Neutral Citation [2021] EWHC 1950 (Ch)

Claim No: HC-2014-001262

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Sitting remotely at:
Royal Court of Justice
Rolls Building
7 Rolls Buildings
London EC4A 1NL

Date: 16 July 2021

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

BETWEEN:

PETER FARRAR
(deceased)

Claimant
(assignor for the purposes of this application)

-and-

CANDEY LIMITED

Intended Claimant
(Applicant and assignee for the purposes of this application)

-and-

DAVID CHARLES LAWSON MILLER

Defendant
(Respondent for the purposes of this application)

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- -

Mr Muhammed Haque, QC (of **CANDEY**) appeared for the Intended Claimant/Applicant

Mr Jonathan Cohen, QC (instructed by **North Star Law Limited**) appeared for the Defendant/Respondent

Hearing date: 10 June 2021 with supplemental written submissions

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Marcus Smith:

A. INTRODUCTION

1. The claimant in these proceedings is a Mr Peter Farrar, who died suddenly and unexpectedly in October 2019. He commenced these proceedings against the Defendant, Mr David Miller, in 2014. The proceedings have yet to come to trial, and are in their early stages.

2. The Applicant is the firm of solicitors – Candey Limited (**Candey**[1]) – who acted for Mr Farrar in the proceedings. By this application, Candey seek to be substituted for Mr Farrar as claimant. The basis for the application is that Mr Farrar assigned his claim against Mr Miller to Candey. If the application is granted, then Candey seek consequential amendments to the Claim Form and the Particulars of Claim to reflect the change in the identity of the claimant. These consequential amendments are not controversial between the parties, but the application to substitute Candey for Mr Farrar is contentious and is opposed by Mr Miller.

3. Mr Miller opposes the application on two grounds:

   (1) First, he contends that the assignment from Mr Farrar to Candey is void on the grounds of champerty.

   (2) Secondly, and in the alternative, pursuant to his own application, he seeks an order under section 423 of the Insolvency Act 1986 avoiding the assignment on the ground that the assignment was a transaction defrauding creditors.

4. In the event, the application under section 423 was not pursued on this occasion. Mr Cohen, QC, who appeared for Mr Miller, when I pressed him on whether the section 423 application should be moved on this or on another occasion, considered the matter in light of Mr Haque, QC's submissions, and submitted that it would be more appropriate for the section 423 application (if necessary to be dealt with at all) to be dealt with on a later date. I accepted that submission – which was not opposed by Mr Haque – and accordingly this judgment does not deal with the section 423 application.

B. IMPLICATIONS OF MR FARRAR'S DEATH

5. At the outset of the hearing, Mr Cohen helpfully pointed out that Mr Farrar had no personal representative, and that an order pursuant to Rule 19.8 of the Civil Procedure Rules (**CPR**) needed to be made. It was common ground between the parties that (given the issues arising) there was no need for any person to be appointed to represent the estate of Mr Farrar pursuant to CPR 19.8(1)(b) and that I should instead make an order under CPR 19.8(1)(a) and hear the application in the absence of any person representing the estate of Mr Farrar. That suggestion was, in the circumstances of this application, clearly right, and I made an order under CPR 19.8(1)(a) at the outset of the hearing.

[1] Annex 1 to this Judgment contains a list of the terms and abbreviations used, identifying the paragraphs in the Judgment where each term/abbreviation is used.

C. THE ASSIGNMENT

6. The assignment (the **Assignment**) is in writing, but undated. It is signed by Mr Farrar, witnessed by his personal assistant (a Ms Ansell) and executed as a deed by Candey. The Assignment contains a series of recitals, which describe (amongst other things):

(1) The proceedings commenced by Mr Farrar against Mr Miller. These are referred to in the Assignment as the **Proceedings**, which term I adopt.

(2) The litigation services provided by Candey in relation to the Proceedings and other matters. It is noted that Candey had, at the time of the Assignment, recorded via its standard hourly rates a total sum in respect of the proceedings of £135,000 (the **Incurred Hourly Rate Costs**). In respect of the other matters, the costs were £100,000 (the **Other Litigation Hourly Rate Costs**).

(3) The basis on which Candey was retained. Recital (B) provides:

> "[Candey], and its predecessor in title CANDEY LLP, was instructed by [Mr Farrar] to carry out litigation services since the commencement of Proceedings in accordance with a Damages Based Agreement dated 23 October 2013, recently amended to a Conditional Fee Arrangement (CFA), the condition not yet being satisfied. In consideration for entering into this Deed of Assignment (**Deed**), the CFA is terminated by consent with immediate effect."

(4) Liabilities, in the form of various judgment debts, of Mr Farrar in the amount of £453,870.92 plus interest and costs, which Mr Farrar was unable to pay and in respect of which a bankruptcy petition might be presented. The recitals then state:

> "(E) [Mr Farrar] does not have sufficient funds with which to continue the Proceedings to their conclusion. [Mr Farrar] has fully investigated alternative funding options and, after doing so, has concluded that it is in his best commercial interest to enter into this Deed.
>
> (F) [Mr Farrar] and [Candey] agree that entering into this Deed provides each with the best opportunity to recover any monies from [Mr Miller].
>
> (G) [Mr Farrar] has been advised to take independent legal advice in relation to entering into this Deed.
>
> (H) [Mr Farrar] has agreed to assign all of the benefits in the Proceedings (but not any burdens to include any historic adverse costs liability) to [Candey] on the terms set out in this Deed.
>
> (I) [Mr Farrar] will receive a distribution from any Recoveries as set out below."

7. The Assignment is expressed to be subject to English law and the jurisdiction of the English Court (clause 7). Clause 2 effects (or purports to effect) an assignment in the following terms:

> "2.1 Subject to the terms of this Deed, [Mr Farrar] hereby assigns unconditionally, irrevocably and absolutely to [Candey] all of [Mr Farrar's] title, interest and benefits in and to the Assigned Claims with effect from the Assignment Date.

> 2.2 [Candey] agrees that it shall accept the assignment referred to in clause 2.1 and distribute any sums in accordance with the Distribution of Recoveries within 28 days of receipt of the Recoveries."

8. Clause 2 contains a number of terms that are defined in clause 1. Specifically:

   (1) **Assigned Claims** means "all claims and entitlements arising within and out of the facts of the Proceedings (whether against [Mr Miller] or anyone else) including all claims for damages and/or relief and/or interest and/or costs".

   (2) **Recoveries** means "any damages, profits, money and/or other benefits derived as a result of the Proceedings in respect of the Assigned Claims".

   Although "Assignment Date" is capitalised and appears to have been intended as a defined term, it is actually not defined in the Deed. The Deed provides – in an unnumbered last line just before the execution section – that "[t]his document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it". Unfortunately, no date appears at the beginning of the Deed: there is only a blank. However, the Deed was witnessed by Ms Ansell on 12 September 2019 (the date appears under her address) and – to the extent it matters – I treat that date as the date of the Deed.

9. Clause 3 deals with the distribution of the Recoveries, which are to be distributed in the order of priority set out in clause 3.1 until the Recoveries are extinguished. Using that order, the distribution is specified as follows:

   (1) Payment of any premium for after the event (**ATE**) insurance taken out in respect of the Proceedings

   (2) A sum "equivalent to (i) double the amount of all legal costs [Candey] has incurred (including, for the avoidance of doubt, all of the Incurred Hourly Rate Costs) and double all future costs incurred pursuant to [Candey's] hourly rates as set out in its standard terms of retainer, in connection with the Proceedings (including any appeals and costs proceedings) plus (ii) the Other Litigation Hourly Rate Costs. The amount distributable under this clause is subject to a maximum of 50% of the Recoveries after first deducting the insurance premium referred to in [(1)] above and the sum of £125,000. If [Candey] obtains an order or reaches an agreement that its hourly rate costs and/or expenses are to be paid by [Mr Miller], all such monies recovered will be paid directly to [Candey] and, if applicable, will reduce the amount payable to [Candey] under this clause".

   (3) The balance to Mr Farrar.

D. POINTS RAISED IN RELATION TO THE ASSIGNMENT

10. Unsurprisingly, the Assignment and its validity has been the subject of discussion between the parties' legal representatives, so as to articulate and (where possible) narrow the points in dispute. A number of points as to the validity of the Assignment were raised in these discussions, but were not pursued before me. I am grateful to the parties for their focus on the truly contentious issues.

11. It was common ground that the Assignment – if valid – was an assignment under section 136 of the Law of Property Act 1925. This is important because section 136 permits an

assignee of a debt or other legal chose in action to bring proceedings in his own name, which is precisely the point of Candey's application. If this were an equitable assignment, the question of substituting Candey for Mr Farrar would be altogether more complex.

12. It seems to me that (if valid) the Assignment is indeed an assignment within section 136. In particular:

(1) The Assigned Claims are legal choses in action.

(2) The Assignment is absolute. Although Candey, as assignee, is obliged to distribute the Recoveries in a particular way pursuant to clause 3, this obligation does not affect the absolute and unconditional nature of the assignment of the Assigned Claims so as to render the Assignment conditional and so outside section 136.

(3) The Assignment is in writing and under the hand of the assignor, Mr Farrar.

(4) Although no formal notice of the Assignment was given, that is not in fact a requirement of section 136. What is required is express written notice of the Assignment. Candey say that notice was given when the application to substitute Candey for Mr Farrar was served on Mr Miller's legal representatives,[2] and that is sufficient to meet the requirements of section 136. This point was not disputed by Mr Miller.

13. The only point – but it is a fundamental one – taken by Mr Miller is that the Assignment is a champertous one and void for that reason.

E. CHAMPERTY

(1) The essential rules

14. In *R (Factortame Limited) v. Secretary of State for Transport, Local Government and the Regions (No 8)*,[3] Lord Phillips MR adopted the definitions of champerty and maintenance in *Chitty on Contracts*. A person is guilty of maintenance if he supports litigation in which he has no legitimate concern without just cause or excuse. Champerty occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit. Champerty can thus be seen as an aggravated form of maintenance.[4]

15. Champerty and maintenance are rules that apply to all contracts or transactions falling within their scope. The rules are not limited to agreements. Assignments generally, and particularly assignments of rights to litigate or of causes of action, are no exception. It is perfectly possible for the mere transfer of a cause of action to be voided because it infringes the rules of champerty and maintenance.

16. However, not all assignments of rights to litigate or of causes of action are invalid by these rules. As Lord Roskill noted in *Trendtex Trading v. Credit Suisse*,[5] "[t]he court should look at the totality of the transaction. If the assignment is of a property right or

[2] See paragraph 60 of Candey's written submissions.
[3] [2002] EWCA Civ 932 at [32].
[4] In *Sibthorpe v. Southwark LBC* at [56], Lord Neuberger MR noted that this "classic" definition of champerty was not the only form of champerty, so it is not right to regard cases of champerty as merely a subset of maintenance.
[5] [1982] 1 AC 679 at 703.

interest and the cause of action is ancillary to that right or interest, or if the assignee had a genuine commercial interest in taking the assignment and in enforcing it for his own benefit, I see no reason why the assignment should be struck down as an assignment of a bare cause of action or as savouring of maintenance."

17. It is also important to appreciate that because the rules of champerty and maintenance are founded on public policy, they are not immutable, but must reflect the times. In *Martell v. Consett Iron Co Ltd*,[6] Dankwerts J expressed the view that unless the law of maintenance was capable of keeping up with modern thought, it must die in a lingering and discredited old age. He took the view that a doctrine like maintenance, based as it was on considerations of public policy, could not become "frozen into immutable respectability", so as to be no longer capable of alteration.

(2) Developing case-law: the importance of access to justice

18. The times have changed considerably in the case of litigation funding. The need for, and importance of, access to justice has rendered proper and lawful transactions that would – in older days – have been caught by the doctrines of champerty and maintenance. In a speech to Gray's Inn in 2013, Lord Neuberger said that "access to the courts is a right and the State should not stand in the way of individuals availing themselves of that right".[7]

19. That is a point that has been made, repeatedly, in the cases. In *JEB Recoveries LLP v. Binstock*,[8] His Honour Judge Simon Barker, QC (sitting as a Deputy High Court Judge) asked rhetorically:

> "In a litigation climate where legal representatives can both share in the fruits of the claim they advance and underwrite their client's costs risk of the claim and thereby enable an impecunious client to pursue a just claim, why should the court decline to hear, on grounds of public policy, the claim of an impecunious litigant which has been assigned to an entity in which he has an interest and which assignment creates the opportunity to open an otherwise closed door to reasonable and proportionate protection in costs on the application and for the benefit of the defendant (which, if not complied with will bring about the termination of the litigation at much less potentially irrecoverable expense to the defendant than would have been the case had the claim not been assigned)?"

20. In *Casehub Limited v. Wolf Cola Limited*,[9] Mr Stuart Isaacs, QC (sitting as a Deputy High Court Judge) identified various considerations of public policy in favour of upholding an assignment of a right to litigate, one of which was that:

> "...access for customers to justice is therefore enhanced; the courts recognise the need for innovative but responsible ways of increasing access to justice for the impecunious: see the comments of Danckwerts J in *Martell v Consett Iron Co Ltd* [1955] Ch 363, 386-387..."

21. In *Akhmedova v. Akhmedov*,[10] Knowles J stated:

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[6] [1955] 1 Ch 363 at 382.
[7] Lord Neuberger, giving the first Harbour Litigation Funding Annual Lecture, *From barratry, maintenance and champerty to litigation funding*, Gray's Inn (8 May 2013).
[8] [2015] EWHC 1063 (Ch) at [65].
[9] [2017] EWHC 1169 (Ch) at [28(5)].
[10] [2020] EWHC 1526 (Fam).

"[35] The tests for maintenance and champerty are set out in the decision of the House of Lords in *Giles v. Thompson*, [1994] 1 AC 142. Maintenance and champerty (where profit is involved) will only be established where there is "wanton and officious intermeddling with the disputes of others in which the [maintainer] has no interest whatsoever and where the assistance he renders to the one or the other party is without justification or excuse" (per Lord Mustill at 164C-D). Lord Mustill explained that all aspects of the transaction should be taken together for the purpose of considering the test described above (164C).

[36] In *Sibthorpe v. Southwark LBC*, [2011] EWCA Civ 25, the Court of Appeal explained that, when considering an allegation of champerty in relation to an agreement to which the person conducting the litigation (or providing advocacy services) is not a party, the modern approach was for the court to decide whether the agreement would undermine the purity of justice or would corrupt public justice which is a question to be decided on a case-by-case basis ([35] to [36]). It formulated that approach given the views expressed by Steyn LJ in *Giles v. Thompson* (Court of Appeal decision), Lord Mustill in *Giles v. Thompson* in the House of Lords and Lord Phillips in *Factortame*. In *Davey v. Money*, [2019] EWHC 997 (Ch), Snowden J held that, in determining whether an agreement with a non-party as regards the conduct of litigation would tend to undermine or corrupt the process of justice, "the crucial issue appears to be whether the non-party can exercise excessive control or influence over the conduct of the proceedings in such a way as, for example, to suppress evidence, influence witnesses, or procure an improper settlement" (at [78]).

[37] Finally, the observations of Lord Neuberger MR (as he then was) in *Sibthorpe* suggest that the law of champerty should be curtailed rather than expanded by the courts in a context where access to justice is difficult to achieve for the great majority of citizens, given the ever-reducing availability of legal aid, and where legislative policy has shifted to permit a wider variety of more flexible funding arrangements."

(3) The Courts and Legal Services Act 1990

22. These cases were cases involving transactions or agreements that did not concern lawyers. Independently of these decisions, and specifically in relation to lawyers, there has been substantial intervention by Parliament. Certain fee arrangements between a client and his solicitor have been specifically sanctioned in the Courts and Legal Services Act 1990 (as amended). Types of contingent and conditional fee agreements – which, under the common law doctrines of champerty and maintenance, at least as then understood, would have been unlawful – are expressly permitted. Thus:

(1) A damages-based agreement – or **DBA** – provides for a form of contingency fees. A DBA is defined in section 58AA(3)(a) of the 1990 Act as:

"...an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that –

(i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and

(ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained..."

An agreement falling within this definition, and provided it satisfied the requirements specified in section 58AA(4) "is not unenforceable by reason only of its being a damages-based agreement" (section 58(AA)(1)), but "a damages-based agreement which does not satisfy those conditions is unenforceable" (section 58(AA)(2)[11]).

(2) A conditional fee agreement – or **CFA** – is defined in section 58(2) of the 1990 Act as follows:

> "(a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and
>
> (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances; and
>
> (c) references to a success fee, in relation to a conditional fee agreement, are to the amount of the increase."

As in the case of DBAs, "[a] conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)[12]) any other conditional fee agreement shall be unenforceable" (section 58(1)).

23. An important question – which was explicitly articulated by Candey in the arguments before me – is the extent to which the cases I have described in paragraphs 18 to 21 above (which stress the significance of enabling access to justice) can properly be used to inform and construe the statutory regime contained in the Courts and Legal Services Act 1990 (as amended).

F. CANDEY'S SUBMISSIONS

(1) Candey's position regarding the nature of the Assignment

24. Candey did not contend that the Assignment was either a CFA or a DBA within the meaning of the 1990 Act. Candey was right not to advance such a point. The Assignment can, in no way, be characterised as an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services. Candey was, undoubtedly, providing such services prior to the Assignment, pursuant to a DBA.[13] But the purpose of the Assignment was to terminate the DBA[14] and to replace it with an arrangement whereby no litigation services would be provided at all to Mr Farrar, for the very good reason that Mr Farrar would no longer have a claim to

[11] This is subject to section 58AA(9), which is not material for present purposes.
[12] Not material for present purposes.
[13] The Assignment, in recital (B) in fact refers to a "recently amended" CFA. As has been explained in correspondence, this is an error, and the reference should be to a DBA, not a CFA. In my judgment, nothing turns on this error.
[14] Recital (B) says this in terms.

litigate. The whole point of the Assignment was to transfer that claim from Mr Farrar to Candey.

25. Nevertheless, Candey contended that the Assignment was proper, in the public interest, and not champertous. That argument ran along two lines: what I shall term the "broad argument" and what I shall term the "narrow argument".

(2) Candey's "broad" and "narrow" contentions

26. Candey's position, at its broadest, was that the Assignment could be justified even if it had not been preceded by a DBA. In other words, because the Assignment was, according to its terms, similar in effect to a perfectly proper DBA, it was in the public interest even though it was not a CFA or a DBA within the meaning of the 1990 Act. That was a bold contention: if correct, it obliges me to hold that there exist, in parallel with the agreements explicitly sanctioned by Parliament in the 1990 Act, certain classes of transaction, not explicitly sanctioned by Parliament, which are nevertheless not caught by the rules on champerty and maintenance. Essentially, Candey submitted that the statutory regime as regards lawyers laid down in the 1990 Act needed to be read – and, in effect, extended – in light of the case law described in paragraphs 18 to 21 above which – as I have said – involve transactions or agreements that did not concern lawyers.

27. Candey's alternative position was significantly narrower. Candey contended that I needed to consider the Assignment in its context, as a continuation – by other means – of a perfectly proper arrangement (a DBA) within the 1990 Act. On this basis, the Assignment did no more than enable the claim against Mr Miller to continue by other means, without any further advantage to either Mr Farrar (or his estate) or to Candey. In its written submissions, Candey variously said:

> "Clause 3.1 of the Deed mirrors the DBA in such a way that no losses or gains have been made by either Mr Farrar or Candey in the execution of the Deed – the Deed is in exact equilibrium with the foregoing DBA."[15]
>
> "Mr Farrar's claim has a value of approximately £1.5m, of which Candey receives nothing beyond what it is legally permitted to receive by virtue of Mr Farrar's former DBA. Mr Farrar's estate will receive (and always would have received) the exact same amount before and after the Assignment...".[16]
>
> "...the Assignment does not, in any way, confer an unfair advantage to Candey. Clause 3.1 of the Deed clearly sets out the Distribution of Recoveries. The distribution is entirely consistent with any customary CFA or DBA arrangement and includes an express provision for the remaining balance to be transferred to [Mr Farrar] – now his estate."[17]
>
> "The sole purpose for Mr Farrar entering into the Assignment was to enhance his access to justice by keeping his claim alive. That is all. The Deed – which is not challenged in form or substance – evidences his impecuniosity and informed decision to enter into the Deed free-willed having

[15] Paragraph 19.2 of Candey's supplemental written submissions. These submissions were directed to the section 423 application made by Mr Miller but – doubtless because the champerty point and the section 423 points are to an extent interlinked – I found them of value generally.
[16] Paragraph 24 of Candey's supplemental written submissions.
[17] Paragraph 40 of Candey's written submissions.

explored all available options. The Assignment was in Mr Farrar's best interest, and in that of all potential creditors of Mr Farrar."[18]

28. In short, the essence of Candey's narrower case was that I had to view the Assignment through the prism of what had gone before. I propose to consider Candey's "broad" case first, followed by its "narrow" case.

G. CANDEY'S "BROAD" CONTENTION

29. Clearly, the Assignment cannot benefit from the statutory protection afforded to DBAs and CFAs that fall within the relevant provisions of the Courts and Legal Services Act 1990. That is because the Assignment is outwith the statutory definition of a DBA and of a CFA.[19] That means that Candey cannot rely on the statutory protection conferred on compliant DBAs and CFAs by sections 58(AA)(1) and 58(1), namely that they shall not be unenforceable by reason only of being a DBA or CFA (as the case may be).

30. Conversely, however, the automatic invalidation of DBAs and CFAs that do not comply with the statutory conditions also does not apply.

31. Candey's point was that the recognition of enforceable DBAs and CFAs in the 1990 Act, together with the judicial recognition that times have changed, and access to justice is important,[20] rendered the Assignment something that was either in the public interest or else at least could not be said not to be in the public interest. Either way, this was a case where the Assignment should not be voided by the rules of champerty and maintenance, even if it had been executed by Mr Farrar without a pre-existing DBA.

32. I accept, of course, that execution of the Assignment even without a pre-existing DBA would give Candey a financial interest in the Proceedings. That is trite and, in a very real sense, is the very point of the rules of champerty and maintenance. According to the "old" law, such an interest, on the part of a solicitor, was *ex hypothesi* impermissible. The mere existence of such an interest cannot render the *Trendtex* test satisfied, as Candey at times appeared to contend. If that were the case, then contingency agreements between solicitors and their clients would have been proper without Parliament's intervention by way of the 1990 Act.

33. The point is that such agreements were, prior to Parliament's intervention in the Courts and Legal Services Act 1990, contrary to public policy and void. The position is very clearly expressed by Lord Neuberger in *Sibthorpe v. Southwark LBC*:[21]

> "[17] A type of contract which has relatively often given rise to an allegation of champerty or maintenance is one between a claimant in a piece of litigation and the person conducting the litigation (almost always a solicitor or barrister) on the claimant's behalf. At any rate until the recent past, the law had set its face against those who conduct litigation placing themselves in a position where they could profit from their clients' success. As Lord Denning MR put it in *Wallersteiner v. Moir (No 2)*, [1975] QB 373, 393, "English law has never sanctioned an agreement by which a lawyer is remunerated on the basis of a "contingency fee", that is he gets paid the fee if he wins, but not if he loses", describing

[18] Paragraph 33 of Candey's supplemental written submissions.
[19] See paragraph 24 above.
[20] See the cases set out in paragraphs 18 to 21 above.
[21] [2011] EWCA Civ 25.

this as champerty. He relied at 394 on a dictum of Lord Esher MR in *Pittman v. Prudential Deposit Bank Ltd*, (1896) 13 TLR 110, 111:

> "In order to preserve the honour and honesty of the profession it was a rule of law which the court had laid down and would always insist upon that a solicitor could not make an arrangement of any kind with his client during the litigation he was conducting so as to give him any advantage in respect of the result of that litigation."

[18] Buckley and Scarman LJJ agreed with Lord Denning MR as to the principle. Buckley LJ said this [1975] QB 373, 401-402:

> "A contingency fee, that is, an arrangement under which the legal advisers of a litigant shall be remunerated only in the event of the litigant succeeding in recovering money or other property in the action, has hitherto always been regarded as illegal under English law on the ground that it involves maintenance of the action by the legal adviser. Moreover, where, as is usual in such a case, the remuneration which the adviser is to receive is to be, or to be measured by, a proportion of the fund or of the value of the property recovered, the arrangement may fall within that particular class of maintenance called champerty...It may, however, be worthwhile to indicate briefly the nature of the public policy question. It can, I think, be summarised in two statements. First, in litigation a professional lawyer's role is to advise his client with a clear eye and an unbiased judgment. Secondly, a solicitor retained to conduct litigation is not merely the agent and adviser to his client, but also an officer of the court with a duty to the court to ensure that his client's case, which he must, of course, present and conduct with the utmost care of his client's interests, is also presented and conducted with scrupulous fairness and integrity. A barrister owes similar obligations. A legal adviser who acquires a personal financial interest in the outcome of the litigation may obviously find himself in a situation in which that interest conflicts with those obligations..."""

34. Of course, the Courts and Legal Services Act 1990 has – as Lord Neuberger recognised[22] – fundamentally changed this position and, no doubt at least in part as a result of these changes, the law's attitude to maintenance of litigation by non-lawyers has changed also.[23] It is important to appreciate that the law now draws a clear distinction between cases where a person is providing advocacy or litigation services and cases where a person is not. This is a distinction carefully articulated by Lord Neuberger in *Sibthorpe*. Thus:

(1) At [35] to [36], Lord Neuberger stated that where there is an allegation of champerty in relation to an agreement to which a person conducting the litigation (or providing advocacy services) is not a party, the court must look at the agreement in question in the round, and decide whether it would undermine the purity of justice, or would corrupt public justice, a question to be decided on a case by case basis.

(2) Agreements with a person conducting the litigation (or providing advocacy services) are very different, as Lord Neuberger made clear in the following passage:

> "[37] However, with the sole exception of the *Thai Trading* case, [1998] QB 781, there seems to be no support for the application of such an approach where the allegedly champertous agreement is entered into with a person who is

[22] *Sibthorpe* at [20], [25] and [31]
[23] As evidenced by the cases referenced in paragraphs 18 to 21 above.

conducting the litigation in question (or providing advocacy services in connection therewith). Such agreements have, as I see it, always been treated as a special category or species of champertous agreements, and are subject to stricter rules. That is clear from what Oliver LJ said in the *Trendtex* case, [1980] QB 629, 663, and from what Steyn LJ and Lord Mustill said in *Giles v. Thompson*, [1993] 3 All ER 321, 332, and [1994] 1 AC 142, 163 respectively. It was also the effect of the reasoning of Schiemann and May LJJ in *Awwad*'s case, [2001] QB 570, 593 and 600 respectively.

[38] Despite Mr James's submission to the contrary, I believe that this view also accords with that of this court in *Factortame (No 8)*, [2003] QB 381: see *per* Lord Phillips MR at [23] and [33] to [35]. Further, Lord Phillips MR's citation of Buckley LJ's observations in *Wallersteiner v Moir (No 2)*, [1975] QB 373, 401-402, and his reference to *Awwad*'s case, at [2003] QB 381, [60] and [61] respectively, undermine the notion that he was intending to depart from the principles in those cases. Indeed, one would have expected a very full discussion and analysis of the law if he was intending to differ from a decision of the Court of Appeal less than two years earlier. Further, the only reason that Lord Phillips MR considered whether Grant Thornton had been conducting the litigation was because the approach in *Giles v. Thompson* [1993] 3 All ER 321; [1994] 1 AC 142 would have been inappropriate if they had been doing so.

[39] I accept that *Thai Trading*, [1998] QB 781 gives some real support to the notion that it is now appropriate to consider a fresh approach to the law of champerty, even in relation to arrangements with those who conduct litigation. However, although the trenchant judgment of Millett LJ is powerful and deserves respect, it was clearly *per incuriam*, and, in relation to the point I am currently considering, as mentioned in [24] above, inconsistent with the subsequent decisions of this court in *Awwad*, [2001] QB 570 and *Factortame (No 8)*, [2003] QB 381.

[40] In my judgment, when it comes to agreements involving those who conduct litigation or provide advocacy services, the common law of champerty remains substantially as it was described and discussed in *Wallersteiner v. Moir (No 2)*, [1975] QB 373 and *Awwad*'s case, [2001] QB 570. This is for two main reasons. The first is to be found in the passages in the judgments of Buckley LJ in the former case at [1975] QB 373, 401, and of Oliver LJ in the *Trendtex* case, [1980] QB 629, 663. The second reason, articulated in *Awwad*'s case [2001] QB 570, 593, 600, by Schiemann and May LJJ, is that, in section 58 of the 1990 Act (as amended) the legislature has laid down the rules as to which previously champertous agreements may be entered into by those conducting litigation and those providing advocacy services, and which may not.

[41] There is a third reason, at least in my judgment, for this conclusion. As already indicated, there is obvious attraction in the notion that there should be no general rule as to whether an agreement with a person conducting the relevant litigation which involves him benefiting from the success of the litigation, is unlawful, and that each case should be assessed on its merits. However, there is also much to be said for clear rules so that all parties, solicitor and claimant client as well as the defendant, know where they stand rather than waiting for a determination as to the validity of a potentially champertous agreement on the overall merits. There is also much to be said for a properly funded legal profession, which has no need to have recourse to conditional fees or contingency fees or the like. It is a matter for the legislature if such arrangements are thought to be necessary for economic or other reasons, and, if they are so necessary, then it is for the legislature to decide on their ambit."

35. In my judgment, this is a fatal (and on me binding) answer to Candey's "broad" contention. As Lord Neuberger has made clear, there is now a very hard distinction between potentially champertous transactions between non-lawyers and potentially champertous transactions involving a lawyer. The former cases are considered according to the broad and flexible standard articulated in paragraph 34(1) above. The latter cases are assessed according to an altogether different standard: they are either sanctioned by statute or they are not; and if they are not, the common law does not ride to the rescue. In this case, the Assignment is not sanctioned by the 1990 Act and – assuming it to stand alone – clearly fails as a champertous transaction.

H. CANDEY'S "NARROW" CONTENTION

(1) Introduction

36. Candey's narrow contention obliges me to consider the Assignment in its context – in particular, by having regard to the pre-existing DBA between Mr Farrar and Candey. It is clear that whilst the doctrines of champerty and maintenance continue to have their basis in public policy, what is in the public interest and what is not in the public interest is enormously fact dependent.

37. Candey's contention involved a difficult two-sided contention. In the first place, it had to be said that the Assignment was not so different from the pre-existing DBA so as to lose a kind of inferential protection from the provisions of the 1990 Act that did serve to protect the DBA. On the other hand, the making of the Assignment in substitution for the DBA had to be justified in terms of access to justice – otherwise why sanction an unnecessary move away from the DBA?

38. I intend to approach Candey's contention in the following way. First, I shall consider whether, and if so in what way, the Assignment improved access to justice. In making this assessment, I shall apply by analogy the test set out in paragraph 35(1) above. I shall consider:

(1) Whether, given the existence of the DBA between Mr Farrar and Candey, the replacement of the DBA by the Assignment does in fact facilitate access to justice; and

(2) Whether, given the interest Candey already had in the Proceedings because of the DBA, the entering into the Assignment in replacement of the DBA undermined the purity of justice or corrupted public justice.

Inevitably, these questions are connected, and they involve a careful consideration of the differences between the DBA regime between Candey and Mr Farrar and the Assignment that replaced that regime.

39. Secondly, bearing in mind that the Assignment is a transaction involving a lawyer and is not a transaction between non-lawyers, I shall consider whether it is open to me, as a matter of law, to apply the test that I have articulated, given what Lord Neuberger said in *Sibthorpe*.

(2) The first question: has the Assignment improved access to justice?

(i) The Assignment was necessary to enable the Proceedings to continue because of the cost of future disbursements

40. The overt justification for the Assignment was that unless the DBA was replaced by the Assignment, Mr Farrar simply could not afford to carry on with the Proceedings.

41. At first blush, this is a difficult point to make good. According to the terms of the DBA that existed between Mr Farrar and Candey, it was Candey that bore its own costs and the cost of counsel (a disbursement). Candey would only recover its costs and the fees of the barristers it retained if it made a recovery in the Proceedings.

42. In these circumstances, it is difficult to see why the Assignment was necessary to improve access to justice: the future costs were, or appear to have been, taken care of.

43. Candey's position was that whilst this was indeed the case so far as its own costs and the fees of counsel were concerned, under the DBA Mr Farrar continued to be responsible for all disbursements apart from barristers' fees. Since Mr Farrar could not afford these, he would have to drop the Proceedings.

44. There are a number of difficulties with this argument:

(1) It is unfortunate that Mr Farrar could not, by reason of his death, assist in explaining why he entered into the Assignment. That deficiency is, so far as is possible, made good in the evidence adduced by Candey, where the explanation in paragraph 43 above is advanced. I would be most reluctant not to accept what a respectable firm of solicitors said about the reasons for the Assignment, and – to be clear – I accept Candey's evidence. Nevertheless, I must accept that Candey can only provide a limited insight into Mr Farrar's thinking and (when considering access to justice) it is Mr Farrar's position and his thinking that matter.

(2) Mr Miller submitted that the cost of future disbursements was an unlikely reason for the Assignment, given that "Court fees, photocopying charges, electronic document management costs, couriers" (the disbursements specifically referenced in the DBA) would not amount to very much. In short, the funding of these disbursements could not have been a reason for Mr Farrar not to continue with the Proceedings.

45. I see considerable force in Mr Miller's point, but ultimately it seems to me that I have to accept Candey's explanation of Mr Farrar's motives, and I do so. Nevertheless, it does seem to me that the advantage – in terms of access to justice and viewed purely objectively – provided by the Assignment was marginal, given that the vast bulk of the future costs of the Proceedings would be borne by Candey and not Mr Farrar.

(ii) The Assignment would remove the risk of future costs orders against Mr Farrar

46. Continuing the Proceedings pursuant to the DBA would mean that Mr Farrar would be at continuing risk of costs orders being made against him. On this point, the DBA said as follows:

> "If you lose you will be liable to pay your Opponents' costs and expenses, a risk you may be able to insure. Any contract for ATE insurance will be between you and the insurer but we will assist you in taking out such insurance if necessary."

47. One of the advantages of the Assignment was that it removed or (at the very least) reduced Mr Farrar's exposure to future adverse costs orders. Of course, that exposure could also be removed or reduced by taking out ATE insurance, but Mr Farrar may not have been able to afford the premium or such cover may not have been available to him.[24]

48. Candey did not place very much weight on this factor, but I bear it in mind as a potential advantage of the Assignment over the pre-existing DBA.

(iii) Avoiding the consequences of bankruptcy

49. Another reason for Mr Farrar to execute the Assignment might have been to ensure that the Proceedings would continue even if he was made bankrupt, a possibility that the Assignment expressly contemplated.[25] The Assignment made reference to certain judgment debts, which Mr Farrar was (at the time of the Assignment) unable to satisfy.

50. It is important to understand more about these debts:

(1) Mr Farrar had been the defendant in litigation brought against him by two companies, each controlled by Mr Miller. He lost that litigation – hence the judgment debts. As I have stated, they amount to some £453,870.92 plus interest, which continues to accrue, and costs.

(2) The benefit of these debts has now been assigned by these companies to Mr Miller, by an assignment dated 5 February 2021.

51. The prospect of the Proceedings being thwarted (which is how Mr Farrar might have seen it[26]) by bankruptcy is self-evident: Mr Farrar's trustee-in-bankruptcy might very well take a different view of the merits of the proceedings to that of Mr Farrar, and might very well be persuaded to settle the Proceedings at what Mr Farrar might perceive to be an undervalue.

52. The evidence before me does not assert this as a reason for the Assignment, and Mr Farrar is, due to his death, unable to assist on questions of his motivation. Candey may very well not have known the entirety of Mr Farrar's thinking, and certainly I place no weight on the fact that this aspect was not particularly addressed in Candey's evidence.

53. It seems to me that this is an obvious reason for the Assignment, and one that I consider would have featured in Mr Farrar's thinking. Certainly, for the purposes of the exercise I am carrying out, it is a matter that I must consider.

54. In my judgment, this aspect of the Assignment is objectionable for a number of reasons:

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[24] There was little evidence before me on this point. Generally speaking, the payment of ATE premia is after-the-event, and Mr Haque very properly disavowed this as a possible reason for the Assignment. However, Mr Farrar's risk of bankruptcy – to which I will come – might well have been relevant to an ATE insurer, and an ATE insurer may well have been wary of providing cover for this reason.
[25] See recital (D).
[26] Unsurprisingly, I had no evidence on the point.

(1) First, control of the litigation would pass – and would pass permanently – from the claimant (Mr Farrar) or his estate (whether that be the trustee in bankruptcy or his representative on death) to a party uninterested in the litigation, namely Candey, who (up until the assignment) were Mr Farrar's lawyers. This point requires some further unpacking:

(a) This is a case where a "bare" cause of action – the Assigned Claims – is transferred from a litigant to a third party who is the litigant's solicitor. Although Candey asserted that it was not a "stranger to the litigation" and not a "third-party intermeddler",[27] the basis for this assertion appears to be that Candey is very familiar with the Proceedings, having been instructed by Mr Farrar from the outset. This betrays a fundamental misunderstanding of the meaning of a "stranger to the litigation". Such a stranger may very well be extremely familiar and conversant with the litigation in which he is intermeddling, but still be a stranger. The phrase seeks to capture the absence of any legitimate interest in a party intermeddling with litigation.

(b) Some assignments of rights to litigate can be justified because the right to litigate or the cause of action is incidental to or subsidiary to a right of property. That justification cannot exist here – and Candey did not say that it did. Other assignments of a right to litigate can be justified because the assignee has some other "genuine commercial interest in taking the assignment and enforcing it for his own benefit". This is the well-known test in *Trendtex Trading Corporation v. Credit Suisse*.[28] Candey asserted that it has "from the very inception of the claim, held a genuine commercial interest in the outcome of these proceedings. As the Claimant's solicitors, Candey's remuneration for its provision of legal services was, from the outset, contingent upon the success of the claim. It might be trite, but Candey's own commercial interests resided wholly upon the claim being successful".[29]

(c) Candey contended that:

> "32 It is also trite that in every case conducted under a contingency agreement (and especially in DBAs) the lawyer has a commercial interest in the continuation and result of the case. It is therefore axiomatic that if the claim is assigned to the lawyer, there is still a genuine commercial interest. This would even be the case whether or not the litigation could continue but for the assignment.
>
> 33 By regulation, Parliament has legitimised contingency arrangements and therefore the financial interest of lawyers in the outcome. Unlike medieval times, lawyers are regulated and the historic risks associated with champerty do not arise. The complaint that the Defendant really seems to be making is that Parliament should not have allowed contingency arrangements. That is obviously unsustainable."

[27] Paragraph 38 of Candey's written submissions.
[28] [1982] 1 AC 679 at 703 (*per* Lord Roskill).
[29] Paragraph 32 of Candey's written submissions.

Essentially, what this contention amounts to is that the Assignment makes the position under the DBA no worse. In the first place, this contention runs into the difficulties arising out of the decision of the Court of Appeal in *Sibthorpe*, to which I will be returning. The point is that whilst a more flexible, case-by-case, approach applies in the case of "non-lawyers",[30] agreements with "lawyers"[31] are very different. Such agreements are either CFAs or DBAs falling within the statutory scheme and are enforceable by virtue of the provisions of the 1990 Act; or they are not within the statutory scheme, in which case the old rules apply, and the agreement is champertous. This is exactly what Lewison LJ held in *Rees v. Gately Wareing*:[32]

> "However, legislation has intervened to validate certain kinds of conditional fees and contingent fees. The legislation applies only to lawyers. It does not apply to others such as expert witnesses (*Factortame Ltd (No 8)*, [59]) or claims and recovery agents (*Papera Traders Co Ltd v. Hyundai Merchant Marine Co Ltd (No 2)*, [2002] 2 All ER (Comm) 1083). Where legislation has provided for conditional fees and contingent fees to be lawful in certain cases, those cases must be taken to be the limits of what is permissible, and the courts should not create any further cases: *Awwad v Geraghty & Co*, [2001] QB 570, 593G, 600E; *Factortame Ltd (No 8)*, [61]. As Schiemann LJ put it in *Awwad v. Geraghty*, 593, acting for a client in pursuance of a conditional normal fee agreement, in circumstances not sanctioned by statute, is against public policy."

(d) It may very well be that Candey can contend that Candey's financial interest under the Assignment is precisely the same as it was under the DBA – a point I will return to. But what is undeniable is that control of the Proceedings moves by virtue of the Assignment decisively away from the proper claimant and his proper successors in title on bankruptcy and/or death to a party that has – apart from its interest in fee recovery – no legitimate interest in prosecuting the Proceedings. That, to my mind, is a major problem with the Assignment, and one that is not consistent with the purity of justice.

(2) Secondly, I do not accept that the Assignment did not improve Candey's own financial position as regards its fees. That is for a number of reasons:

(a) The Assignment provides for the recovery of the Other Litigation Hourly Rate Costs, which were not covered by the pre-existing DBA between Mr Farrar and Candey.

(b) Under the pre-existing DBA, whilst Mr Farrar would only pay uplifted costs if there was a recovery from the Proceedings, Mr Farrar would (in such a case) be able to challenge the amount of Candey's costs and – if necessary – have them reviewed. Under the regime established by the Assignment, Candey would be acting on its own behalf, and there would be no such control in respect of the costs it incurred in conducting the Proceedings. Indeed, subject to the 50% maximum on Candey's recovery laid down by

[30] I.e., those who do not conduct litigation or provide advocacy services.
[31] I.e., those who conduct litigation or provide advocacy services.
[32] [2014] EWCA Civ 1351 at [33].

the Assignment, there would be no particular incentive on Candey to keep costs low.[33]

(c) There is a risk that the Assignment alters the priority of recoveries that would otherwise pertain under the DBA. As to this:

(i) Under the pre-existing DBA, any recovery from the Proceedings would be a receivable for Mr Farrar. Of course, Mr Farrar would be under a contractual obligation to pay half of any such receivable to Candey. The DBA provides:

> "In the event you recover any damages, monies, other sums and/or derive any benefits (excluding our hourly rate costs and expenses) ("Proceeds") from claims against Mr David Charles Lawson Miller and/or or related parties ("your Opponents") whether by court order, agreement, settlement or otherwise, you will pay us 50% of the Proceeds inclusive of VAT if applicable ("the Payment")."

(ii) There are many reasons why Mr Farrar might be unable to fulfil this personal obligation, despite wishing to. As the Assignment notes, Mr Farrar was cash-poor and at risk of bankruptcy. If made bankrupt, Candey would – like all other unsecured creditors – have a claim in the bankrupt estate, and might (on a *pari passu* distribution) recover only a portion of the fees due and owing. We know that Mr Farrar had substantial debts due to Mr Miller's companies (and now to Mr Miller) and (even disregarding any question of set-off) there is an obvious risk that any recoveries from the Proceedings would be so eroded that Candey would recover less than its entitlement under the DBA.

(iii) That risk is removed by the Assignment. Any recoveries from the Proceedings would be a receivable for Candey, and only after Candey's claims were satisfied would there be any payment to Mr Farrar or his estate. The effect of the Assignment is thus to render Candey in effect a secured creditor, having first call on any recovery out of the Proceedings.

(iv) Candey contended that the lien that a solicitor has meant that the Assignment actually made no such difference when compared to the situation under the DBA. Candey would (so it contended) have a lien over moneys payable to Mr Farrar pursuant to the DBA. That raises the interesting question as to the priority as between (i) two judgment debts (where there may be set off) and (ii) a solicitor's lien. I was addressed at length on these interesting questions (in supplemental written submissions produced by the parties at my request), but it seems to me that I do not need to resolve these (as yet) hypothetical questions. It is enough for me to note that the Assignment has the arguable potential – to put it no higher than that – of improving

[33] It may be that, as Candey contended, a contractual regime similar to the control of costs that exists between solicitor and client could be implied. But that would simply be a "patch" to deal with what amounts to another obvious problem with the Assignment.

Candey's financial position over that which would pertain if the DBA between Mr Farrar and Candey governed.

(iv) Keeping Mr Miller "on the hook"

55. It was asserted that it was not in the public interest to enable Mr Miller to deploy the doctrine of champerty in order to escape liability.[34] It seems to me that this is a circular point. Of course, litigants ought to be given every access to justice, in order to vindicate their claims. But rules exist limiting the ability to bring proper claims (e.g. limitation, champerty, standing) and it is no answer to say that, but for the rules of champerty, properly applied, Mr Miller would be liable to Mr Farrar's successor in title by assignment.

(v) Evaluation

56. In my judgment, the Assignment creates a very marginal benefit in terms of access to justice, against a number of very real issues in terms of undermining the purity of justice. Considering the test that I articulated in paragraph 38 above, it seems to me that the Assignment cannot be justified and is in my judgment champertous, even given the shift in approach concerning litigation funding that is described in the case law set out at paragraphs 18 to 21 above.

(3) The second question: *Sibthorpe* again

57. Although, given the conclusion I have reached, this question is academic, I address it very briefly. In my judgment, the difficult questions that the Assignment gives rise to, which I have articulated in the preceding paragraphs, only go to reinforce the good sense of the reasoning of Lord Neuberger in *Sibthorpe* (as set out in paragraph 34 above) and of Lewison LJ in *Rees v. Gately Wareing* (as set out in paragraph 54(1)(c) above). To my mind, that reasoning applies equally, and with equal force, to a transaction which – like the Assignment – replaces a 1990 Act compliant DBA or CFA but which is, itself, not so compliant with the 1990 Act.

I. CONCLUSION

58. Accordingly, I conclude that the Assignment is champertous and therefore void.

59. For all these reasons, therefore, Candey's application fails. Candey cannot and should not be substituted for Mr Farrar as claimant in the Proceedings because the cause of action asserted in the Proceedings remains vested in Mr Farrar. The Assignment transferred nothing, because it is void and of no effect.

[34] See *Massai Aviation Services, Aerostar Limited v. The Attorney General for the Bahamas*, [2007] UKPC 12 at [21] (*per* Lady Hale), where this was considered to be a relevant factor.

ANNEX 1

TERMS AND ABBREVIATIONS

(paragraph 2, footnote 1 of the Judgment)

Assigned Claims	§8(1)
Assignment	§6
ATE	§9(1)
Candey	§2
CFA	§22(2)
CPR	§5
DBA	§22(1)
Deed	§6(3) (in quotation)
Incurred Hourly Rate Costs	§6(2)
Other Litigation Hourly Rate Costs	§6(2)
Proceedings	§6(1)
Recoveries	§8(2)

Claim No. HC-2014-001262

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Before The Honourable Mr Justice Marcus Smith

Dated 16 July 2021

BETWEEN:

MR PETER FARRAR
(deceased)

Claimant/Assignor of Claim

- and -

CANDEY LIMITED

Applicant and Intended Claimant

- and -

MR DAVID LAWSON MILLER

Respondent and Defendant

ORDER

UPON Candey Limited's application dated 7 May 2020 (the "**Application**") to be substituted as the Claimant in place of Mr Peter Farrar (Deceased) in Claim No. HC-2014-001262

AND UPON the death of the Claimant and the Court deciding to proceed without any personal representative of his estate having been appointed, pursuant to CPR r19.8(1)(a);

AND UPON the Defendant's cross-application dated 25 May 2021 for an order pursuant to section 423 of the Insolvency Act 1986 (the "**Cross-Application**")

AND UPON hearing Mr Muhammed Haque QC, Leading Counsel for the Applicant, and Mr Jonathan Cohen QC, Leading Counsel for the Defendant

IT IS ORDERED THAT:

1. The Application is dismissed. The Cross-Application is therefore on this basis no longer effective, but is adjourned *sine die* with liberty to restore.

2. Following the judgment being handed down, all other consequential matter are adjourned to be dealt with on the papers (if the Judge is so advised). Written

submissions in respect of all consequential matters should be filed by 4.30 pm on 22 July 2021, together with a draft order the terms of which the parties should do their best to agree but which must otherwise set out all areas of disagreement in a single draft.

3. The time for the Applicant to file an appellant's notice is extended to the day 21 days after the Court has determined the consequential matters.

4. The Applicant shall serve this order on the Defendant.

The Court has provided a sealed copy of this Order to the serving party:

CANDEY Limited, 8 Stone Buildings, Lincoln's Inn, London WC2A 3TA