

Wives with Court Orders

Now safe from Husbands creditors ?

The Court of Appeal has recently overruled a decision which caused sleepless nights for many people whose spouses had later gone bankrupt.

In the case that was over-turned the husband had been ordered to transfer to his wife his share in their jointly owned farm at the end of 2004. When her husband went bankrupt a few months later, a Trustee in Bankruptcy was appointed to try and recover money for his creditors.

The Trustee applied for an Order setting aside the transfer to the wife. He was successful because the transfer had been within a period of 5 years prior to the Bankruptcy Order and he argued it was, what is technically called, a “Transfer at an Under-value”.

This means that full payment in money or its equivalent was not made by the person who acquired the property from the Bankrupt.

The first Judge who heard the case, said that the settlement of the wife’s divorce claim for various technical reasons did not mean the wife had provided any value at all.

This slightly surprising conclusion has now been over-turned by the Court of Appeal and, therefore, many Trustees in Bankruptcy will no longer be looking at whether they can over-turn previous settlements.

It should be noted that this reinforces the importance of having a Court Order when settling financial matters on divorce, as an informal agreement would not provide the same protection against a Trustee in Bankruptcy claiming in this way.

Michael Spencer

Please see previous article - Shock in store if bankruptcy strikes former spouse



Mike Spencer

**20 Regent Street,
Nottingham,
NG1 5BQ**

Tel: 0115 9 100 200

Email: enquiries@actons.co.uk

Website: www.actons.co.uk

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Actons Solicitors
20 Regent Street, Nottingham, NG1 5BQ
Tel: 0115 9 100 200
Website: www.actons.co.uk