

CHAPTER 78
FRAUDULENT DISPOSITIONS
ARRANGEMENT OF SECTIONS

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CHAPTER 78
FRAUDULENT DISPOSITIONS

1 of 1991

An Act to amend the law relating to dispositions made with an intent to defraud.

[Assent 5th March, 1991]

[Commencement 5th April, 1991]

Short title.

1. This Act may be cited as the Fraudulent Dispositions Act, 1991.

Interpretation.

2. "appointed date" means the date on which this Act comes into operation;
"creditor" means a person to whom an obligation is owed;
"disposition" means any disposition or series thereof, however effected, and (without prejudice to the generality thereof) includes any transaction, gift, grant or transfer of property of any nature whatsoever;
"intent to defraud" means an intention of a transferor wilfully to defeat an obligation owed to a creditor;
"obligation" means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had actual notice;
"relevant disposition" means a disposition to which section 4(1) applies;
"transferor" means the person who as owner or as the holder of a power in that behalf directly or indirectly makes a relevant disposition or causes it to be made;
"transferee" means the person to whom a relevant disposition is made and shall include any successor in title;
"undervalue", in relation to a disposition of property, means-
 - (a) the provision of no consideration for the disposition; or
 - (b) a consideration for the disposition the value of which in money or money's worth is significantly less than the value of the property the subject of the disposition.

Application.

3. (1) With effect from the appointed date this Act shall apply in place of the law in effect prior to the appointed date to every disposition of property made after the appointed date by any person and whether or not the property, the subject of the disposition, is situate in The Bahamas or elsewhere; save that in any action or proceedings commenced prior to the appointed date or within six months of the appointed date but in respect of a disposition made prior to the appointed date this Act shall have no application and the law to be applied shall be that in effect prior to the

appointed date.

(2) In this section, "the law in effect" means the law relating to fraudulent dispositions of property.

Avoidance of fraudulent dispositions.

4. (1) Subject to the provisions of this Act, every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.

(2) The burden of establishing an intent to defraud for the purposes of this Act shall be upon the creditor seeking to set aside the disposition.

(3) No action or proceedings shall be commenced pursuant to this Act unless commenced within two years of the date of the relevant disposition.

Saving of certain rights.

5. (1) In the event that any disposition shall be set aside pursuant to this Act, then-

- (a) unless the court is satisfied that the transferee has acted in bad faith-
 - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the court; and
 - (ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee, (and of any predecessor transferee which has not acted in bad faith); and
- (b) unless the court is satisfied that a beneficiary of a trust has acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(2) The burden of proving that a transferee or beneficiary has acted in bad faith shall be upon the person making the allegation.

Extent of avoidance of relevant dispositions.

6. A disposition shall be set aside pursuant to this Act only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition had been set aside together with such costs as the court may allow.

Act not to validate certain dispositions.

7. Nothing in this Act-

- (a) shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor;
- (b) shall affect the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

Relationship with Trusts (Choice of Governing Law) Act.

8. Nothing in this Act shall create or enable any right, claim or interest on behalf of a creditor or person which right, claim or interest would be avoided or defeated by the Trusts (Choice of Governing Law) Act.