

Deciding the rightful recipient of monies paid into court during liquidation proceedings (*Crumpler v Candey*)

Restructuring & Insolvency analysis: The rightful recipient of monies paid into court during liquidation proceedings has become a hotly contested battle in the wider struggle around a multimillion dollar hotel bankruptcy. Ashkhan Candey, managing partner of Candey (the firm acting for Peak Hotels and Resorts Ltd (Peak) in the litigation), gives a quickfire roundup of the background and decisions in this case.

Crumpler and another (Joint liquidators of Peak Hotels and Resorts Ltd in liquidation) v Candey Ltd, [2018] EWCA Civ 2256, [2018] All ER (D) 78 (Oct)

What are the practical implications of this case for practitioners?

Sir Colin Rimer's very clear judgment has clarified any perceived uncertainty in the law. This is a win for the ordinary person and their ability to fund litigation. The liquidators argument that a claimant loses all right over money they pay into court—the price they pay for access to justice—was found to be fundamentally misconceived. The ability to charge monies in court provides an effective tool for a person to give security to the other side and at the same time to their lawyers.

What was the background?

Candey acted for Peak in complex litigation in London, the BVI, New York and Hong Kong in respect of a \$368m shareholder dispute over the ownership of Aman Hotels. As Peak's cash began to run out, Candey agreed to cease charging hourly rates and agreed a fixed fee of £3.8m to help Peak finance the litigation to the end of the proceedings. The fixed fee was secured by a charge over, among other things, 'all monies in Court in all jurisdictions worldwide'.

Eight weeks before trial, Peak entered liquidation. The liquidators instructed Candey to continue to represent them, and in due course a substantial multi-million-dollar settlement was secured which included the release to Peak of around \$12m that Peak had previously paid into court.

Candey had by this time incurred £1.2m of notional hourly rates but was able to claim as a secured creditor for the full amount of the fixed fee. The liquidators challenged the security which comprised chiefly of monies paid into court. The liquidators argued that where monies had been paid into court, by way of security for costs and fortification of a cross-undertaking in damages, the paying party loses all right in the monies. Candey disagreed. They contended that the paying party retains an interest in the monies, a right to demand its return on success, and that right was capable of being charged.

In June 2017 His Honour Judge Davis-White QC found in favour of Candey, holding that it had a floating charge over the \$12m in funds paid into court and a further \$1.5m recovered from Standard Chartered Bank (see: *Re Peak Hotels and Resorts Ltd (in liquidation); Crumpler and another v Candey Ltd*, [2017]

EWHC 1511 (Ch), [2017] All ER (D) 171 (Jun)).

In a further judgment in November 2017 ([2017] EWHC 3388 (Ch)) His Honour Judge Raeside QC, in determining an application made by the liquidators under section 245 of the Insolvency Act 1986, valued Candey's services at the contractual price of £3.8m plus interest.

The liquidators appealed against both decisions.

What did the court decide?

The appeal against the decision of HHJ Davis-White QC was unanimously rejected by the Court of Appeal. Sir Colin Rimer, who delivered the judgment, said:

'In my judgment, the current of authority flows firmly in favour of Candey and against the liquidators—namely that the payer of money into court by way of providing security...retains its property in the money...subject to the security interest...I would also regard such current as flowing in the correct direction.'

Interviewed by Julian Sayerer.

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