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**Authors** Emily Husain, George Eyre and Michael Maris

# Cases Alerter

At-a-glance cases provided by **Gatehouse Chambers**

## *Candey Ltd v Crumpler* [2022] UKSC 35

### Facts

Solicitors ('Candey') represented a company ('PHRL') in litigation between 2014 and 2016 and in October 2015 they entered into a fixed fee agreement ('FFA') for deferred payment. Pursuant to the FFA, a deed was executed creating a fixed charge in Candey's favour over all damages, costs, monies and other sums or benefits flowing from all PHRL's litigation. When PHRL entered administration in 2016 Candey was dis-instructed by the liquidators. Candey sought payment of its outstanding fees, arguing that its lien should be converted to a charge over the money under s 73 of the Solicitors Act 1974, securing its fees in priority to all other claims in the liquidation including the liquidators' fees. At first instance the court found that Candey had waived its lien by accepting the FFA, which provided additional security for its fees; this reasoning was upheld by the Court of Appeal.

### Held

The appeal was dismissed, with the Supreme Court finding in accordance with the lower courts that Candey had waived its right to an equitable lien in respect of its fees. The court held that to determine whether a solicitor had waived its equitable lien by taking new security, the fundamental question was whether the parties' objectively ascertained intention, in light of all the circumstances, had been that the new security would supplement the lien or replace it. If the new security was in any way inconsistent with the solicitor's equitable lien, and where the solicitor had taken the new security without giving express notice that it was retaining the lien, then the reasonable inference was that the new security replaced the lien. A new security carrying a right to interest was inherently likely to be inconsistent, and similarly, where the solicitor took new security over an asset covered by the original lien, such a charge would probably be inconsistent with the retention of the lien. Candey had waived its lien by entering into a new fee agreement secured by a deed of charge in 2015, which was incompatible, and further had made no reference to any intention to retain the lien.

## *Kwok v Juan* [2022] UKPC 52

### Facts

The parties had entered into an oral agreement to build and operate a five-star luxury hotel in Xiamen, China. The parties fell into dispute as to the terms of their oral agreement, of which there was no written record. The judge accordingly determined the issues concerning the contract on the basis of witness evidence alone.

On appeal, the Eastern Caribbean Court of Appeal overturned the judge's findings of fact in respect of the contract, refused an application by the respondent to adduce fresh evidence, and set aside the judge's decision to appoint a liquidator of the parties' jointly owned BVI company.

The decision was appealed to the Privy Council on three grounds:

- (1) the Court of Appeal was not entitled to overturn the judge's findings of fact concerning the agreement;
- (2) the Court of Appeal was wrong to refuse the respondent permission to adduce fresh evidence; and
- (3) the Court of Appeal was wrong to set aside the judge's appointment of a liquidator.

### Held

The Board allowed the appeal:

- (1) An appellant court would rarely be justified in overturning findings of fact which turned on witness credibility and should not do so unless satisfied that any advantage enjoyed by the trial judge by having evaluated the witnesses could not be sufficient to explain or justify his conclusions. That inhibition extended to interfering with evaluation of the facts and inferences to be drawn from them.
- (2) The Court of Appeal had held that it was not open to a respondent to make an application to adduce fresh evidence which might reinforce the conclusions reached by the trial judge. However, there was no legal basis for that finding. If an appellant is permitted to adduce fresh evidence, it would be unfair to refuse to permit the respondent to adduce fresh evidence to rebut it; and it would be equally unfair to refuse to permit a respondent to adduce fresh evidence simply because he is a respondent and not an appellant.
- (3) The judge was not limited to remedies that reversed or put right the conduct that justified the making of the order. The court was the court was entitled to look at the reality and practicalities of the overall situation, past, present and future.

## *Little Miracles Ltd v Oliver* [2022] EWHC 2553 (Ch)

### Facts

The claimant applied to the court for a final charging order in respect of the first defendant's ('D1') interest in a property (the 'Property') which was jointly owned by D1 and the third defendant, his wife ('D3').

The claimant had previously issued a claim against D1, the second defendant (a company) ('D2') and D3. The claim was the subject of

a settlement agreement. D1 was subsequently made bankrupt and shortly thereafter the claimant issued an application seeking to enforce the terms of the settlement. D1 was discharged from bankruptcy one year later pursuant to s 279(1) Insolvency Act 1986 ('IA 1986'). The claimant's application was heard and D1 was ordered to pay damages and costs for breach of the settlement agreement.

The claimant issued an application for and obtained a charging order against D3's interest in the Property. Some six years later, the claimant issued an application for a charging order against D1's interest in the Property.

D1 submitted that the debt which was the subject of the claimant's application against him – being the damages and costs for breach of the settlement agreement – were debts provable in the bankruptcy, such that he was released from the debt on the discharge of his bankruptcy.

#### Held

The court considered the meaning of a 'bankruptcy debt' under s 382 IA 1986 and the provision within the Insolvency (England and Wales) Rules 1986 ('IR 1986') for a creditor to prove in respect of a debt payable at a future time.

The court held that a bankruptcy debt meant any debt or liability to which the bankrupt was subject at the date of the bankruptcy order; any interest payable on any such debt or liability in respect of any period ending on or before that date; and any debt or liability to which the bankrupt may become subject thereafter, by reason of any obligation incurred before that date.

Accordingly, the relevant debts were provable in the bankruptcy and were not now debts that could be enforced against D1 following discharge. The application was therefore dismissed. ■

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