

Candey Ltd (Appellant) v Crumpler and another (as Joint Liquidators of Peak Hotels and Resorts Ltd (In Liquidation)) (Respondent)

Date: 21 December 2022

Justices

Lord Reed (President), Lord Briggs, Lord Kitchin, Lord Hamblen, Lord Stephens

Background to the Appeal

Candey Ltd ("**Candey**") acted as a solicitor for Peak Hotels & Resorts Ltd ("**PHRL**") between April 2014 and March 2016 in respect of worldwide litigation and various other matters. One such matter was an action in the High Court in London, referred to as "**the London Litigation**".

On 21 October 2015, PHRL entered into a fixed fee agreement (the "**FFA**") with Candey, under which Candey agreed to continue to act for PHRL in return for a fixed fee (the "**Fixed Fee**"). Payment of the Fixed Fee was deferred until the handing down of judgment on liability or settlement of the London Litigation, PHRL entering an insolvency process, or PHRL receiving funds. A deed of charge (the "**Deed of Charge**") was entered into on the same day as the FFA, which granted a floating charge (a form of security) over PHRL's assets.

PHRL was placed into liquidation in the British Virgin Islands ("**BVI**") on 8 February 2016. The Respondents (the "**Liquidators**") were appointed by the BVI court as liquidators of PHRL. The Fixed Fee became payable and Candey lodged a proof of debt.

The London Litigation was settled by PHRL shortly before trial and Candey was dis-instructed by the Liquidators on 3 March 2016. The monies PHRL received in relation to the settlement are referred to collectively as the "**Settlement Proceeds**".

Candey contended that its outstanding fees were payable in priority to sums payable to other creditors in PHRL's liquidation and asserted an equitable lien over sums of money recovered or preserved in the course of the London Litigation. This lien is a form of security that arises by operation of equity for solicitors to be paid their proper fees for the successful conduct of litigation out of the money the client recovers or preserves through that litigation (or its settlement). Candey also argued that the lien ought to be converted to a charge over that money under section 73 of the Solicitors Act 1974 (the "**1974 Act**").

The deputy judge, amongst other matters, found that Candey had waived its entitlement to an equitable lien when it renegotiated its retainer and accepted additional security for its fees in October 2015. The Court of Appeal agreed with the deputy judge on this point. Candey now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Kitchin gives the judgment, with which Lord Reed, Lord Briggs, Lord Hamblen and Lord Stephens agree.

Reasons for the Judgment

Whether a solicitor's equitable lien has been waived depends on the intention of the parties. The question is whether it is to be inferred that it was the intention of the parties that the lien should no longer exist. The intention must be assessed objectively in light of all the circumstances [43]-[46], [63]. Where solicitors

take additional security, a relevant factor will be to what extent the taking of new security is inconsistent with the lien. A further relevant factor is whether, considering the professional relationship between solicitors and their clients, the solicitors explained to the clients that they were reserving their rights to an equitable lien [47], [64]-[65]. The authorities illustrate that if solicitors take additional security which is inconsistent with the lien and do not explain that the lien is being retained, then it is likely to be reasonable to infer that the lien is surrendered [48]-[64]. This is particularly so where the solicitors take new security over the same property that the lien would apply to [61].

Applying these principles to the present case, the FFA and the Deed of Charge form a package of rights and obligations and new security arrangements which are inconsistent with the equitable lien [66]-[95]. This is for two reasons. First, the new security created by the Deed of Charge extends over the same property as the equitable lien would do (being the Settlement Proceeds). This is regardless of the fact that the Deed of Charge also covers other property [81]-[87]. Second, the FFA and the Deed of Charge expressly confer priority, in the event of insolvency, to one of PHRL's backers, and therefore create different priorities than that of an equitable lien which would rank first [88]-[92]. However, the provisions in the FFA for the earning and securing of interest on the Fixed Fee are not inconsistent with an equitable lien [93]-[96].

The professional obligation on solicitors to give express notice if they intend to retain an equitable lien where the new security is inconsistent with the lien is not displaced by the client obtaining independent legal advice. Therefore, the fact that Candey required PHRL to take independent legal advice in relation to the FFA and the Deed of Charge does not change the court's conclusion [78]-[80].

There is no express or implied assertion in the FFA or the Deed of Charge that Candey reserved its lien, and evidence of communications between Candey and PHRL take the matter no further [97]-[103].

The Court of Appeal was therefore entitled to find that Candey's equitable lien was waived when the parties entered into the FFA and the Deed of Charge [104].

Accordingly, this appeal is dismissed.

References in square brackets are to paragraphs in the judgment

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available online. [Decided cases](#)