

Conditional fee agreements: another unattractive hiccup

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Introduction

Could a firm of solicitors bring proceedings against their former client on the basis that the client was in breach of a duty of good faith, by settling the underlying litigation on terms which meant that the solicitors had no express entitlement to their costs? To what extent, if at all, when bringing such a claim, can the solicitors rely on privileged documents? And to what extent, if at all, can the solicitors rely on confidential documents, provided to them after the underlying proceedings have settled? These are some of the novel questions raised by the Court of Appeal in its recent decision of *Candey Ltd v Bosheh and another* [2022] EWCA Civ 1103. This article takes a closer look at this judgment.

Background

Candey Ltd (“Candey”) are a firm of solicitors. They were engaged in two separate High Court actions by Mr Bosheh and his son (together the “Boshehs”). The work was carried out under a conditional fee agreement (“CFA”). The terms of the CFA meant that Candey would only be paid for each action if the Boshehs were the successful party. If that outcome occurred, Candey would benefit from an uplift of 100% on their fees.

The first action was discontinued against the Boshehs. In that action, Candey recovered its fees under the CFA in the normal way. The second set of proceedings, however, was another matter. In that action, knowing receipt (an equitable wrong which is essentially concerned with receiving funds in breach of trust) and conspiracy were alleged against the Boshehs, who in turn made a substantial counterclaim. The Boshehs settled this action shortly before trial on a ‘drop hands’ basis as part of a global settlement, meaning all parties simply walked away from their respective claims with no payments passing between them. The Boshehs refused to settle on terms negotiated by Candey, which would have involved them gaining a share of any recovery against a second defendant in the same action. A settlement on those terms which would have enabled Candey to recover its fees under the CFA.

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