



BERMUDA
1994 : 21

CONVEYANCING AMENDMENT ACT 1994

[Date of Assent 13 July 1994]

[Operative Date 13 July 1994]

WHEREAS it is expedient to amend the Conveyancing Act 1983 to make new provisions in respect of certain voidable dispositions:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Short title

1 This Act which amends the Conveyancing Act 1983 may be cited as the Conveyancing Amendment Act 1994.

Inserts new Part IV A

2 The Conveyancing Act 1983 is amended by inserting at the end of Part IV, immediately after section 36, the following new Part IV A—

"PART IV A

**PROVISIONS AGAINST DISPOSITIONS WITH
REQUISITE INTENTION**

Interpretation

36A (1) In this Part—

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"appointed day" means the date on which this Part comes into operation;

"disposition" means any disposition or series of dispositions of property of any nature whatsoever and however effected, and, without limiting the generality of the foregoing, includes any exercise of a power of appointment, any trust, gift, transfer, sale, exchange, demise, assignment, assurance, grant, lease, surrender, conveyance, reconveyance, release, reservation, any purchase or other acquisition, any covenant, contract or option and any compromise or other dealing or arrangement;

"eligible creditor" means a person to whom—

- (a) on, or within two years after, the material date the transferor owed an obligation and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied;
- (b) on the material date the transferor owed a contingent liability and since that date the contingency giving rise to the obligation has occurred and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied; or
- (c) on the date of the action or proceeding to set aside the relevant disposition, the transferor owes an obligation in consequence of a claim, made by that person against the transferor, arising from a cause of action which accrued prior to, or within two years after, the material date.

"material date" means the date on which a relevant disposition is made;

"obligation" means any obligation or liability, other than a contingent liability, to pay a sum of money or to transfer property;

"property" includes money, goods, things in action, land and every description of property wherever situated and every description of interest, whether present or

future or vested or contingent, arising out of, or incidental to, property;

"relevant disposition" means a disposition to which section 36C applies;

"requisite intention" means an intention of a transferor to make a disposition the dominant purpose of which is to put the property which is the subject of that disposition beyond the reach of a person or a class of persons who is making, or may at some time make, a claim against him;

"transferor" means a person who 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 includes a successor in title of such person;

"trust" includes a settlement;

"undervalue", in relation to a disposition of property, means a disposition in respect of which—

- (a) no consideration is given; or
- (b) the value of the consideration given is, in money or money's worth, significantly less than the value, in money or money's worth, of the property.

Application

36B (1) Subject to subsections (2) and (3), with effect from the appointed day the provisions of this Part shall apply to every disposition of property made by any person whether that disposition was made before or after the appointed day and whether or not the property, the subject of the disposition, is situated in Bermuda or elsewhere.

(2) Notwithstanding subsection (1), where—

- (a) prior to, or within six months after, the appointed day; and
- (b) pursuant to a conveyance of property to which section 37 of the Conveyancing Act 1983 applies,

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any action or proceeding has been commenced, this Part shall have no application, and the provisions of the said section 37 shall have effect as if this Part had not been enacted.

(3) This Part shall not affect the operation of a disentailing assurance or the law of bankruptcy for the time being in force.

Avoidance of dispositions made with the requisite intention, etc

36C (1) Subject to subsection (2) and the provisions of this Part, every disposition of property made with the requisite intention and at an undervalue shall be voidable at the instance of an eligible creditor thereby prejudiced.

(2) Where a person seeking to set aside a relevant disposition was not, on the material date, a person to whom an obligation was owed by the transferor, the Court shall not set aside that disposition unless the Court is satisfied that that person was, on the material date, reasonably foreseeable by the transferor as a person to whom an obligation might become owed by him.

(3) Subject to subsection (4), no action or proceeding to set aside a disposition shall be commenced pursuant to this Part unless such action or proceeding is commenced—

- (a) in the case of an eligible creditor referred to in paragraph (a) of the definition of that expression, within six years after the material date or within six years after the date when the obligation became owed, whichever is the later date;
- (b) in the case of an eligible creditor referred to in paragraph (b) of that definition, within six years after the material date;
- (c) in the case of an eligible creditor referred to in paragraph (c) of that definition, within six years after the material date, or within six years after the date when the cause of action accrued, whichever is the later date.

(4) Except as provided in subsection (3), nothing contained in this section shall be construed as in any way affecting the operation of the Limitation Act 1984.

(5) For the avoidance of doubt it is hereby declared—

- (a) that a disposition to which this Part applies shall not, by reason only that it was made at an undervalue, be set aside by the Court; and
- (b) the Court shall, for the purpose of setting aside such a disposition determine, on a balance of probability, whether it was made with the requisite intention.

Savings of certain rights

36D (1) Where, pursuant to this Part, a relevant disposition is set aside and the Court is satisfied that the transferee has acted in good faith, then,—

- (a) the transferee shall have a first and paramount charge over the property, the subject of the relevant disposition, for an amount equal to all costs (and not only such costs as the Court might otherwise allow) properly incurred by the transferee in the defence of the action or proceeding to set aside that disposition;
- (b) the relevant disposition shall be set aside subject to all fees and costs properly incurred and subject also to any pre-existing rights, claims and interests of the transferee and of any person through whom the transferee claims and who has acted in good faith; and
- (c) in the case of a trust, the relevant disposition shall only be set aside subject to the right of a beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or a 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 any person through whom the transferee claims has not acted in good faith shall be upon the person making the allegation.

Extent of avoidance of relevant disposition

36E Subject to section 36D, a relevant disposition shall be set aside pursuant to this Part only to the extent necessary to satisfy the obligation owed to the eligible creditor at whose instance the disposition has been set aside.

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Part not to validate certain dispositions

36F Nothing contained in this Part shall be construed as -

- (a) validating any disposition of property which is neither owned by, nor is the subject of a power of disposal with respect thereto vested in, the transferor; or
- (b) affecting 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 (Special Provisions) Act 1989

36G Nothing in this Part shall be construed as creating or enabling any right, claim or interest on behalf of a creditor or person which right, claim or interest would be avoided or defeated by section 11 of the Trusts (Special Provisions) Act 1989, (which prohibits the variation or setting aside of trusts validly created under the Law of Bermuda).".

Amends Real Estates Assets Act 1787

3 The Real Estates Assets Act 1787 is amended by repealing section 3.

Repeals section 37

4 Section 37 of the Conveyancing Act 1983 is repealed.