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Supreme Court upholds first-instance decision on fraudulent transfer of shares



15 October 2019 | Contributed by Elias Neocleous & Co LLC

Litigation, Cyprus

The Supreme Court recently confirmed a first-instance decision to annul the transfer of shares by a debtor to his son. The Supreme Court found that the debtor had acted fraudulently to prevent his creditor from executing a court judgment which had been issued in the creditor's favour. The Supreme Court also found that the issuance of a decree on the sale of shares as a means of enforcing the decision against the debtor was possible. **(1)**

The Supreme Court highlighted that the first-instance court had been correct in finding that Articles 14, 16 and 19 of the Civil Procedure Law (Cap 6) allowed for the issuance of a seizure and sale order and that the shares constituted movable property subject to enforcement measures by the creditor. Conversely, the court rejected the debtor's claim that the transfer of the company's shares to his son had been made in good faith to obtain a tax exemption as a product of second thought and alibi construction.

In its judgment of 2 July 2019, the Supreme Court stated as follows:

The Court of First Instance rightly held, that the combined provisions of Articles 3 (1) and (2) of the Securities Transfer (Cancellation) Act, Cap. 62, does not require the submission of details of fraudulent intent, but it is sufficient for the Applicant to rely on and establish those constituents of Article 3 (1) that the transfer or disposal of the property, was intended to interfere with or delay the creditors. The First Instance Court, reasonably, concluded that the act of the debtor amounted to a fraudulent transfer of the shares in question, which could have been subject to cancellation orders. Therefore, the Court issued a cancellation order of the said shares, in order to re-register them in the name of the debtor, who was reinstated as a shareholder and for their sale.

The Supreme Court's reasoning derives from the entrenched principles set out in Cypriot law and Supreme Court case law, which outline that the enforcement of a judgment is part of the basis of the administration of justice. Hence, the law rightly empowers the courts to use their power wherever the need to suppress the law arises. Part IX of Cap 6, as amended, gives the courts discretion to verify the ability of a debtor to repay its debts. Therefore, the courts may order:

- the disclosure of a debtor's assets which can be made available for debt payment; and
- the disposal of any assets which a debtor has acquired after the creation or incurrence of its civil liability.

In this legal context, creditors can request the courts to issue one or more decrees ordering payment of the debt on a monthly basis, the cancellation of malicious transfers or charges or a deduction of the debtor's earnings.

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Endnotes

(1) Civil Appeal 37/2013, *Economou v Koutsokoumni*, 2 July 2019.

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