

Court of Appeal gives guidance on invalid Floating Charges

Our May newsletter provides an overview of a recent case surrounding Floating Charges.

CASE

Crumpler & another (Joint Liquidators of Peak Hotels and Resorts Ltd) v Candy Limited[2019] EWCA Civ345.

SUMMARY

Floating Charges created **within 12 months** of a company's insolvency can only relate to the **actual value of goods or services provided at the same time as or after the creation of the Charge and not to any previously agreed fixed fee**, the Court of appeal has ruled.

DETAIL

The Court said that fixed returns are incompatible with Section 245(6) of The Insolvency Act of 1986.

- In October 2015 Peak agreed a £3.8m fixed fee agreement with the law Firm, which was secured by a Legal Charge containing a Floating Charge.
- In February 2016, Peak entered Liquidation and the English High court recognised the Liquidation as foreign main proceedings.
- The fixed fee immediately became payable under the terms of the fixed fee arrangement and they sought to recover the full amount.
- The Liquidators claimed that the creditor should be only able to recover the value of services supplied to the company **after the date the Charge was created**, which was 21 October 2015. This was estimated at £1.2m rather than the fixed fee of £3.8m.
- In November 2017 The High Court ruled that the value of services supplied amounted to the whole of the £3.8m fixed fee. The Liquidators appealed to the Court of Appeal.
- The Court of Appeal ruled that the focal point of s245(6) was **the value of the services actually supplied after the date of creation of the Charge** - it was not what the parties had agreed would be paid. The valuation test was an objective one, considering the value of actual goods and services provided.
- The Court said the concept of **provision of services in return for a fixed fee had to be disregarded** because such a concept is incompatible with the valuation exercise under s245(6). It is forward looking- setting a fee in advance- whereas the **valuation required** under s245(6) is **retrospective** in that it requires an **assessment of the work that has actually been done**.
- The creditor was still able to prove in the Liquidation for the remaining amount of the fixed fee, albeit as an unsecured debt.

Please note that should your clients require any confidential advice regarding insolvency matters they are welcome to contact one of our partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedures please do not hesitate to contact us.

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