

Tribe v Tribe [1996]

Evidence

The complainant and defendant are father and son. The father ran a retail company selling clothes from different shops. The landlord of the store, the complainant, rented and scheduled demolition in two of his stores. The complainant insured to preserve his interests and entrusted the company's shareholding to the company of his son, who is the defendant in this case. The transfer of the shareholding was not intended for the defendant to pay. Afterward, the latter provided the landlord with one lease and requested the lease revision for another store. Then, the complainant demanded the shareholding be transferred back to his company.

Problematics

The complainant demanded the defendant to return the previously transferred shareholding of his company. Initially, the first transfer of the shareholding was viewed as one for illegal reasons, namely to mislead the creditors of the complainant. Nonetheless, according to the agreement between the complainant and the defendant, the latter was supposed to hold the mentioned shares for the former on trust up until the time of dilapidation came. Eventually, the defendant made an appeal.

Resolution

The court dismissed the defendant's appeal. As the conditions of the share transfer were not nuanced on paper, this transaction was viewed by the court as a gift. Although the initial purpose of the complainant's transfer was confirmed as illegal, he could withdraw from it before the completion of the illegal purpose. The complainant could recover the lost property if he provided evidence of the illegality of the transaction. The case of Tribe v Tribe became exceptional, as the complainant's actions were confirmed illegal and the court did not assist him in the restoration of the transferred shares.

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