

# Transactions defrauding creditors

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**CATEGORY:**  
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Walker International Holdings Ltd v Republique Populaire du Congo and Others [2005] EWHC 2813 High Court, Queen's Bench Division (Commercial Court) (Morison J)

## Facts of the Case

The Applicant Walker International Holdings Limited ('Walker') had acquired debts from the Respondent state 'Congo' under a loan agreement. Following an arbitral Award, it was ordered that Walker could enforce the Award in the same way as a judgment. Accordingly, Walker obtained charging orders over a property and shares owned by a company, Jackson 31 Limited ('Jackson'), on the basis that the judgment debtor Congo was beneficially interested in both the property and the shares.

Financiere et Investissements Du Congo SA ('Fininko'), a Congolese company, held the shares in Jackson and was owned by a state owned Congolese oil company Societe Nationale des Petroles du Congo ('SNPC'). In summary, Walker claimed that Congo and SNPC were effectively the same entity and that Fininko's ownership of the shares in Jackson was a sham. As a result, Walker claimed, under section 423 of the Insolvency Act 1986, that Congo and SNPC had entered into or participated in transactions with the intention of placing assets beyond the reach of creditors. Fininko argued that there was no basis for claiming that it was a sham entity and that it had been established under Congolese law as a separate corporate entity. Fininko also argued that in considering whether Congo and SNPC were the same entity, the Court had to determine whether the entity was an 'alter ego' or 'organ of the State'; it was not sufficient to simply establish State control.

## The Decision

The Court found that SNPC was part of Congo and that as such its assets belonged to Congo. It also found that Fininko was owned by Congo and SNPC, as it had no real financial autonomy of its own. For example, large amounts of money had been advanced, without any agreement or interest provision, suggesting that there was never any plan or intention for it to be repaid. When Fininko had contracted to purchase the shares in Jackson, it was a 'shell' company with no bank account or employees and the funds had come from SNPC. Therefore, by putting the shares into Fininko's name, without any consideration, Congo and SNPC had placed them beyond the reach of creditors such as Walker, pursuant to section 423 of the Insolvency Act 1986.

## Points of Interest

This case provides a useful analysis of how the Court can implement the provisions of the Insolvency Act 1986 in relation to fraudulent transactions. In this case, Morison J pointed out that, if necessary, the Court could also have used its powers under section 425 of the 1986 Act to require that the shares be vested in SNPC to make them 'amenable to execution on the basis that Congo, the debtor, was "interested beneficially" in both the shares and Jackson's property'.