

Power of the court to order return of assets which have been improperly transferred

608. (1) The court has the following power where, on the application of a liquidator, creditor or contributory of a company which is being wound up, 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.

(2) That power of the court is to order, if it deems it just and equitable to do so, any person who appears to have—

(a) the use, control or possession of the property concerned, or

(b) the proceeds of the sale or development of that property,

to deliver it or them, or pay a sum in respect thereof, to the liquidator on such terms or conditions as the court thinks fit.

(3) This section 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.

(5) This section is in addition to, and not in substitution for, any restitutionary or other relief by way of recovery (including the remedy of tracing) that is available to a liquidator or any other person.