

Adrian Pay

Called: 1999

"A good lawyer and a fighter. Extremely thorough. Provides good written work." - Legal 500 2021

"Always extremely thorough and prepared. Good in court; good broad range of knowledge." - Company & Partnership - Legal 500 2020



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Practice Overview

Adrian is a tenacious chancery litigator who excels in the exhaustive preparation and clear presentation of complex cases. Clients comment "*He is excellent on the detail, very reliable and committed to the client.*" (Chambers Global Commercial Dispute Resolution) and "*he is very measured in court, but packs an unexpected bite which is very effective*" (Chambers UK Bar, Commercial Chancery).

Adrian's practice covers all aspects of modern chancery, including commercial fraud, company and insolvency and contractual disputes.

Recent high profile cases include:

- *Caldero v Beppler & Jacobson Ltd* [2013] EWHC 2191 (Ch), [2014] EWCA Civ 935 (led by Robin Hollington QC - acting for the successful petitioner in a shareholders' dispute over two prestigious hotels in Montenegro); -
- *Weaving Macro Fixed Income Fund Limited (in liquidation)* (instructed with James Thom QC and Anna Littler - a claim against auditors arising out of the collapse of a Cayman fund following a large-scale fraud by the fund's founder); and
- *Re Dragon Capital Ltd* (BVI HC (Com) 2014/0171) (led by Robin Hollington QC - an unfair prejudice claim concerning a large Vietnamese investment fund).

Adrian also has an extensive property litigation practice. He appeared for the successful party, leading Thomas Fletcher in the Supreme Court in *R (TRF) v Tilbury Dorset CC* [2015] UKSC 18.

Commercial Litigation

Adrian's practice comprises in large part, high-value commercial litigation, litigated in the High Court in this jurisdiction and offshore: (e.g., *Caldero v Beppler & Jacobson Ltd* [2013] EWHC 2191 (Ch), [2014] EWCA Civ 935, *Weaving Macro Fixed Income Fund Limited (in liquidation)* (Cayman Islands) and *Re Dragon Capital Ltd*

(BVI HC (Com) 2014/0171) (see above)). He is instructed in commercial fraud cases (e.g. *Weaving Macro Fixed Income Fund Limited (in liquidation)*).

Adrian has expertise in many aspects of modern commercial litigation (e.g. large-scale e-discovery exercises, asset preservation interim relief, computer forensic evidence, conflict of laws, acting in foreign jurisdictions).

Recent directory acknowledgements include:

"Totally on top of the material, and you can have complete confidence in the drafts he produces." Chancery: Commercial - Chambers UK Bar 2017

"He is one of the most diligent counsel that I've worked with and he's very good at homing in on the detail of a case." Chancery: Commercial - Chambers UK Bar 2016

Company

Adrian has wide experience in company matters, with particular expertise in shareholders' disputes (e.g. *Caldero v Beppler & Jacobson Ltd* [2013] EWHC 2191 (Ch), [2014] EWCA Civ 935, a high-profile shareholders' dispute, over two prestigious hotels in Montenegro; *Re Dragon Capital Ltd* (BVI HC (Com) 2014/0171), an unfair prejudice claim concerning a large Vietnamese investment fund). He is also instructed in, for example, claims against directors and disputes relating to share sale agreements.

"A good choice for shareholder disputes and oppression claims. Excellent on the big picture (with a deep knowledge of the field) and very strong on drafting and presentation of evidence." - Legal 500 2020

Insolvency

Adrian is instructed in insolvency matters, for example, claims against directors and claims to set aside transactions in an insolvency context.

Offshore

Adrian acts both in cases litigated in foreign jurisdictions (e.g. the British Virgin Islands - *Re Dragon Capital Ltd* (BVI HC (Com) 2014/0171), the Cayman Islands - *Weaving Macro Fixed Income Fund Limited (in liquidation)*) and in cases litigated in this jurisdiction with an foreign element (e.g. *Caldero v Beppler & Jacobson Ltd* [2013] EWHC 2191 (Ch), [2014] EWCA Civ 935, a petition involving hotels in Montenegro, against a Russian respondent), *TOC Investments Ltd v Beppler & Jacobson Limited* [2016] EWHC 20 (Ch), related proceedings, in which Adrian, led by Robin Hollington QC, are instructed by a subsidiary of the former TNK-BP, the Anglo-Russian oil venture).

Adrian has been called to the bar of the British Virgin Islands.

Property

Adrian is recommended as a leading individual for property litigation, being *"able to present complex intellectual arguments in a very clear manner, both on paper and in court"* (Legal 500 2016) and *"a well-regarded barrister with a broad property litigation practice"* and one who *"who covers all the angles"* (Legal 500).

The property work which Adrian undertakes includes disputes in relation to property developments (e.g. *Buxton Country Homes Limited v Surfbuild Limited* [2008] EWHC 1475 (Ch) (led by James Thom QC)); matters arising

out of defective conveyancing; boundary disputes; rights of way disputes; claims based on proprietary estoppel / constructive trusts; commercial landlord and tenant.

Adrian appeared for the successful parties in a series of important cases relating to solicitors' undertakings in conveyancing transactions:

- *Angel Solicitors (A Firm) v Jenkins O'Dowd & Barth (A Firm)* [2009] 1 WLR 1220
- *Clark & another v Lucas Solicitors LLP* [2010] 2 All ER 955
- *Thames Valley Housing Association Limited & Others v Elegant Homes (Guernsey) Limited and Others* [2009] EWHC 2647 (Ch).

Public Rights of Way

Adrian frequently acts in relation to public rights of way issues, cases include:

- *Kind v Northumberland County Council* [2013] 1 WLR 743
- *TRF v Powys CC* [2013] EWHC 3144 (Admin)
- *TRF v Peak District National Park Authority* [2012] EWHC 3359 (Admin)
- *Wilson v Yorkshire Dale National Park Authority* [2009] EWHC 1425 (Admin)

Adrian appeared for the successful party in the Supreme Court in *R (TRF) v Tilbury Dorset CC* [2015] UKSC 18 (against George Laurence QC), having '*presented his arguments very well*' according to Lord Neuberger's judgment.

Cases

Name: Re Dragon Capital Ltd (Shrimpton and anr v Scriven and ors)

Reference: BVI HC (COM) 2014/0171

Date: 15th June 2016

Court: High Court, British Virgin Islands

Facts:

Robin Hollington QC and Adrian Pay are instructed for the Petitioners in a claim under section 184I BVI Business Companies Act 2004 to have their shares in Dragon Capital Ltd ('the Company') bought. The Company is a large Vietnamese investment fund, of which Mr Shrimpton, the First Petitioner, was the co-founder. Mr Shrimpton owns approximately 35% of the issued shares (personally and through a company, the Second Petitioner). Mr Shrimpton claims, inter alia, that he was unfairly excluded from management.

Mr Shrimpton claims that the Company was, from its inception, a quasi-partnership between him and Mr Scrivener, the co-founder, subject to equitable understandings, including a right to participate in management. A number of Vietnamese individuals subsequently became partners, but with their shareholdings held indirectly by Mr Shrimpton and Mr Scrivener.

Some time thereafter, the International Finance Corporation (part of the World Bank) ('IFC') and Promotion et Participation pour la Cooperation Economique ('Proparco') acquired shareholdings, at which time formal

shareholders' agreements were executed. The Vietnamese partners did not execute the shareholders' agreements.

The Company, which had taken an active stance in the proceedings and filed a Defence which inter alia denied the existence of a quasi-partnership, applied for declarations (1) that the Company had been and remained entitled to be an active defendant in the proceedings; and (2) to sanction the costs already incurred and to be incurred by the Company in defending the proceedings.

The Judge examined the authorities on participation by a company in unfair prejudice proceedings, including, in particular, *Re A Company* [1994] 2 BCLC 146, *Power v Ekstein* [2010] NSCWC 137, *Trojan Equity Ltd v CMI Ltd* (2011) 87 ACSR 144 and *Annuity & Life Re & or v Full Apex (Holdings) Ltd* [2012] SC (Bda) 73 Com.

The Judge dismissed the application, ordering the Company to pay the Petitioners' costs. As to the Company's entitlement to participate, there had been no application by the Petitioners to restrain it from doing so. The Company was free to participate if it chose to do so. As to the sanction of costs incurred or to be incurred, that was an issue for trial: it was quite impossible at this stage to determine whether historic and proposed participation by the Company would amount to a misfeasance on the part of the directors causing it do so.

[Click here to view judgment](#)

Judge: Judge Sir Bernard Eder QC (Ag)

Practice Area: Commercial Litigation

Name: **Re Dragon Capital Ltd (Shrimpton and anr v Scriven and ors)**

Reference: BVI HC (COM) 2014/0171

Date: 2nd June 2016

Court: High Court, British Virgin Islands

Facts:

Robin Hollington QC and Adrian Pay are instructed for the Petitioners in a claim under section 184I BVI Business Companies Act 2004 to have their shares in Dragon Capital Ltd bought. Dragon Capital Ltd is a large Vietnamese investment fund, of which Mr Shrimpton, the First Petitioner, was the co-founder. Mr Shrimpton owns approximately 35% of the issued shares (personally and through a company, the Second Petitioner). Mr Shrimpton claims, inter alia, that he was unfairly excluded from management.

Mr Shrimpton claims that Dragon Capital Ltd was, from its inception, a quasi-partnership between him and Mr Scrivener, the co-founder, subject to equitable understandings, including a right to participate in management. A number of Vietnamese individuals subsequently became partners, but with their shareholdings held indirectly by Mr Shrimpton and Mr Scrivener.

Some time thereafter, the International Finance Corporation (part of the World Bank) ('IFC') and Promotion et Participation pour la Cooperation Economique ('Proparco') acquired shareholdings, at which time formal shareholders' agreements were executed. The Vietnamese partners did not execute the shareholders' agreements.

Mr Scrivener and Mr Pasikowski, the First and Second Respondents, applied for summary judgment on the issue of whether Dragon Capital Ltd was a quasi-partnership and/or whether the quasi-partners were bound by equitable understandings. They relied upon two principal arguments (1) the allegation of the existence of a quasi-partnership was so weak as to have no real prospect of success; and (2) in any event, the Petitioners had no real prospect of showing that the quasi-partnership survived the execution of the shareholders' agreements.

The application was dismissed, the judge ordering the applicants to pay the Petitioners' costs. As to the first ground, the Judge held that the question of whether a quasi-partnership existed was highly fact-sensitive and unsuitable for summary disposal and that there was ample evidence to suggest that Dragon Capital Ltd was a

quasi-partnership. As to the second ground, there was a real prospect that, looking at the shareholders' agreement in its proper context, the quasi-partnership survived the execution of the shareholders' agreements (or that it revived, thereafter). The Judge commented '[6] *This application for summary judgment… is a particularly good example of how such an application can delay and derail proceedings as they progress towards trial and how such an application can increase costs.*'

[Click here to view judgment](#)

Judge: Judge Jules Sher QC (Ag)

Practice Area: Commercial Litigation

Name: TOC Investments Ltd v Beppler & Jacobson Limited and ors

Reference: [2016] EWHC 20 (Ch)

Date: 8th January 2016

Court: High Court

Comment:

Robin Hollington QC and Adrian Pay acted for TOC Investments Limited (a subsidiary of the former TNK-BP oil company) in an application to be reimbursed approximately £2,800,000 which it had advanced for the fees and expenses of provisional liquidators of Beppler & Jacobson Limited ('BJUK') (a company which owns two prestigious hotels in Montenegro which was the subject of a minority shareholders petition in the proceedings *Caldero Trading Limited v Beppler & Jacobson Limited* [2013] EWHC 2191 (Ch), [2014] EWCA Civ 935 in which Robin Hollington QC and Adrian Pay acted for the petitioner)

Pursuant to a partial compromise of the petition, it was ordered in 2012 ('the Newey Order') that, after a share buy-out and the dismissal of the petition, the costs of the PLs be paid by BJUK. TOC shortly thereafter entered into a funding agreement with the PLs and BJUK which provided for the 'advance' of monies for the costs of the PLs. TOC advanced c. £2,800,000 in relation to the costs of the PLs before BJUK emerged from provisional liquidation at the end of 2014, Caldero's shares having been purchased by the majority shareholders pursuant to the Newey Order. The shareholders of BJUK maintained that TOC had no right to be reimbursed for the costs of the provisional liquidation. Hildyard J held that, while the Funding Agreement had no express provision for repayment, it was clear from the factual context, that TOC was not making a gift but it was intended that TOC have recourse. The agreement was premised on such a right, to which the Newey Order and Rule 4.30 of the Insolvency Rules gave expression and the mode and means of enforcement. Alternatively, TOC was entitled to be subrogated to the PLs' rights to payment under the Newey Order or Rule 4.30.

Practice Area: Commercial Litigation

Name: R (on the application of Trail Riders Fellowship and another) (Respondents) v Dorset County Council (Appellant)

Reference: [2015] UKSC 18

Date: 18th March 2015

Court: Supreme Court

Comment:

A challenge by way of judicial review to the surveying authority's refusal to entertain 5 applications to upgrade or add public vehicular rights of way to the definitive map. The issue was whether maps presented at a scale of 1:25,000, by using a digital map derived from an Ordnance Survey 1:50,000 map, satisfy the requirements as to scale in the relevant provisions of the Wildlife and Countryside Act 1981. The survival of potential rights for mechanically-propelled vehicles over these routes depended upon the applications being found to have been compliant with these requirements. The TRF, represented by Adrian Pay leading Thomas Fletcher, succeeded in the Supreme Court, by a majority of 3:2, in establishing the validity of the applications, resisting an appeal by Dorset CC, represented by George Laurence QC leading Kira King. The Supreme Court also considered, but declined to overrule, *Winchester College & Anor, R (on the application of) v Secretary of State for Environment, Food and Rural Affairs* [2008] EWCA Civ 431.

To read the full judgement please click below.

Practice Area: Property

Name: Caldero Trading Limited v Beppler & Jacobson Limited and ors

Reference: LTL 2/12/2014

Date: 1st December 2014

Court: High Court

Comment:

Robin Hollington QC and Adrian Pay act for the successful petitioner in a dispute relating to two prestigious hotels in Montenegro. At a hearing in relation to the implementation of a share purchase order, the petitioner sought and obtained freezing relief against the shares of the majority shareholders and those to be transferred by the petitioner pursuant to the share purchase in relation to numerous orders for payment of costs to be subject to detailed assessment. The dishonesty shown by the respondents justified an inference of a risk of dissipation of assets and their repeated failures to comply with orders to pay assessed costs until it suited them indicated a propensity to prefer their own interests over those of their creditors.

Practice Area: Commercial Litigation

Name: Caldero Trading Limited v Beppler & Jacobson Limited and ors

Reference: [2014] EWCA Civ 935

Date: 8th July 2014

Court: Court of Appeal

Comment:

Robin Hollington QC and Adrian Pay act for the Petitioner (Respondent to the appeal) in a long-running dispute relating to two prestigious hotels in Montenegro. The Petitioner is a minority shareholder in a UK holding company which owns land in Montenegro and, through a Montenegrin subsidiary, the two hotels.

The Appellants sought to overturn the decision of Mr Justice David Richards [2013] EWHC 2191 (Ch) in which he accepted the Petitioner's case that all sums (in the order of €50,000,000) provided for the purchase and renovation/refurbishment of the hotels were agreed to be provided by way of capital rather than loan and not to be deducted from the Petitioner's share. The Court of Appeal upheld Mr Justice David Richards' decision, rejecting the Appellants' submission that the agreement was commercially improbable and that the findings were inconsistent with certain documents. The Court of Appeal held that the judge had been entitled to make the findings which he did and that the appeal should never have been brought.

Practice Area: Commercial Litigation

Name: Trail Riders Fellowship & ors v Powys County Council

Reference: [2013] EWHC 3144 (Admin)

Date: 17th October 2013

Court: -1

Comment:

Adrian Pay acted for the Claimants in a successful challenge to two traffic regulation orders imposing a ban on mechanically propelled vehicles on two byways open to all traffic. In other ongoing proceedings, one of the Claimants alleged that the byways were out of repair and sought to enforce the authority's duty to repair. The traffic regulation orders were made during the course of the hearing of that claim (which was stayed pending any challenge to the orders). Mr Justice Cranston quashed the orders on the basis that the authority may have been influenced by the improper consideration that the orders would benefit the authority's position in the other proceedings (or not making the orders would jeopardise their position).

Practice Area: Property

Name: Caldero Trading Limited v Beppler & Jacobson Limited and ors

Reference: [2013] EWHC 2191 (Ch)

Date: 23rd July 2013

Court: High Court

Comment:

Robin Hollington QC and Adrian Pay act for the petitioner in a dispute relating to two prestigious hotels in Montenegro. Following a trial, Mr Justice David Richards accepted the petitioner's case that funds (in the order of €50,000,000) invested by the company's majority shareholder had been invested by way of capital rather than loan. Robin Hollington QC and Adrian Pay subsequently succeeded in upholding the decision in the Court of Appeal.

Practice Area: Commercial Litigation

Name: Trail Riders Fellowship and Tilbury v Dorset County Council

Reference: [2013] PTSR 987, CA; [2013] EWCA Civ 553

Date: 20th May 2013

Court: -1

Comment:

A challenge by way of judicial review to the surveying authority's refusal to entertain 5 applications to upgrade or add public vehicular rights of way to the definitive map. The issue was whether maps produced to a scale of 1:25,000, by using a digital map derived from an Ordnance Survey 1:50,000 map, satisfy the requirements as to scale in the relevant provisions of the Wildlife and Countryside Act 1981. The survival of potential rights for mechanically-propelled vehicles over these routes depended upon the applications being found to have been compliant with these requirements. Adrian acted for the Appellant in a successful appeal against the decision of Supperstone J who had dismissed the claims (first instance decision reported at [2013] 1 All ER 209). The Court of Appeal held that the maps were compliant with the requirements of paragraph 1 Schedule 14 Wildlife and Countryside Act 1981.

Adrian was subsequently successful in upholding the Court of Appeal's decision in the Supreme Court.

Practice Area: Property

Name: Caldero Trading Ltd v Beppler & Jacobson Ltd Ors

Reference: [2012] EWHC 4031 (Ch)

Date: 14th December 2012

Court: High Court

Comment:

Under the terms of a consent order, provisional liquidators were no longer entitled to all of the books and records of a company which was the subject of a winding up petition, as the order had restricted the liquidators' entitlement to documents reasonably necessary solely for protecting and preserving the company's assets.

Practice Area: Commercial Litigation

Name: Caldero Trading Ltd v Beppler & Jacobson Ltd & Ors

Reference: LTL 10/1/2013

Date: 14th December 2012

Court: High Court

Comment:

An application to re-amend amended points of defence was refused where the draft amendments had not made out any case as to why a final order to wind-up a company on an agreed basis ought to be varied.

Practice Area: Insolvency

Name: Trail Riders Fellowship v Peak District National Park Authority

Reference: [2012] EWHC 3359 (Admin)

Date: 30th November 2012

Court: -1

Comment:

A successful challenge to an experimental traffic regulation order imposing a ban on mechanically propelled vehicles on a byway open to all traffic. The purported experiment was irrational and the experiment described was no experiment at all. The experimental traffic regulation order was quashed.

Practice Area: Property

Name: Caldero Trading Ltd v Beppler & Jacobson Ltd and ors

Reference: [2012] EWHC 2286 (Ch)

Date: 13th November 2012

Court: High Court

Comment:

A company case in which Robin Hollington QC and Adrian Pay successfully applied for the appointment of provisional liquidators of a company with interests in Montenegro, fought off challenges to the jurisdiction of the English court, and subsequently obtained final relief in the petition seeking relief on the unfair prejudice ground and winding up on the just and equitable basis.

Practice Area: Commercial Litigation

Name: Trail Riders Fellowship and Tilbury v Dorset County Council

Reference: [2012] EWHC 2634 (Admin); [2013] 1 All E.R. 209

Date: 2nd October 2012

Court: -1

Comment:

A challenge by way of judicial review to the surveying authority's refusal to entertain 5 applications to upgrade or add public vehicular rights of way to the definitive map. The issue relates to whether maps produced to a scale of 1:25,000, by using a digital map derived from an Ordnance Survey 1:50,000 map, satisfy the requirements as to scale in the relevant provisions of the Wildlife and Countryside Act 1981. The survival of potential rights for mechanically-propelled vehicles over these routes depended upon the applications being found to have been compliant with the requirements. Mr Justice Supperstone dismissed the claim. The claim subsequently went to the Court of Appeal, where Adrian succeeded in overturning the decision and then the Supreme Court where Adrian succeeded in upholding the decision of the Court of Appeal.

Practice Area: Property

Name: Caldero Trading Ltd v Beppler & Jacobson Ltd and ors

Reference: [2012] EWHC 1609 (Ch)

Date: 14th June 2012

Court: High Court

Comment:

Joinder of additional parties to a section 994 petition; service outside the jurisdiction (Russia, Nevis); resisting strike-out application by a director of the company in relation to which the petition was presented, where no cause of action alleged but director was a central actor in the wrongdoing and should provide disclosure; resolution of dispute as to entitlement of the petitioner to show documents and witness statements provided by Respondents to its funder; argument as to relationship between CPR 31.22 and implied undertakings in disclosure orders attached to freezing-type orders.

Practice Area: Commercial Litigation

Name: Kind v Northumberland County Council

Reference: [2013] 1 WLR 743, [2012] RTR 30, [2012] EWHC 603 (Admin)

Date: 14th March 2012

Court: Administrative Court

Comment:

Adrian Pay acted for the successful appellant in an appeal by way of case stated to the Administrative Court in relation to a cattle grid across the full width of a public bridleway. It was successfully argued before Lord Justice Moore-Bick and Mr Justice King that section 146 Highways Act 1980 could not be used to authorise an obstruction which ran the full width of a public highway. The judgment provided an important statement of principle as to the limits on the power under section 146 Highways Act 1980 and also guidance as to how the Courts should approach the discretion under section 130B Highways Act 1980.

Practice Area: Property

Name: TAS Restaurants Limited v Firat

Date: 2nd February 2010

Court: High Court

Comment:

Malcolm and Adrian acted for the Respondent/Defendant to a freezing injunction for £550K. Allegations of breach of duty and trust in relation to a catering business.

Practice Area: Commercial Litigation

Name: Thames Valley Housing Association Limited & others v Elegant Homes (Guernsey) Limited & others

Reference: [2009] EWHC 2647 (Ch)

Date: 27th October 2009

Court: High Court

Comment:

Ts purchased for £575,000 plots of land for 9 units from E from a development site of 30 units. W were solicitors acting for E who during the course of the conveyance to Ts gave undertakings to discharge a charge affecting the land. The charge secured all monies owed by E to B (a bank): that borrowing comprised not only E's borrowing for the present site (approx. £1.3m at the time of the hearing) but also for another development site. Ts paid E a further approx. £1m under build contracts entered into at the same time as the conveyances to have the dwellings built. W did not obtain a redemption figure from B before giving the undertaking. In breach of the terms of E's facility, B was not told at the time of the sale or the build contract. B required repayment of an amount approximately equivalent to the outstanding facility referable to this site (approx. £1.3m), much less than E's full indebtedness, as a condition of releasing the charge. On Ts' application for summary enforcement of the undertakings, W contended that there should be an inquiry as to what B could properly require to discharge the charge: there was a reference to 'bullet repayments' in an internal bank document which W argued should be taken to be evidence of an arrangement whereby B could be compelled to discharge the charge upon payment of what B might have received if the sale had been undertaken with B's knowledge and consent.

Held: There was no evidential basis for W to argue that B could be compelled to discharge the charge for anything less than it demanded. The arrangement between B and E was fully documented; it did not provide any right for E to compel B to release any part of the charge other than by redemption in full; it did not contemplate a sale by E without B's consent or a sale of plots of land which had not been built on. Since there was no real issue as to what B could properly require to discharge the charge, W was ordered to perform its undertakings. Even if there had been such an issue, the Court would almost certainly have ordered performance in any event. A purchaser who accepts an undertaking should be entitled to rely on it and to know that the solicitor giving it will have to comply with it. The Court considered dicta in *Clarke v Lucas LLP* [2009] EWHC 1952 (Ch) and obiter dicta in the cases of *L Morgan & Co v Jenkins O'Dowd & Barth* [2008] EWHC 3411 (Ch) and *Angel Solicitors v Jenkins O'Dowd & Barth* [2009] 1 WLR 1220.

Practice Area: Property

Name: Angel Solicitors (A Firm) v Jenkins O'Dowd & Barth (A Firm) & (1) Barclays Bank Plc (2) Close Brothers Limited (3) Ellenwell Properties Limited

Reference: [2009] EWHC 46 (Ch); [2009] 1 WLR 1220; [2009] PNLR 19; [2009] NPC 9

Date: 19th September 2009

Court: High Court

Comment:

C applied for summary enforcement of undertakings given by D in the course of conveying three properties. These were the usual form of undertaking to discharge charges on completion of the transaction. Barclays had an all-monies charge over two properties securing the indebtedness of substantially in excess of the value of the properties. Close had an all-monies over the third property. D did not seek a redemption figure prior to giving the undertakings. Barclays and Close openly indicated that they would release their charges for amounts less than the full secured indebtedness, such amounts being broadly the full net proceeds of sale realised by the sales of

the properties. D sought to join Barclays and Close to the proceedings, arguing that Barclays and Close would have released the charges for a lesser amount if asked for a redemption figure during the course of the conveyancing transactions. D invited the Court to order an inquiry as to what amount would have been agreed by Barclays and Close at that time, on the basis that this was relevant as to the extent to which the Court should enforce its undertakings.

Held:

The actual sums that Barclays and Close might have required in the past had D sought a redemption figure at the correct time were irrelevant to the question of enforcing the undertakings. There was no basis on which the instant court could impose upon Barclays or Close a redemption figure merely because it may have been prepared to agree a lesser figure at an earlier time. The application to join Barclays and Close was dismissed accordingly. C's application for summary judgment was granted.

Practice Area: Property

Name: Clark & another v Lucas Solicitors LLP

Reference: [2010] 2 All ER 955; [2009] EWHC 1952 (Ch)

Date: 31st July 2009

Court: High Court

Comment:

Cs purchased a residential property, being one newly built property out of a small development. D solicitors provided an undertaking in the usual form to discharge charges on completion of the transaction. There were two all-monies charges secured over the whole site, one in favour of a bank and one in favour of K, an individual who had provided finance for the development. D had not sought a redemption figure from either the bank or D; it did not appear that D had communicated in any way with K prior to giving the undertaking to discharge his charge. D paid the entire proceeds of sale to the bank which sealed a discharge of its charge. K received nothing. K's charge secured in excess of £1 million which was significantly in excess of the value of the property, £560,000. K refused to seal a discharge without payment of the entire sum secured. C applied for summary enforcement of D's undertaking. D admitted giving the undertaking and breach of the undertaking, but contended that D should not be ordered to perform the undertaking and there should be an inquiry as to damages instead. D submitted that the undertaking was impossible to perform; that there was uncertainty as to the amount which K could properly insist upon; that ordering performance of the undertaking would be disproportionate to Cs' true loss; and that, as a relevant matter in assessing Cs' true loss, C may be entitled to be subrogated to the rights of the bank under their prior charge.

Held:

The undertaking was not impossible to perform. There was no evidence of a real dispute as to the amount which K could properly require as a condition of sealing a discharge. Ordering performance was not disproportionate: D should be taken to have contemplated, when undertaking to discharge an all-monies charge, that he might be required to pay all the monies secured thereunder. The Court considered obiter dicta in the cases of *L Morgan & Co v Jenkins O'Dowd & Barth* [2008] EWHC 3411 (Ch) and *Angel Solicitors v Jenkins O'Dowd & Barth* [2009] 1 WLR 1220.

Practice Area: Property

Name: Wilson and another v Yorkshire Dales National Park Authority

Reference: [2009] EWHC 1425 (Admin)

Date: 19th June 2009

Court: High Court

Comment:

Appeal under Schedule 9 of Part VI Road Traffic Regulation Act 1984 by Motoring Organisations' Land Access and Recreation Association. National Park Authority made traffic regulation orders banning use of a number of routes by mechanically-propelled vehicles pursuant to new powers conferred by Natural Environment and Rural Communities Act 2006. Traffic regulation orders quashed for failure to consider adequately or at all section 122 Road Traffic Regulation Act 1984. Irrational not to consider less stringent traffic regulation orders where routes subject to outstanding applications under Schedule 14 Wildlife and Countryside Act 1981 to have vehicular rights shown on definitive map.

Practice Area: Property

Name: Buxton Country Homes Limited v (1) Surfbuild Limited (2) SCSC Developments Limited (3) James Cansdale (Little Chalfont Limited)

Reference: [2008] EWHC 1475 (Ch)

Date: 27th June 2008

Court: High Court

Comment:

C was involved in property development. C and Ds had discussed the possibility of a joint venture arrangement. It had been contemplated that C would find properties for development, obtain planning permission and be responsible for site management, and that Ds would fund the purchase of the site and the build costs. In respect of certain properties, Ds had written letters to C setting out terms of the proposed venture. In respect of certain cases where a letter existed, the scope of the development had changed from when the letter was first written. Disputes arose in relation to certain properties. Two of the properties were acquired by C and the others were acquired by the Ds. In general terms, C and Ds were in dispute about whether C was entitled to certain fixed fees in respect of property developments (finder's fees, fees for obtaining planning permission and site management). The parties were also in dispute about profit shares in respect of the various properties in issue, both as to entitlement and extent.

Held:

Findings were made as to C's entitlement to profit shares in relation to the properties purchased in Ds' names. As to two sites in Ds' name, where the scope of the project had changed since the letter evidencing the joint venture agreement, C was held to be entitled to a share of profits by an implied term or constructive trust, the extent of that profit share to be determined at an inquiry. As to one site in C's name, Ds were held to be entitled by a constructive trust to a profit share to be determined at an inquiry. C was held to be entitled to recover finders' fees and commission in relation to the obtaining of planning permission without deductions. C was held to be entitled to recover a management fee without deductions in relation to two properties, but not others.

Practice Area: Property

Name: Lansforsakringar Bank AB v Wood

Reference: [2007] All ER (D) 254 (Jul)

Date: 17th July 2007

Court: High Court

Comment:

D owed C (a Swedish bank) an outstanding debt, for which C had obtained judgment in Sweden. The debt was guaranteed by D's mother and had also been secured on the mother's home.

Following his mother's death, D was successful in applying for substantial provision under the Inheritance (Provision for Family and Dependents) Act 1975.

D's mother's will also released D from all his liabilities to her. If the debt to C was paid by the estate of D's mother pursuant to its guarantee liability in the ordinary course of administration, D would have no liability to either the bank or to the estate in relation to C's debt.

C applied for a third party debt order under CPR 72.2 arguing that the provision under the 1975 Act was a debt which could be attached. If the application was granted, the practical effect was that the debt would fall on D rather than his mother's estate.

Held:

An order made under the Inheritance (Provision for Family and Dependents) Act 1975 is not a payment of money which qualified as a 'debt due or accruing due'. As such, the court did not have jurisdiction under CPR 72.2 to make a final third party debt order in respect of the provision ordered under the 1975 Act.

An order making provision under the Inheritance (Provision for Family and Dependents) Act 1975 is not 'a debt due or accruing due' and, accordingly, cannot be made the subject of a third party debt order under CPR 72.2.

Practice Area: Trusts and Estates

Name: Mohamed v City of Westminster

Reference: [2005] EWCA Civ 796; (2005) HLR 47; [2005] All ER (D) 137 (Jun)

Date: 15th June 2005

Court: Court of Appeal

Comment:

Intervening accommodation did not break the chain of causation for the purposes of a finding of intentional homelessness. The reviewing officer was justified in finding that the intervening accommodation was not settled accommodation.

Articles

Date	Title	Contributors
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Date	Title	Contributors
30th April 2015	What's illegality? The decision of the Supreme Court Published In <i>New Square Chambers</i>	Adrian Pay
20th December 2013	Choose your weapon: interlocutory relief in shareholder disputes Published In <i>New Square Chambers</i>	Adrian Pay
28th February 2010	A grave year for undertakers Published In <i>New Square Chambers</i>	Adrian Pay
30th June 2007	How big is an equity? Published In <i>New Square Chambers</i>	Adrian Pay

Publications

Date	Title	Contributors
14th April 2016	Macdonald on the Law of Freedom of Information Third Edition Oxford University Press	John Macdonald QC Ross Crail Edwin Simpson Simon Adamyk Adrian Pay Charlotte Ford



Date	Title	Contributors
30th May 2009	The Law of Freedom of Information 2009 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay Charlotte Ford

20th March 2003	The Law of Freedom of Information 2003 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay
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