

Power of court to order the return of assets improperly transferred

443. (1) Where a receiver of the property of a company is appointed and, on the application of the receiver or any creditor or member of the company, it can be shown to the satisfaction of the court that—

(a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect, and

(b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members,

the court may, if it deems it just and equitable to do so, make the following order.

(2) That order of the court is one requiring any person who appears to have the use, control or possession of such property or the proceeds of the sale or development of it to deliver it or pay a sum in respect of it to the receiver on such terms or conditions as the court sees fit.

(3) Subsection (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which section 604 applies.

(4) In deciding whether it is just and equitable to make an order under this section, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.