside three of the dispositions and ordering Mr Pelosi junior to repay the £125,000 he had received for the sale of the fourth property. This decision was upheld by the Extra Division of the Inner House. Stonegale Ltd and Mr Pelosi junior appeal the decision to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses Stonegale and Mr Pelosi junior’s appeal. Lord Reed gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Lord Reed finds that the Appellants’ submission that the administrators could have pursued a number of alternative remedies is not relevant to the issue which this court must determine, which is whether the Respondents are entitled to the remedy they have sought on the basis that the four dispositions are gratuitous alienations [17].

Lord Reed holds that the gratuitous nature of the alienations was clearly explained by the Lord Ordinary and is plain and obvious. Prior to the conveyances, the companies owned five properties: 110, 210, 260 and 278 Glasgow Road, and 64 Roslea Drive. The Anglo-Irish Bank (“the bank”) held standard securities over each of these five properties, having made available to Oceancrown a secured facility in the region of 17.3 million, which was cross-guaranteed by the other two companies [4].

In August 2010 the bank’s solicitors were informed by Mr Robert Frame, a solicitor of Miller Becket and Jackson (“MBJ”), of the “details of the properties and the relevant sale price” in relation to the release of the five properties from the bank’s securities. The bank’s solicitors were informed that the sale prices were as follows: £762,000 for 278 Glasgow Road; £200,000 for 110 Glasgow Road; £934,000 for 210 Glasgow Road; £450,000 for 260 Glasgow Road. They were also informed that 64 Roslea Drive was to be sold for £68,000, bringing the total sale price of the five properties to £2,414,000. This information was passed to the bank [6].

On 10 November 2010 the property at 278 Glasgow Road was disposed by Oceancrown for £762,000 to a company called Strathcroft Ltd, which was also owned by Mr Pelosi senior. On the same day, Strathcroft disposed the same property to Clyde Gateway for £2,467,500, a sum far in excess of an earlier valuation of £762,000. The Lord Ordinary found that Strathcroft’s involvement was to “provide a short-lived intermediary between Oceancrown and Clyde Gateway”, describing it as “a cog in Mr Pelosi’s machine” [7]. No sales had been agreed in respect of the other four properties [6].

Strathcroft, on the instructions of Mr Pelosi senior, authorised MBJ to send the bank the sum of £2,414,000 “in respect of purchases of [the five properties]” on 16 November 2010, and Mr Frame transmitted the money to the bank. The bank then executed discharges of the standard securities over all five properties. The Lord Ordinary found that “the bank was misled in relation to the funds it received” and that had it known that only 278 Glasgow Road was sold, whilst the overall reduction in bank indebtedness would have occurred, the bank would only have discharged the standard security over that property [8].

As a consequence of misleading the bank, Mr Pelosi senior’s companies retained the other four properties valued at £1.525 million, free of the bank’s standard securities [9]. On 24 November 2010, 110, 210 and 260 Glasgow Road were disposed to Stonegale Ltd and 64 Roslea Drive was disposed to Mr Pelosi junior. Nothing was paid for these properties [10].

A loan agreement between Strathcroft Ltd and Stonegale Ltd signed by Mr Pelosi junior and dated 16 November 2010 which purported to enable the latter to finance the purchase of the properties at 110, 210 and 260 Glasgow Road was found by the Lord Ordinary to be a sham, “concocted purely for the purpose of the defence of these proceedings” [11].

Lord Reed finds that there was no reciprocity between the disposal of the four properties, which were gifted to Stonegale Ltd and Mr Pelosi junior, and the earlier payment to the bank. The transactions had the purpose and effect of diverting assets from the companies’ creditors, which was exactly what section 242 of the Insolvency Act 1986 is intended to prevent [17].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html