

Trust declarations and creditor protection in insolvency: lessons from Wade and Anor v Singh and Ors.

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Case Note

Trust declarations and creditor protection in insolvency: lessons from *Wade & Anor v Singh & Ors*

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ABSTRACT

The High Court case *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* (*Wade & Anor v Singh & Ors*) examined the validity of a Declaration of Trust and enforcement of charging orders in a corporate insolvency. Involving a property owned by family members of a liquidated company, the case explored the intersection of trust law, property rights, and creditor protection. The court invalidated the Declaration as an attempt to defraud creditors under the Insolvency Act 1986. This case emphasises the importance of clear intent in trust declarations and reinforces creditor rights protection in insolvency proceedings. The case underscores the need for specialist legal advice in property and trust matters, particularly when creditor claims may arise.

INTRODUCTION

The case of *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* (*Wade & Anor v Singh & Ors*) provides significant insights into the legal intersection of trust declarations, property rights, and creditor protection within the framework of corporate insolvency.¹ The case revolves around a series of properties, with particular focus on a property known as ‘the Oaks’, which became the subject of contention between the liquidators (by Amanda Wade and Nicholas Nicholson) of MSD Cash and Carry PLC and various family members involved in the company.² The judgment delivered by Deputy Insolvency and Companies Court (‘ICC’) Judge Curl KC underscores the critical role of transparency, intention, and formalities in trust declarations, especially where creditor protection comes into play under section 423 of the Insolvency Act 1986.³ The case ultimately serves as a cautionary tale for both legal practitioners and family-run businesses concerning the risks associated with attempting to shield assets

from creditor claims by relying on trust declarations made in the face of impending insolvency.

FACTUAL BACKGROUND

The underlying dispute in *Wade & Anor v Singh & Ors* stems from the liquidation of MSD Cash and Carry PLC, a family-owned company that was wound up on 16 January 2012 on a petition presented on 12 September 2011.⁴ Following the liquidation, the liquidators sought to recover a significant judgment debt amounting to £996,494 from two of the defendants, Mohinder Singh and Surjit Singh Deol.⁵ These defendants were part of a larger family group that had involvement in both the company and the ownership of several properties, including the Oaks. The liquidators sought to enforce charging orders over a number of properties owned by the defendants as part of their efforts to recover the debt owed to the company.⁶

Central to the case was the question of whether the Declaration of Trust, dated 17 April 2017, concerning the

¹ *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch).

² *ibid*, para 4 (i).

³ Insolvency Act 1986, s 423.

⁴ *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch), para 1.

⁵ *ibid*, para 3.

⁶ *ibid*, paras 1, 3, and 4.

Oaks, constituted a legitimate trust or whether it was an attempt to defraud creditors by placing the property beyond their reach.⁷ The defendants, particularly Raminder Kaur Deol, argued that the Oaks had been held on trust for her benefit since its acquisition in 2003.⁸ She further claimed that the Declaration of Trust simply formalised an existing trust that had already been created at the time of the property's purchase and stated that: '[a]lthough everyone knew that [the Oaks] were beneficially mine, including informing Leigh Carr, our accountants, we did not take steps to confirm this in writing until late 2016 when Leigh Carr were dealing with tax matters on our behalf with HMRC (HM Revenue and Customs)'.⁹ The liquidators, however, contended that the Declaration was either a sham or a transaction made with the purpose of defrauding creditors under section 423 of the Insolvency Act 1986.¹⁰

KEY ISSUES BEFORE THE COURT

The case before the court raised several complex legal issues that intersected with trust law, insolvency law, and creditor protection. One of the central questions was whether an oral express trust had been created in 2003, at the time of purchasing the Oaks, with Raminder as the sole beneficial owner.¹¹ Under the provisions of section 53(1)(b) of the Law of Property Act 1925, 'a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will'.¹² While the defendants claimed that such a trust had been established at the time of the property's purchase, they conceded that, in the absence of written evidence, it was not enforceable until the Declaration of Trust was formalised in 2017.¹³

A significant aspect of the case concerned whether 'a common intention constructive trust of the beneficial interest in the Oaks arise in favour of Raminder at the time of its purchase in 2003'.¹⁴ To establish such a trust, the defendants needed to provide proof of a shared intention between Mohinder and Raminder that the property would be held for Raminder's benefit, alongside evidence of Raminder's detrimental reliance on this shared intention.¹⁵ This would require a careful assessment of the parties' interactions and intentions at the time of purchase, raising the broader question of how far informal arrangements can be considered binding under the law.

Another key issue before the court was the validity of the 2017 Declaration of Trust. If no trust had existed before 2017,

the question arose as to whether this Declaration created a valid express trust in favour of Raminder or whether it was merely a device to place the property beyond the reach of creditors.¹⁶ This raised significant concerns about the timing and purpose of the Declaration of Trust, particularly as it was executed shortly before the liquidators and HM Revenue and Customs brought claims against Mohinder, suggesting potential ulterior motives.¹⁷

The concept of a sham trust was also significant in this case. The court had to consider whether the Declaration of Trust was a sham.¹⁸ For the trust to be deemed a sham, it would need to be shown that the parties had deliberately created the appearance of rights and obligations that did not reflect their true intentions. This issue was tied closely to the circumstances in which the trust had been created and whether there was an attempt to mislead creditors or the court about the actual nature of the property ownership.

In addition, the case also involved an assessment under section 423 of the Insolvency Act 1986.¹⁹ Even if the Declaration of Trust was not a sham, the court had to determine whether it constituted a transaction defrauding creditors.²⁰ This provision of the Insolvency Act 1986, particularly section 423(3)(a), allows the court to set aside transactions made with the intention of putting assets beyond the reach of creditors, a critical consideration given the timing of the Declaration of Trust in relation to the creditor claims.

JUDGMENT AND ANALYSIS

Deputy ICC Judge Curl KC delivered a comprehensive judgment that carefully weighed the legal principles against the facts presented. With respect to the claim of an oral express trust in 2003, the court rejected the defendants' argument that such a trust had been created when the property was purchased.²¹ The defendants contended that the 2017 Declaration of Trust merely formalised a pre-existing trust from 2003, but the judge found no credible evidence to support the existence of such a trust.²² As mentioned, section 53(1)(b) of the Law of Property Act 1925 mandates that any declaration of trust regarding land must be in writing.²³ In this case, the lack of contemporaneous documentation from 2003, combined with insufficient evidence to demonstrate an intention by Mohinder to create a trust at that time, led the court to conclude that no express trust had existed.²⁴

⁷ *ibid*, paras 5–6.

⁸ *ibid*, paras 114 and 116.

⁹ *ibid*, para 67.

¹⁰ *ibid*, paras 21(iv) and (v).

¹¹ *ibid*, para 21(i).

¹² Law of Property Act 1925, s 53(1)(b).

¹³ *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch), para 119.

¹⁴ *ibid*, para 21(ii).

¹⁵ *ibid*.

¹⁶ *ibid*, para 21(iii).

¹⁷ *ibid*, para 62.

¹⁸ *ibid*, para 21 (iv).

¹⁹ Insolvency Act 1986, s 423.

²⁰ *ibid*.

²¹ *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch), para 126(i).

²² *ibid*, para 126(ii).

²³ Law of Property Act 1925, s 53(1)(b).

²⁴ *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch), para 128.

The defendants also presented an alternative argument based on the doctrine of common intention constructive trust. A constructive trust would have required proof of a shared intention between Mohinder and Raminder that the property would be held for her benefit, as well as evidence that Raminder had acted to her detriment based on this intention. However, the court found no such shared intention or detrimental reliance.²⁵ The evidence indicated that, while there may have been a general intention to provide Raminder with a family home, this did not rise to the level of a legally enforceable trust arrangement, and thus no common intention constructive trust existed.²⁶

When considering the 2017 Declaration of Trust, the court found that it did not formalise any prior trust but rather created a new disposition of the property.²⁷ While the Declaration sought to establish Raminder as the sole beneficial owner of the Oaks, the timing and context of its execution raised significant concerns.²⁸ The judge noted that the Declaration had been executed at a time when creditor claims were imminent and that the property was under threat from enforcement actions by both the liquidators and HM Revenue and Customs.²⁹ This timing was a critical factor in assessing whether the trust was a legitimate disposition of property or a tactic to protect assets from creditors.³⁰

On the question of whether the Declaration of Trust was a sham, the judge relied on the principle established in *Snook v London and West Riding Investments Ltd*, which states that a sham ‘means acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create’.³¹ The court ultimately declined to find that the Declaration was a sham.³² While the judge acknowledged that the circumstances surrounding the Declaration were suspicious, there was insufficient evidence to show that the parties intended to mislead creditors or the court.³³ Although the Declaration may have been executed for asset protection purposes, this alone did not render it a sham in the legal sense.³⁴

Despite this finding, the court ruled that the Declaration of Trust constituted a transaction defrauding creditors under section 423 of the Insolvency Act 1986.³⁵ As mentioned, section 423 empowers the court to set aside transactions that are entered into with the purpose of putting assets beyond the reach of creditors.³⁶ In applying the test set out in *JSC Bank v Ablyazov*, which considers whether the transaction was carried out with the

prohibited purpose of prejudicing creditors, the court found that the Declaration had indeed been executed with the intent of protecting the property from creditor claims.³⁷ The inclusion of a power of revocation in the Declaration, coupled with the fact that it was executed shortly before claims were brought by HM Revenue and Customs and the liquidators, indicated that the transaction was designed to shield the Oaks from creditor claims.³⁸ Consequently, the court concluded that the Declaration fell within the scope of section 423 and should be set aside.³⁹

IMPLICATIONS FOR LEGAL PRACTICE

Wade & Anor v Singh & Ors offers several important implications for both legal practitioners and those involved in insolvency practice, particularly in relation to trust declarations, creditor protection, and the legal boundaries of asset protection strategies.⁴⁰ The case highlights key considerations that must be borne in mind when advising clients on the creation of trusts and dealing with creditor claims in the context of corporate insolvency. One of the central implications for legal practice is the importance of complying with statutory formalities when declaring trusts, especially in relation to property. The court’s rejection of the defendants’ claim that an oral express trust had been created in 2003 serves as a stark reminder that the creation of a trust in relation to land must be evidenced in writing, as mandated by section 53(1)(b) of the Law of Property Act 1925.⁴¹ Legal practitioners advising clients on the establishment of trusts should therefore ensure that such declarations are properly documented and executed at the time of the transaction, with clear evidence of intention and the trust’s terms. This is particularly critical when advising clients who may face creditor claims in the future, as retrospective declarations of trust, as seen in this case, are likely to be scrutinised and potentially invalidated by the courts.

The case also underscores the need for transparency and genuine intention when creating trusts. In instances where a trust is established with the aim of shielding assets from creditors, practitioners must be cautious. While it is legitimate to structure financial and asset arrangements in ways that protect clients’ interests, the creation of a trust solely for the purpose of defeating creditor claims can lead to serious legal consequences, as demonstrated by the court’s application of section 423 of the Insolvency Act 1986.⁴² Transactions that are found to have been made with the intention of putting assets beyond the reach of creditors can be set aside, leaving the assets exposed to creditor claims. This

²⁵ *ibid*, para 135.

²⁶ *ibid*.

²⁷ *ibid*, para 126(iv).

²⁸ *ibid*, para 126(iii).

²⁹ *ibid*.

³⁰ *ibid*.

³¹ *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, 802 C-D.

³² *Amanda Wade and Nicholas Nicholson (Joint Liquidators of MSD Cash and Carry Plc (In Liquidation)) v Mohinder Singh, Surjit Singh Deol, Raminder Kaur Deol, the Estate of Bakshish Kaur (Deceased)* [2024] EWHC 1203 (Ch), para 147.

³³ *ibid*.

³⁴ *ibid*.

³⁵ *ibid*, para 149; and Insolvency Act 1986, s 423.

³⁶ *ibid*.

³⁷ *ibid*; *JSC Bank v Ablyazov* [2015] UKSC 64.

³⁸ *ibid*, paras 151–153.

³⁹ *ibid*, para 156.

⁴⁰ *ibid*.

⁴¹ Law of Property Act 1925, s 53(1)(b).

⁴² Insolvency Act 1986, s 423.

reinforces the need for legal practitioners to conduct thorough due diligence and ensure that clients are not engaging in activities that could be construed as defrauding creditors.

For insolvency practitioners, the case highlights the effectiveness of section 423 as a tool to recover assets that have been improperly transferred or shielded from creditors.⁴³ The ruling affirms that courts will not hesitate to set aside transactions that are found to have been executed with the purpose of prejudicing creditors, even in the absence of a finding of fraud or sham. This broadens the scope of section 423 and demonstrates that insolvency practitioners can rely on this provision to challenge suspicious transactions, regardless of whether there is direct evidence of an intent to mislead.⁴⁴ In practice, insolvency practitioners should be vigilant when assessing asset transfers made by insolvent companies or their directors, particularly those made shortly before insolvency proceedings or creditor claims arise.

Moreover, the case draws attention to the difficulties in proving the existence of informal trusts, such as oral express trusts or common intention constructive trusts. The court's rejection of the defendants' arguments regarding the existence of a constructive trust, due to a lack of evidence of a shared intention and detrimental reliance, underscores the evidentiary challenges that parties face in such claims. Legal practitioners advising clients on trust arrangements must therefore stress the importance of formalising any agreements in writing to avoid disputes or claims that such arrangements were never intended to be legally binding. This is especially relevant in family businesses, where informal arrangements may be more common, but where the failure to properly document such arrangements can result in significant legal and financial risks.

The judgment also has broader implications for insolvency law and practice, particularly with respect to family-owned businesses. The case serves as a cautionary tale for family members who attempt to shield assets from creditors through trust arrangements. The court's detailed examination of the timing and context of the 2017 Declaration of Trust illustrates that courts will scrutinise the motivations behind such transactions, particularly where there is a suggestion that assets are being placed beyond the reach of creditors. Insolvency practitioners should therefore be alert to any trust declarations or transfers of assets made by individuals or companies facing insolvency, as these may be vulnerable to challenge under section 423.⁴⁵

In addition, the court's consideration of the power of revocation in the Declaration of Trust provides important guidance for legal practitioners drafting trust documents. The inclusion of a power of revocation, particularly in the context of an impending creditor claim, can raise red flags and may suggest that the trust is not genuinely intended to be a permanent disposition of the property. Legal practitioners should carefully consider the implications of including such provisions in trust documents, particularly where there is a risk that the trust could be challenged by creditors or in the event of insolvency.

Furthermore, the case highlights the risks associated with executing trust declarations or other asset transfers at a time when

creditor claims are imminent. The court's focus on the timing of the Declaration of Trust, and its proximity to the liquidators' and HM Revenue and Customs' claims, underscores the need for careful planning and foresight when advising clients in financial distress. Transactions that are carried out shortly before the initiation of insolvency proceedings or creditor claims are likely to be subjected to greater scrutiny by the courts, particularly where there is an indication that the transaction was made with the intention of protecting assets from creditors. Legal practitioners should therefore advise clients to be mindful of the timing of any asset transfers or trust declarations and ensure that they are not engaging in activities that could be perceived as attempts to frustrate creditor claims.

Finally, the case serves as a reminder of the broader ethical considerations that legal and insolvency practitioners must bear in mind when advising clients. While it is the role of practitioners to protect their clients' interests, the court's ruling highlights the fine line between legitimate asset protection and transactions that are designed to defraud creditors. Practitioners must ensure that they are not complicit in facilitating transactions that could later be challenged under insolvency law. This requires a careful balancing of the client's interests with the legal and ethical obligations that govern the profession.

CONCLUSION

This case provides a valuable lesson in the interplay between trust law, property rights, and creditor protection in insolvency. The judgment illustrates the challenges faced by both debtors and creditors when family-owned businesses and personal assets become entangled in insolvency proceedings. Ultimately, the court's decision reinforces the principle that trust declarations must be made with clear intentions and in accordance with legal formalities, particularly where creditor claims are involved. Legal practitioners must remain vigilant in advising clients on the risks associated with trust declarations and the potential for such transactions to be set aside under section 423 of the Insolvency Act 1986.

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⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

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