Barclays bank ltd v quistclose investment ltd law equity essay

Finance, Banks

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Introduction

In the case of Barclays Bank ltd and Quest Close Investment ltd, the defendant, Q Ltd), granted the loan value of £209, 719 to R Ltd (Rolls Razors Ltd) on settled agreement that the company will use the Loan to pay dividends to the shareholders. The cheque of Q Ltd for the loan amount was transferred to R Ltd with on the date of 15 July 1964, which mentioned the loan purpose in a covering letter that this amount will be solely used for the purpose of paying the due dividends. The cheque of Q Ltd’s was transferred in a new Bank account opened mainly for the reason with Barclays Bank Ltd that was aware regarding the condition of loan (Gbolahan, 1990). Before the payments of dividend, R Ltd entered into liquidation and Barclays Bank claim that the Loan value will be used to set off the due Overdrafts on other Barclay’s account of R Ltd’s.

Discussion

Analysis of the State of the Law:

The 2 main questions had arisen that must be favorably resolved to respondents if the amount has to be recovered from appellants. The first question is that whether, among Rolls Razor Ltd and respondents, the loan terms are made in order to astonish the amount of £209, 719 in a trust in situation if the dividend is not being paid. The second issue is that whether, appellants had noticed of trust or of conditions that gives rise to it as the Trust is obligatory upon them (Mohamed, 2008). Some of the past cases reflecting the similar issue such as His Lordship that reviewed some authorities on end such as Milne v Toovey (1819), Glynn v Edwards (l859), Hannen and Re Rogers exp Holland (1891). These cases have the favor of authority, consistency and longevity and will provide some good sense. These cases are not mandatory on the Lordships and it is vital to account for these arguments as they are been put why they must be distinguished or departed (Mohamed, 2009). It is said, initially, that the chain of command mentioned stands on own and is reliable with some other recent decisions. The cases in which money was paid to organization for the intention of getting a portion of shares such as Cresseys' Co V Moseley (1865) and Austin V Stewart (1866). These cases do not impact the standard over which this appeal must be decided. They are solely examples that indicates that, in the nonexistence of some particular arrangement forming a trust (as was indicated to present In Re Nanwa Gold Mines Ltd), expenses of this nature are prepared on the condition that will be part of the company's assets. They

do not negate the proposal that a trust might present where the mutual purpose is that they must not be included (Gbolahan, 1990).

Deficiencies existed in the Case:

It is not complicated to ascertain accurately that what terms of loan was advanced by respondents to R Ltd. There is no confusion that loan was especially given in order to make capable to R Ltd of paying the dividends. This indicates clearly from letter terms of R Ltd to appellants of 15 July 1964, that letter before transmitting to appellants was given to respondents in cover so that cheque can be enclosed in it. The shared purpose of Rolls Razor Ltd & respondents and spirit of negotiation was that advanced sum must not become component of Assets of R Ltd but must be utilized solely for paying specific segment of the creditors such as those which are permitted to dividends (Dennis & Jennis, 2012). An essential effect from this process simple of analysis must be that if in case, the dividends might not be paid, the money should have been repaid to respondents: the expressions 'exclusively' or 'only’ does not have any other meanings. That negotiations of the character of payments from a person’s creditors to a 3rd person poses rise to the affiliation of a fiduciary trust or character, in support as primary trust of creditors and in case if the primary trust fails of 3rd person has been identified as a sequence of decisions in the past 150 years (Dennis & Jennis, 2012). The second and major argument for appellant was of a more complicated nature. The transaction among the respondents and R Ltd was based on loan, indicating rise to the lawful act of debt. This essentially excluded the affect of any trust mandatory in equity; in the favor of

respondents a transaction might focus one action or the other. It cannot admit both of them. This form of argument seems to be unattractive. It reflects that law does not allows an arrangement to be made through which one individual accept to grant money to the other, on conditions that money should to be used exclusively in repaying the debt rather than becoming a normal asset of the later obtainable to creditors at large, needs to be returned to the lender (Lodewijk, 2009). The lender is obliged, in this case as he is a lender, to agree anything the common wishes of borrower and lender may be, that which he was intending in order make available for one reason should be easily available for others of the borrower’s creditors for which he has not the shortest intention to offer. The 2 sources present themselves. The first is based on the Academic analysis of case. Quistcose has aroused a considerable level of interest and argument in the law reviews it. But the reality that case might be the theme of widespread academic areas does not indicate that it is of significance in practice (Lodewijk, 2009).

Academic Analysis of the Case:

The cause for Quistclose been the topic of substantial academic analysis is mainly that the case is hard to settle at the present categories or principles. However, these difficulties do not essentially transform in the world of practice; the reality that the case is of significant interest to academic lawyers does not indicate that it is of importance in practice. The second source refers to the case law that Quistcose has established. While Subsequent Case Law perhaps provides more reliable measure of the legal importance of the case rather academic analysis. It is also not fully reliable.

The reality that the case has been referenced at various situations might give rise to an interference that case is of high significance in application (Samantha, 2001). In some of the cases, decisions are simply agreed and implemented in the legal practice and are not the issue of additional judicial challenge. The search of Lexis was also not fully reliable. The reality that the case has been referenced at various situations might give rise to an interference that case is of high significance in application. In some of the cases, decisions are simply agreed and implemented in the legal practice and are not the issue of additional judicial challenge (Hepburn, 2001). The search of Lexis was made in March 2003 that reveals that Quistclose has been referenced in around 107 cases. This might not be considered as an irrelevant figure. In different cases, Quistclose cites to the court but was not raised in the judgments. There is also additional division of cases in that the reference to Quistclose is not more than just a passing or fleeting one. There are also various cases in that the discussion of Quistclose might not be dismissed as insignificant. There are mainly 2 specific contexts in which the decision was been invoked. The first is Insolvency: classically, money has been upgraded to the recipient who has become insolvent now and the payer intends to recover the payment in precedence to the issues of other insolvent creditors. Secondly, the Quistclose is also cited in several cases based on Tax (Hepburn, 2001). There is certainly no complexity in identifying the co existence in one deal of equitable, legal and remedies rights. When the money is provided, the lender attains a similar right to watch that it is applied for the primary definite objective is been passed out that is the payment of debt, the lender has his remedy against the borrower for debt

(Alastair, 2004). The principal objective might be carried out such as the issue arises if the secondary objective such as the repayment to lender has been decided upon through implications or expressly, if it has the equity remedies that might be initiated to give outcome to it. If this is not and the money is proposed to exist at the common fund of the debtors assets then there might be the suitable remedy of Loan Recovery. There is no reasoning that why the adaptable interaction of equity & law might not let these practical arrangements and other shifts if desired (Alastair, 2004). It will be to the dishonor of both systems if they might not. In the existing case, the desire to form a secondary trust for the use of Lender, to arise if the primary trust, to give the dividend might not be agreed out is dear and there could not find any reasons that why the law must not give impact to it.

Treatment of Case to be dealt in later decisions:

It is not simple to recognize that Commercial implication of the decisions of House of Lords in Barclays Bank Ltd v Quistclose Investments Ltd. The major cause is the lack of a thorough practical research of the effect which Quistclose and the succeeding case laws it has gathered have had on the Global practice or specific segments of it. While these studies have been performed in the area of retaining Title clauses, no such work has been done in relation to Quistclose itself. It is possible to obtain subjective proof regarding Quistclose from legal practitioners, but there are 2 issues with these evidences. Firstly, it is not efficiently dependable and secondly, it is incompatible in itself. Some of the experienced practitioners have made use of Quistclose, while the others have not. In the case of shortage of

statistically consistent evidences, it is vital to consider other sources in effort to place information regarding the affect of Quistclose on the marketable practice (Malcolm, 1995). The final part of the Quistclose case is that they comprises within themselves a constituent element of desperation that says that Quistclose is invoked by a claimant that aims to neglect as being identified as an unsecured creditor and upholds that he has a proprietary interest in the money which was been paid to the recipient. One of the similar examples is Goldcorp that is an example in this group (Malcolm, 1995). One of the other is Re Holiday Promotions in Europe Ltd. The Customer pays deposits of £15o to holiday organizations that are refundable and the organization later went into liquidation. The customers claimed that money was in custody for them on trust. The submission was not accepted, as it being held that the connection among the company and customers was considered as of creditor and debtor rather than beneficiary and trustee and. The invocation of Quistclose based on the truth of Holiday Promotions and Goldcorp indicates that Quistclose is possibly superior seem as element of the armory of a court case lawyer rather than a transactional lawyer. In other expressions, a transactional lawyer dependent to protect the creditor’s position (William, 2004). It is possible to depend on Quistclose only in such cases where there is no better alternative sensibly open to him and in various cases there might be such an option, such as mortgage or a charge. The Court case lawyers by distinction must consider matters as they approach them. If the lender has not taken a conventional security, and deals with the hope of being responsible to be an unsecured creditor, the litigation lawyer should attempt to find the ways of enhancing the lenders

position and the incantation of Quistclose might be one method of attempting it. Quistclose has not bring much by method of pleasure to litigators that consider themselves in the position, but it might in a special case prove to be of immeasurable amount (William, 2004). The winners mostly in these cases are the customers rather than banks, that have granted money to the companies which are trading on the verge of insolvency or Financiers apart from the Banks that are been ready to put up money for the purpose of enabling a company to continue trading.

Conclusion

In common grounds, it seems right, that a simple appeal to put the money in a new account is not enough to form notice. On the date of 15 July 1964, the appellants when they also received covering letter along with the cheque on that specific date. In past, there was been a conversation on telephone among Mr. Parker and Mr. Goldbart to which they have also referred. From these there seems no doubt that the appellants were told that the cheque has been offered on loan through a third party and was to be used solely for the intention of giving the dividends. This was enough to give them notice that it was trust money rather than Assets of R Ltd. They were ignorant of the lenders uniqueness though the respondents name as drawers was on the cheque was of no meaning.