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CAN CREDITORS LEAD TO THE SETTING ASIDE OF A PROPERTY PURCHASE?

In the case of M and Another vs Murray and Others the above question is answered affirmatively. Mr. and Mrs. Moreau married each other in 1980 out of community of property. They became the trustees of a trust of which they were the sole shareholders. They separated on 19 July 2009 and a while thereafter Mrs. Moreau applied for a divorce in terms of which they entered into a settlement agreement. Mr. Moreau requested that a benefit be paid out from his retirement fund to cater for the divorce. With the pay-out he received, he purchased (in the name of the trust) two properties and paid the balance into Mrs. Moreau's account, it would seem, to evade his creditors. It was, however, evident that Mr. and Mrs. Moreau colluded to strip Mr. Moreau of his assets so that he did not have to pay his debts.

As a result, the Court ruled that where any transactions made by a person before their sequestration, in collusion with another person or disposed of property belonging to him to prejudice his creditors that these transactions may be set aside, and the third parties be ordered to repay any amounts paid to them.

In conclusion, it remains vital that you determine whether your potential client is currently insolvent or is anticipating insolvency before selling their property, it might result in such a transaction being set aside by a court order at the request of the person's creditors.