

2024 EDLS/STEP MOOT

Composed by Sean McWeeney KC

1. This action was commenced in the Bahamas Supreme Court on January 9th, 2024 pursuant to the Fraudulent Dispositions Act ("the Act").
2. The Plaintiff is Bloneva Joseph ("Bloneva"). The 1st Defendant is Isaac Saunders ("Isaac"). The 2nd Defendant is NT Ltd. ("the Trustee").

Summary of Bloneva's Claim and the Agreed Facts

3. On November 7th, 2021, Isaac, with intent to defraud Bloneva as a creditor, transferred virtually all his assets, totaling some \$500,000 in realizable value ("the transferred assets") by deed of gift to the Trustee ("the Transfer") to be held upon trust for his two children, aged 7 and 5 at the time.
4. Isaac's admitted intention in making the Transfer was to put the transferred assets beyond the reach of any judgment that Bloneva might obtain against him in respect of an interest-free loan of \$500,000 she made to him in June 2019. The loan became due and payable in full on October 31st, 2021 but remains unpaid in its entirety.
5. In consequence of the Transfer, Isaac was left with insufficient assets to meet any claim that Bloneva might make for repayment of the loan. This financial insufficiency continues to obtain.
6. The Trust is a fully discretionary trust of personal property, namely the transferred assets. The Trust was created by Isaac in writing on the date of the Transfer. It is irrevocable and reserves no powers of any kind to Isaac or anyone under his control. Isaac has no de facto control over the Trust either.

7. The Trustee was not aware of the loan debt when it accepted the transferred assets. Indeed it only learned about the debt in December 2023.
8. Neither the instrument creating the Trust nor the deed of gift referred to in para 3 was ever recorded or otherwise made known to anyone other than the Trustee until Isaac mentioned the Transfer to Bloneva in December, 2023.
9. To date, distributions by the Trustee for the educational and living expenses of the two children, totaling \$45,000, have been made, plus trust administration expenses totaling \$9,000 have been paid as well.
10. Isaac admits that he is a "transferor"; that the Trustee is a "transferee"; that the Transfer is a "disposition" and "relevant disposition"; that the debt owing from him to Bloneva is an "obligation"; that Bloneva is a "creditor"; that the Transfer was made with "intent to defraud"; and that it was made at an "undervalue" - all within the meaning of the Act.
11. Bloneva admits that her action was commenced more than two years after the Transfer. However, she only became aware of the Transfer in December 2023 after she had contacted Isaac by telephone to let him know that although she had been very patient with him out of sympathy for his financial difficulties, she could wait no longer and would therefore be suing him for the loan debt. Isaac had then informed Bloneva that suing him would be a waste of time and money as he simply did not have the wherewithal to pay her; that he had moreover transferred just about everything he owned to a trust for his children more than two years before; that he was sorry he had had to do that because he knew that it meant that those assets would no longer be available for payment of the loan but that he had had to look out for his children and protect them

from the mess he had made of his financial affairs. Isaac admits all of the foregoing.

12. It was after that conversation that Bloneva instructed her lawyers to bring the present action.
13. In the meantime, action on the loan debt has not yet been brought as Bloneva's lawyers have advised her that it would make more sense to dispose of the present action first because if it should turn out that the transferred assets are not retrievable from the Trust, action on the loan debt might well be a case of throwing good money after bad having regard to Isaac's inability to pay it off from his own resources.

The Relief Sought by Bloneva

14. Bloneva seeks an order setting aside the Transfer such that the transferred assets (less the distributions and trustee expenses mentioned in para 9) should re-vest in Isaac free of the Trust, thereby becoming potentially available to satisfy the debt owed to Bloneva subject to her obtaining judgment thereon.
15. In opposition to that, both the Trustee and Isaac contend that even after taking into account all of the admissions that Isaac has made and the other agreed facts, and even though it is clear that Isaac would have no defence to an action for the loan debt should the same be brought against him by Bloneva, the present action to set aside the Transfer must fail as it was commenced more than two years after the Transfer; that that being so, it is simply too late to set the Transfer aside as the Act imposes an absolute time bar of two years for the bringing of actions by creditors for that purpose. Alternatively, that even if the time bar under the Act is not absolute, it ought nonetheless to be applied having regard to the agreed facts of the case. Bloneva does not agree.

16. The court has directed that oral and written submissions be made in respect of the foregoing dispute.

1. Two teams : one for Bloneva; the other for the Trustee. Isaac supports the position of the Trustee but is not represented by counsel.