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Case summary

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## Case ID

UKSC/2023/0080

## Parties

### Appellant(s)

Alexander Ahmad El-Husseiny

Ziad Ahmad El-Husseiny

### Respondent(s)

Invest Bank PSC

## Issue

Did the Court of Appeal correctly interpret section 423 of the Insolvency Act 1986 by determining that: (1) a person can 'enter into' a transaction where they act on behalf of a company; and (2) there can be a 'transaction' for the purposes of section 423 where the asset which is alleged to have been disposed of at an undervalue was not beneficially owned by the 'debtor'?

## Facts

The Respondent, Invest Bank PSC ("the Bank"), is a public shareholding company established in the United Arab Emirates ("UAE"). The Bank claims that it is a creditor of Ahmad Mohammad El-Husseini ("Ahmad") pursuant to two alleged guarantees given by Ahmad in connection with credit facilities granted to two UAE companies. The Appellants, Alexander Ahmad El-Husseiny and Ziad Ahmad El-Husseiny, are two of Ahmad's sons. The Bank obtained judgments in Abu Dhabi against Ahmad amounting to roughly £20 million. The Bank issued proceedings in the Commercial Court seeking, amongst other things, relief under section 423 of the Insolvency Act 1986. Section 423 provides that in certain circumstances a court can provide relief where a person has entered into a transaction at an undervalue. The Bank alleged that Ahmad had transferred various assets at an undervalue, including transferring valuable London properties and shares to, amongst others, the Appellants. The Bank's case proceeded on the basis that Ahmad was not the beneficial owner of the transferred assets at the moment of transfer. The Bank alleged that the companies which beneficially owned and transferred the assets were ultimately owned and controlled by Ahmad. Ahmad and the Appellants applied to set aside service of the Bank's claim on them on the basis that, amongst other things, the section 423 claims did not raise a serious issue to be tried. The Commercial Court determined that the Bank had failed to plead a case raising a serious issue to be tried on the section 423 claims in respect of certain of the asset transfers. The Court also partially granted the Bank's application for permission to amend its Particulars of Claim. Both the Bank and the Appellants appealed against the Commercial Court's order. The Court of Appeal allowed the Bank's appeal and dismissed the Appellant's appeal. The Appellants now appeal to the Supreme Court.

## Date of issue

7 June 2023

**Judgment appealed [\[2023\] EWCA Civ 555](#)**

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