

# KNOWING THE ASSETS, KNOWING YOUR ENEMY AND KNOWING THE WEAPONS IN YOUR ARMOURY

## POWERS OF SECTION 423 (INSOLVENCY ACT 1986)



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**“All happy families are alike, each unhappy family is unhappy in its own way”.**

Sober opening words from Mrs Justice Knowles, who starts her judgment on the long-running and highly publicized case of Akhmedova & Akhmedov and others [2021] EWHC 545 (Fam), giving apologies to Tolstoy, but stating that the Akhmedov family is one of the unhappiest to have ever appeared in her courtroom. Indeed, though this is a family which has wealth of which most can only dream of, it is an incredibly sad tale of family woe in which a wronged wife seeks to recover divorce settlement monies which are owed to her from a husband who has gone to extraordinary lengths to put every penny of his wealth outside of her reach.

This is of course not the first time London has seen a tumultuous and somewhat torrid divorce play out in their courtrooms. Just recently we saw the ruler of Dubai, Sheikh Mohammed bin Rashid al- Maktoum, being ordered to pay his ex-wife and their two children over £554 million in what is believed to be one of the largest divorce settlements in British history.

High-profile cases such as these have solidified London as being the divorce capital of the world. This is largely due

to the court’s unique approach to asset division and financial claims seeking to provide parties with enough to meet their financial needs.

In Akmedov, the story began in 2013 when the wife petitioned the English court for financial relief. Then, on 15 December 2016, the husband was ordered to pay the wife one of the largest financial settlements made in UK matrimonial proceedings history, at 41.5% of the husbands identified assets. This order also set aside various transactions, which were found to have been an attempt by the husband to avoid paying the full weight of the wife’s claim and he was consequently ordered to pay the wife a lump sum of £350m and transfer various property.

What followed was a complicated chase that took place on a global stage. Enforcement proceedings concerning various different jurisdictions are never easy, particularly when you throw in a family saga which puts Tolstoy’s storytelling to shame. However, as this case illuminates, there is elegance in the English system in arriving at fair decisions in divorce cases, and a real willingness of Judges to achieve justice in financial settlement. This case begs the questions; what can be done when you’re divorcing someone who has an astonishing evasion strategy and a small army of lawyers? And even if they

are not billionaire tycoons, how can you be sure you know where all the assets are and how do you recover them if they have been put beyond the reach through layers of complex and offshore structures?

**Ultimately, it’s a case of working out what the assets are, who (or which company) they are owned by, and where in the world they are.**

If there is the additional issue of intentionally putting assets out of reach, then it is crucial to understand what weapons are available in the armoury that can be deployed to ensure those assets can be recovered once the financial order is obtained.



In Akhmedov, section 423 of the Insolvency Act 1986 was a powerful weapon deployed by the wife and demonstrates how this wide-ranging and powerful section can be used by victims of transactions that are conducted to put assets beyond their reach, or to prejudice the interests of a claimant with an actual or potential claim.

**An important point to note about section 423 is that whilst it is found in the Insolvency Act 1986, there is no requirement for the debtor to be insolvent and claims can be brought by any victim outside an insolvency.**

The trigger for section 423 is a transaction at an undervalue as defined in the Insolvency Act 1986. In short it is where an individual has entered into a transaction with any person at an undervalue.

**There are four requirements that must be satisfied before relief can be granted, there must be a: (1) a debtor; (2) who enters into a transaction; (3) at an undervalue; (4) with the purpose of putting assets beyond the reach of prejudicing the interest of a person with an actual or potential claim.**

Each of these were present in the case of Akhmedov and therefore the court made the order to restore the position to what it would have been if the relevant transactions had not been entered into.



This recent decision in Akhmedov also showcases the broad powers of section 423. For example, in response to the issuing of the claim by the wife the defendants submitted there was a gateway condition requiring that a creditor had to prove that the debtor had insufficient assets following the transactions to meet the liability owed in order for it to obtain relief. This submission was rejected on the basis of the wording of the statute. Moreover, the court recognised that the condition would effectively prejudice creditors' interests in circumstances where the debtor clearly possessed the prohibited purpose of putting assets beyond the reach of or prejudicing its creditors.

The Akmedov case also considers extraterritoriality in respect of the wife's claim against the trustees of several trusts in Liechtenstein. The court considered the question of extraterritorial effect here and concluded that it was satisfied that there was sufficient connection with England on the basis that the transfers had been effected to evade the English claim brought by the wife who was resident in England. The Court held that the transaction was made with the prohibited purpose and that the wife was still a victim of the transactions within section 423 and she had been prejudiced, because the transactions had made a party who owed her liabilities an empty shell.

Further benefits of this section come from the wide reading of the words "transaction" and "victim" and also the fact there is no requirement of dishonesty or fraudulent intent.

However, although broad, caution should be given to any section 423 claim as there are very specific requirements and clear criteria in relation to the transactions so proper grounds for pleading should be carefully considered from the outset.

**Anyone approaching divorce where there are considerable assets and even the faintest likelihood of an Akhmedovian saga looming on the horizon needs to understand from the onset the significance of knowing the assets, knowing the enemy and knowing the weapons available in the armory, such as section 423 of the Insolvency Act 1986.**

The early engagement and involvement of asset recovery specialists is vital in any such cases. They can assist with the identification of assets and advise on the best recovery strategy for any dissipated assets, which will equip the legal teams with the information and support they require in order to develop the best possible strategy to secure assets whilst the litigation is ongoing and should it be necessary how to ensure the global enforcement is successful.

Forewarned is forearmed, and a specialist team focused on ensuring assets are recovered once a financial order is made is key.

