

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
PUBLIC LAW DIVISION**

**Claim No. 2023/CLE/gen/FP/00670**

**BETWEEN:**

**WILLIAM LAMAR CHESTER**

**Claimant**

**-and-**

**(1) DARBY SHORES LTD  
(2) WILLIAM GORDON CHRICHTON COOK JR.  
(3) RICHARD HENRY DAVIS  
(4) AILEEN MARTY  
(5) WILLIAM SAEGAR**

**Defendants**

**Before: The Honourable Justice Darron D. Ellis**

**Appearances: Richard Horton and Emma Van Wynen for the Claimant  
Jacy Whittaker for Parris Whittaker**

**Hearing Date: 29 July 2025**

**DECISION**

**Solicitor's Charging Lien – Interpretation of Retainer/ Engagement Agreement – Amount or Value in Dispute – Whether Percentage Fee Calculated on Gross Asset Value or Client's Actual Recoverable Interest – Whether Client's Aspirational Objective Determines Fee Base**

**– Professional Duty of Solicitor – Equitable Jurisdiction – Proportionality – Consumer Protection Arguments- Whether Claimant estopped from disputing fees based upon the expiration of a period and an arbitration only clause.**

ParrisWhittaker, the Interested Party law firm, applied for recognition and enforcement of a solicitor's charging lien over proceeds arising from the court-supervised sale of the Darby Islands. The engagement agreement provided that the firm's fees were to be calculated by reference to time spent, subject to a minimum fee of two percent (2%) of the "amount or value in dispute", whichever is greater.

The firm contended that the "amount or value in dispute" was either the appraised value of the Islands, approximately \$67 million, or, alternatively, the realised sale price of \$40 million. The Claimant in opposition contended that he was never legally entitled to the entirety of the Islands or to the gross sale proceeds, but only to his minority shareholding interest, which, in his case, yielded approximately \$3.5 million before final adjustments.

1. Where a solicitor's retainer provides for remuneration calculated as a minimum percentage of the "amount or value in dispute", the meaning of that expression is to be determined objectively, having regard to the language of the agreement, the commercial context, and the nature of the interest which the solicitor was retained to protect. In the absence of clear language to the contrary, "amount or value in dispute" refers to the client's actual economic interest in the subject matter of the litigation, not the gross or resale value of property in which the client holds only a partial interest. **Wood v Capita Insurance Services Ltd** [2017] AC 1173; **Arnold v Britton** [2015] AC 1619 applied.
2. Where the solicitor drafts an engagement agreement and genuine ambiguity remains after the ordinary principles of contractual interpretation have been exhausted, the ambiguity falls to be resolved against the solicitor as the author of the agreement. The contra proferentem principle remains available as a rule of last resort and is particularly relevant where the disputed provision may be considered ambiguous. **The King v Canada Steamship Lines Ltd** [1952] AC 192; **Wood v Capita Insurance Services Ltd** [2017] AC 1173; **Persimmon Homes Ltd v Ove Arup & Partners Ltd** [2017] EWCA Civ 373; **Arnold v Britton** [2015] 2 WLR 1593 applied.
3. A contractual provision requiring objections to invoices to be made within a specified period and providing that, in the absence of objection, the solicitor may continue to render services is directed to the ongoing administration of the retainer relationship. Such a provision does not, without clear and unequivocal language, operate as a waiver of the client's right to challenge fees in subsequent court proceedings, nor does it oust the Court's supervisory jurisdiction over claims for solicitor's fees or applications to enforce a solicitor's lien. **Wood v Capita Insurance Services Ltd** [2017] AC 1173; **Candey Ltd v Crumpler, and another (as Joint Liquidators of Peak Hotels and Resorts Ltd (in Liquidation))** [2022] UKSC 35 applied.

4. Likewise, a dispute-resolution clause requiring fee disputes to be referred to arbitration does not preclude a client from defending proceedings instituted by the solicitor for recovery of fees or enforcement of a solicitor's lien. A solicitor who elects to invoke the Court's jurisdiction cannot simultaneously contend that the client is contractually barred from disputing the claim before that Court. **Wood v Capita Insurance Services Ltd** [2017] AC 1173; **Candey Ltd v Crumpler, and another (as Joint Liquidators of Peak Hotels and Resorts Ltd (in Liquidation))** [2022] UKSC 35 applied.
5. In exercising its supervisory jurisdiction over solicitor-client remuneration agreements, the Court must be satisfied not only that the agreement was validly entered into but also that the remuneration claimed pursuant to it is reasonable. A construction of a fee agreement that produces remuneration calculated by reference to property or value to which the client had no entitlement, and that results in a fee wholly disproportionate to the client's actual interest in the dispute, will not readily be adopted in the absence of clear contractual language. **Re Stuart, Ex parte Cathcart** [1893] 2 Q.B.; **Jemma Trust Co Ltd v Liptrott and others** [2003] EWCA Civ 1476 applied.

Held: The Court determined that the engagement agreement constituted a valid and enforceable solicitor-client retainer and that the minimum fee provision was not, in principle, unlawful or contrary to public policy. However, upon an objective construction of the agreement, the expression “amount or value in dispute” referred to the value of the client’s actual economic interest in the subject matter of the proceedings, and not to the gross value of the underlying property or to any hypothetical valuation advanced by the Applicant. The Court further held that the provisions requiring objections to invoices to be raised within five days and referring fee disputes to arbitration did not operate to estop the Claimant from disputing the fees claimed in these proceedings, nor did they oust the Court’s supervisory jurisdiction over solicitor-client remuneration or applications to enforce a solicitor’s lien. The Court rejected the Applicant’s contention that the Claimant was contractually barred from contesting the fees and held that a party who elects to invoke the Court's jurisdiction cannot simultaneously contend that the opposing party is precluded from defending the claim. In any event, if the minimum fee provision were construed in the manner contended for by the Applicant, such a construction would produce an unreasonable and disproportionate result by calculating fees on the basis of a value to which the client was not entitled and would therefore not be adopted by the Court. The Application is dismissed with costs to the Claimant.

Ellis J,

### **Introduction**

- [1.] This matter concerns the application by the Interested Party, the law firm of ParrisWhittaker (PW), for the recognition and enforcement of a solicitor’s charging lien over proceeds said to arise from PW’s representation of the Claimant in proceedings concerning the sale of the Darby Islands.

- [2.] The Claimant is a 12.5% minority shareholder of the 1<sup>st</sup> Defendant, Darby Shores Ltd. (DSL), a Bahamian company which held title to the Darby Islands in Exuma, The Bahamas — namely, Big Darby Island, Little Darby Island, Guana Cay and Betty Cay, collectively referred to as the Islands in this Judgment. The remaining Defendants are also shareholders in DSL. The Islands were sold in November 2024 for \$40 million.
- [3.] Before retaining PW, and particularly Jacy Whittaker (JW) of that firm, the Claimant, through his then attorneys, Andre J. Feldman and Damian Gomez KC, commenced proceedings alleging oppressive and unfairly prejudicial conduct in relation to DSL. The relief sought included the appointment of joint receivers and managers over the Islands.
- [4.] By an ex parte order dated 29 August 2023, the Court appointed joint receiver-managers. The receiver-managers ultimately secured the sale of the Islands. On the Claimant's case, his shareholder entitlement from that sale is \$3.5 million, subject to expenses.
- [5.] The Claimant retained PW in March 2024, after the receivers had been appointed. During the retainer, PW rendered invoices calculated by reference to time spent. In November 2024, shortly before the completion of the sale of the Islands, PW asserted that, pursuant to the engagement agreement, its total fees were \$1,607,670.40. That sum comprises \$250,000 for Damien Gomez KC's professional fees and \$1,357,670.40 for PW's professional fees.
- [6.] PW calculated its claimed fees by reference to 2% of what it contends was the "amount or value in dispute". It says that the amount or value in dispute was either the appraised value of the Islands, approximately \$67 million, or the \$40 million sale price. The Claimant disputes that construction. He says that he was never entitled to the entirety of the Islands or to the gross proceeds of sale, but only to his proportionate shareholder interest.
- [7.] PW filed the present application on 26 November 2024. The Claimant subsequently retained new counsel. A consent order dated 23 December 2024 authorised interim distributions from the sale of the Islands to shareholders while preserving sufficient funds to meet any order that might be made on PW's application.

### **The Application**

- [8.] By Notice of Application, PW seeks the following relief:
- (a) an order recognising and enforcing PW's solicitor's charging lien over any proceeds of sale of the Islands, or any distribution to the Claimant arising from those proceeds;

(b) an order permitting the Court to review the engagement agreement and related communications in camera;

(c) an order directing that proceeds due to the Claimant be paid into Court or held by DSL or another neutral stakeholder pending determination of the application and payment of PW's fees; and

(d) costs on an indemnity basis or such other order as the Court considers just.

[9.] PW contends that it provided substantial legal services which resulted in, or materially contributed to, the sale of the Islands and the preservation of the Claimant's interests. It relies on common law and equitable principles recognising a solicitor's charging lien over funds recovered or preserved through the solicitor's efforts.

[10.] The application principally turns on the proper construction and effect of the engagement agreement executed between PW and the Claimant. The relevant provision states that PW's professional fees are to be calculated by reference to time spent, or to "a minimum fee of two percent (2%) of the amount or value in dispute, whichever is greater".

[11.] PW contends that the amount or value in dispute was either:

(a) approximately \$67 million, said to represent the appraised value of the Islands; or, alternatively,

(b) approximately \$40 million, being the realised sale value of the Islands.

[12.] The Claimant disputes that contention. He submits that he was never legally entitled to the entirety of the Islands, nor to the gross proceeds of sale, but only to his proportionate shareholder interest. On that basis, he contends that the "amount or value in dispute" cannot properly be equated with either \$67 million or \$40 million.

[13.] PW also contends that the Claimant is estopped or contractually precluded from disputing its fees, relying on provisions said to require invoice objections within five days and to refer fee disputes to arbitration.

## **The Evidence**

### **PW's Evidence**

[14.] PW relies on the affidavit of Kenra Parris-Whittaker, a partner with PW. She deposes that PW acted for the Claimant in proceedings concerning the ownership, management, and eventual sale of the Islands.

- [15.] PW's evidence is that the engagement agreement provided for fees calculated either by time expended or by a minimum fee of 2% of the amount or value in dispute, whichever was greater. PW contends that the relevant value in dispute was the appraised value of the Islands, approximately \$67,883,520, producing a minimum fee of \$1,357,670.40.
- [16.] PW asserts that the Claimant initially contemplated claims wider than recovery of the value of his 12.5% shareholding, including claims directed at ownership or control of the Islands themselves.
- [17.] PW accepts that it later advised the Claimant that attempts to invalidate the historical ownership arrangements carried significant legal and financial risks and were unlikely to succeed. PW says, however, that its work throughout the retainer involved protecting and maximising the value of the Islands as a whole and was not confined to the Claimant's fractional interest.
- [18.] PW also relies on contractual provisions which it says required the Claimant to object to invoices within five days, failing which the invoices became final and binding, and on an arbitration clause governing fee disputes.
- [19.] It was further deposed that, in addition to the disputed minimum fee, the Claimant remained indebted to PW in the approximate sum of \$184,500 for invoiced legal fees in respect of work already performed on a time-spent basis.

### **The Claimant's Evidence**

- [20.] The Claimant's evidence is that he commenced the proceedings in August 2023 as a minority shareholder and creditor of DSL, seeking relief in respect of alleged oppressive conduct under the Companies Act. He identifies his shareholding as 12.5%.
- [21.] The Claimant states that the proceedings were prompted by concerns that the directors had failed to remit substantial real property tax payments on DSL's behalf. The relief sought included restraint orders and the appointment of joint receivers and managers over the Islands. The receivers were appointed before PW was retained.
- [22.] The Claimant says that he retained PW in March 2024 after one of his previous attorneys, Andrew Feldman, withdrew. He understood PW's role to be equivalent to that previously performed by Mr Feldman, with Damien Gomez KC continuing to have primary responsibility for advocacy. As to the underlying fee issue, the Claimant's

evidence is that the PW's retainer was for representation in the ongoing oppression action and did not extend to a claim to recover the entire islands on his behalf.

[23.] The Claimant relies on an email from JW dated 12 March 2024 proposing a retainer fee of US\$50,000, identifying JW's hourly rate as US\$550, and indicating that rates for additional team members would be communicated in the engagement letter. He says that the email made no reference to any percentage fee other than hourly rates and direct expenses.

[24.] The Claimant says that on 13 March 2024, he received the engagement letter and agreement electronically and signed it within approximately ten minutes to secure the firm's services. He states that the minimum fee provision was contained within standard terms and conditions and was not explained to him.

[25.] The Claimant says that, between March and November 2024, he received invoices calculated by time spent and paid sums on account. He contends that the dispute arose only on 13 November 2024, when JW first asserted that PW's fees were to be calculated by reference to the total appraised value of the Islands.

[26.] The Claimant disputes that PW was retained to recover and take over ownership of DSL or the Islands for his personal benefit. He says that any discussions concerning historical ownership agreements were exploratory only and were never adopted as part of the litigation strategy. He further says that PW's own memoranda did not state that it had been instructed to pursue recovery of the Islands as a whole.

[27.] The Claimant accepts that there may have been outstanding time-costed invoices. He disputes, however, the 2% fee as calculated by PW and asks the Court to decline to recognise or enforce any charging lien based on that calculation.

#### **Andre Feldman**

[28.] Andre Feldman swore an affidavit in opposition to PW's application. He states that he was engaged in July 2023 to represent the Claimant's interests as a creditor and minority shareholder of DSL.

[29.] Mr Feldman says that the August 2023 application sought relief under sections 81, 278, 279, and 280 of the Companies Act, including restraint orders, the appointment of joint receivers, the production of records, leave to bring a derivative action, compensation, and costs. He says that the appointment of the receivers was obtained before PW's engagement.

[30.] Mr Feldman states that before withdrawing, he told JW that the replacement co-counsel role would be equivalent to his own, that most of the evidence had already been filed and served, and that the Claimant's interests included his 12.5% shareholding. He

also advised JW that there was an agreed fee structure under which his fees would be 75% of those of lead counsel, Damian Gomez KC. Mr. Feldman said he told JW that the same fee structure would remain if JW assumed the role, and that JW stated that he understood and agreed to that role and arrangement.

[31.] Mr. Feldman further says that PW played no role in the sales process that resulted in the November 2024 sale. He says that the Claimant never expressed any wish to take over control or possession of the Islands, and that the proceedings were directed to sale, payment of liabilities, and shareholder or creditor relief rather than acquisition of the entire asset.

[32.] Mr Feldman also gave evidence regarding the Claimant's objectives. He said that during the eight months he acted as co-counsel, the Claimant never expressed any wish to take over control or possession of the Islands. Instead, he said that the Claimant had, since at least June 2022, been engaged in efforts to sell one or more of the Islands to several potential buyers, and that as counsel for DSL, he had been instructed by the directors to assist in those efforts. He referred in particular to a potential sale of Big Darby Island and Little Darby Island to Blue Ash LLC, and said that the Claimant's affidavit evidence clearly set out those efforts.

### **PW's Submissions**

[33.] PW submits that the application arises from the Claimant's failure to pay fees due under the engagement agreement. It relies on **Western Air Limited v The Airport Authority** SCCivApp. No. 190 of 2022 and **Julius T. Bethel v Patricia Bloom et al.** 2018/ CLE/gen/0252, as recognising the availability of a solicitor's charging lien in The Bahamas. PW also relies on common law authorities, including **Bott & Co Solicitors Ltd v Ryanair DAC** [2023] AC 635, [2022] Costs LR 631, **Gavin Edmondson Solicitors Ltd v Haven Insurance Co Ltd** [2018] 3 All ER 273, and **Candey Ltd v Crumpler** [2023] 2 All ER 527.

[34.] PW submits that the engagement agreement is a commercial bargain, entered into by an experienced and sophisticated client. It says the minimum fee clause is clear and contains no limitation that would confine the "amount or value in dispute" to the Claimant's personal interest.

[35.] PW contends that the factual matrix shows that the Claimant initially pursued or contemplated a broader challenge to the ownership structure of DSL and the Islands. It relies on communications in which the Claimant expressed dissatisfaction with a recovery limited to his minority interest and indicated a willingness to pursue extensive litigation.

[36.] PW submits that although it later advised the Claimant to focus on more viable oppression and creditor claims, substantial work had already been performed on broader

ownership issues. In PW's case, the value of the Islands as a whole was therefore in dispute for purposes of the minimum fee clause.

[37.] PW further submits that the lien should attach to the full proceeds due to the Claimant from the sale and that those proceeds are the fruits of the litigation and of PW's work. It says that if the funds were released to the Claimant while PW was left to pursue separate recovery proceedings, the security afforded by the lien would be undermined.

[38.] PW also relies on clauses 7.8 and 19 of the engagement agreement, which require written objections to invoices within five days and provide for dispute resolution and arbitration, respectively. PW submits that those clauses preclude the Claimant from resisting the solicitor's charging lien asserted in these proceedings.

### **The Claimant's Submissions**

[39.] The Claimant accepts that a solicitor's charging lien is capable of recognition in The Bahamas. He submits, however, that PW has not established the factual or legal basis for recognition or enforcement of such a lien in the circumstances of this case.

[40.] The Claimant advances several objections to the application. Firstly, the Claimant says that the 2% fee clause cannot properly be treated as an agreed charge because PW did not explain how the amount or value in dispute would be interpreted or that PW intended to calculate it by reference to the gross value of the Islands. It is further argued that, if applied, it can extend no further than to the Claimant's interest in the Islands.

[41.] The Claimant further submits that the litigation cannot yet be characterised as successful in the sense required to support the lien asserted. He says that substantive claims remain unresolved and that the nature and extent of any ultimate recovery remain uncertain. The Court does not agree with that submission. The engagement agreement did not state that all claims or issues in the litigation had to be resolved, nor did it make PW's entitlement dependent upon final success in the proceedings or the ascertainment of an ultimate recovery.

[42.] Additionally, the Claimant disputes PW's contention that it played a substantial or causative role in the production of the sale proceeds. He says that the receivers and their attorneys brought about the sale following an order obtained before PW was retained. The Court does not accept this submission as a complete answer to PW's asserted entitlement. The relevant question is not whether PW substantially or causatively brought about the sale of the island. The issue is one of construction of the engagement agreement: whether the contractual language confers upon PW the lien or fee entitlement now asserted and, if so, the scope and amount of that entitlement.

[43.] The Claimant's stronger submission is that, properly construed, the phrase "amount or value in dispute" can extend no further than his recoverable legal and economic interest. In support of this, the Claimant relies on the engagement agreement as a whole, the nature of the proceedings, the absence of clear language, and the principle that ambiguity in solicitor-drafted retainers should be resolved against the solicitor.

[44.] The Claimant also invokes professional conduct principles, including the requirement that attorneys' fees be fully disclosed and fair and reasonable. He says that a fee exceeding US\$1.3 million, calculated by reference to the gross appraised value of property in which he held only a 12.5% interest, was neither fully disclosed nor fair or reasonable.

[45.] The Claimant further relies on consumer protection and unfair contract terms legislation, contending that he engaged PW in his personal capacity and that the relevant clauses were not individually negotiated, were not adequately drawn to his attention, and operated unfairly.

### **Issues**

[46.] The central issues are:

- (a) Whether the engagement agreement is valid and enforceable;
- (b) What is the proper construction of the phrase "amount or value in dispute";
- (c) Whether the Claimant is estopped or contractually barred from disputing PW's fees; and
- (d) Whether PW has established an entitlement to recognition and enforcement of a solicitor's charging lien on the basis advanced in its application?

### **Legal Analysis and Findings**

[47.] The solicitor's charging lien is a long-established equitable remedy. In its traditional form, it operates as security for a solicitor's proper charges out of the fruits of litigation, settlement, or other recovery obtained or preserved through the solicitor's professional services.

[48.] The rationale is straightforward. A client who obtains the benefit of litigation should not, in fairness, take the fruits of that litigation without satisfying the proper costs incurred in producing or preserving that recovery. The lien is not, however, a free-

standing entitlement to payment from any asset connected with the dispute. It is an equitable security over the client's interest in the relevant fund or property.

[49.] In **Gavin Edmondson Solicitors Ltd v Haven Insurance Co Ltd**, the Court explained that equity protects the solicitor's interest in the fruits of litigation where the solicitor's work has produced a recovery. The lien is commonly analysed as a form of equitable charge over the proceeds of the relevant claim. In **Bott & Co Solicitors Ltd v Ryanair DAC** and **Candey Ltd v Crumpler**, the courts reaffirmed that the remedy exists to protect solicitors who have contributed to the recovery or preservation of a fund. Those authorities also confirm that the lien is limited by the nature of the client's interest in the fund.

[50.] Bahamian authority is consistent with that approach. In **Western Air Limited v The Airport Authority**, the Court of Appeal recognised that solicitors may enforce a lien over funds recovered through their efforts. The security is over the funds recovered for the client, not over property belonging to others or over a notional value unconnected with the client's actual entitlement.

[51.] The authorities establish that a solicitor seeking an equitable charging lien must satisfy the Court that: (i) a solicitor-client retainer existed; (ii) professional services were rendered pursuant to that retainer; (iii) those services substantially contributed to the creation, preservation, protection, or recovery of an identifiable fund, property, or monetary benefit; (iv) fees remain due and owing; and (v) in all the circumstances, it is just and equitable for the Court to grant the relief sought. The equitable jurisdiction exists to prevent a client from receiving the benefit of a solicitor's labour without making proper payment for the professional services that produced or preserved that benefit.

[52.] On the evidence before it, the Court is satisfied that a solicitor-client retainer existed between the parties and that PW rendered professional services pursuant to that retainer. The evidence further establishes that PW provided legal services in connection with matters which ultimately culminated in the sale of the Islands and that those services may have contributed, at least to some extent, to the preservation or realisation of a monetary benefit. The Court is also satisfied that some fees remain outstanding, at the very least on a time-costed basis. However, those findings do not conclude the matter. The Court must still determine whether, in all the circumstances, it is just and equitable to grant the charging lien sought by PW, having regard to the nature and extent of the services rendered, the proper construction of the engagement agreement, and the unresolved dispute concerning the basis upon which the fees are said to be recoverable.

[53.] Accordingly, PW must still satisfy the Court that the fee claimed is recoverable under the engagement agreement, including its construction of the expression "amount or value in dispute", and that the amount sought is properly payable before equitable relief may be granted.

[54.] The foundational question in this case is therefore whether PW has established an entitlement to recognition and enforcement of a lien over funds held for or payable to the Claimant, and, if so, the extent of the funds to which such a lien may properly attach.

[55.] The Court must determine the construction of the engagement agreement. In this regard, the objective approach governs the interpretation of contractual language. The Court must ask what a reasonable person, with the relevant background knowledge reasonably available to the parties at the time of contracting, would have understood the language to mean. That approach is reflected in **Persimmon Homes Ltd v Ove Arup & Partners Ltd** [2017] EWCA Civ 373, **Arnold v Britton**[2015] 2 WLR 1593, and **Wood v Capita Insurance Services Ltd** [2017] 2 WLR 1095.

[56.] The Court must give proper weight to the words used. Commercial common sense is relevant, but it cannot be used to rewrite the bargain. Conversely, where the language is capable of more than one meaning, the Court may prefer the construction that best accords with the provision's commercial purpose and the factual matrix known to the parties.

[57.] Solicitor-client retainers, however, are not always treated as ordinary commercial bargains between parties of equal standing. Solicitors are officers of the Court and fiduciaries. Agreements for remuneration are therefore subject to the Court's supervisory jurisdiction and to requirements of fairness, transparency, and reasonableness.

[58.] In **Re Stuart, ex parte Cathcart** [1893] 2 Q.B, Lord Esher MR stated that, where a solicitor's remuneration agreement is challenged, the solicitor must satisfy the Court not only that the agreement was fairly obtained but also that its terms are reasonable. That principle remains relevant where a solicitor seeks equitable relief founded on the retainer.

[59.] This position still holds in modern times, as evidenced in **Jemma Trust Co Ltd v Liptrott** [2004] 1 All ER 510, in which the Court of Appeal recognised that value may be a relevant component of solicitor remuneration. Still, the ultimate question remains whether the overall remuneration is fair and reasonable in all the circumstances.

### **Whether the Engagement Agreement is valid and enforceable?**

[60.] Clause 5.1 of the engagement agreement provides:

“Unless otherwise agreed, the Firm's professional fees are determined and billed based upon the hours expended by the attorneys and paralegals involved, billed at their applicable billing rates (such hours multiplied by such rates), in the aggregate amount that is connected with our services performed for or on your behalf *with a minimum fee of two percent (2%) of the amount or value in dispute, whichever is greater between the time spent and the minimum percentage* ('Fees').”

[61.] On its face, the engagement agreement is not a classic contingency fee agreement. It is principally an hourly-rate retainer, under which fees are calculated by reference to time

spent at applicable hourly rates. The distinctive feature is the minimum fee mechanism, which provides that PW's fees shall not be less than 2% of the “amount or value in dispute”.

[62.] I am not persuaded that the engagement agreement is void or unenforceable merely because it contains a value-based minimum fee mechanism. Nor am I satisfied, on the material before me, that the engagement agreement is necessarily unlawful as a matter of maintenance or champerty.

[63.] Accordingly, I proceed on the basis that the engagement agreement is, in principle, enforceable. That conclusion, however, does not dispose of the matter. A valid retainer does not automatically validate every construction advanced by the solicitor, nor does it establish that the remuneration claimed is recoverable as a matter of law or equity.

[64.] The analysis, therefore, shifts from the validity of the agreement to the interpretation of its remuneration provisions. The central issue is the meaning of the phrase “amount or value in dispute”, and whether PW is entitled to calculate its minimum fee by reference to the gross value of the Islands, the gross sale proceeds, or the value of the Claimant’s actual legal or beneficial interest in those proceeds.

### **What is the proper construction of the phrase “amount or value in dispute?”**

[65.] The objective approach governs the interpretation of contractual language. As stated in **Wood v Capita Insurance Services Ltd** at paragraphs 10 and 11, the Court must first ascertain the objective meaning of the words used.

“10) The court’s task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.....

11) .....Interpretation is, as Lord Clarke JSC stated in the *Rainy Sky* case (para 21), a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. But, in striking a balance between the indications given by the language and the implications of the competing constructions the court must consider the quality of drafting of the clause (the *Rainy Sky* case, para 26, citing *Mance LJ* in *Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 2)* [2001] 2 All ER (Comm)

299, paras 13, 16); and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest: the Arnold case, paras 20, 77. Similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms.”

[66.] The Court must give proper weight to the words used by the parties. The phrase “amount or value in dispute” is not defined in the agreement. Nor has the Court been directed to any rule of Bahamian or English common law giving that phrase a fixed meaning in context. It must therefore be construed in the context of this retainer, this litigation, and the commercial purpose of the minimum fee provision.

[67.] In my judgment, the phrase refers to the value of the right, interest, asset, or benefit genuinely in contention for the client. It does not automatically mean the gross value of the underlying property. Nor does it mean the highest value mentioned in correspondence, negotiation, or litigation strategy. The inquiry is directed to the client's true economic interest at stake.

[68.] That distinction is important. A client may have an interest in a larger asset without being entitled to the entire asset. Where a client claims only a fractional legal or beneficial interest, the value in dispute will ordinarily be the value of that fractional interest, not the value of the entire asset. Where a recovery is subject to liabilities, taxes, charges, or other deductions, the relevant economic value may be the net value that the client can realise, rather than the gross value of the transaction or a notional aspiration.

[69.] Absent clear language to the contrary, a reasonable person would not understand “amount or value in dispute” to include property or money to which the client had no legal or beneficial entitlement. Such a construction would permit a solicitor’s minimum fee to be calculated by reference to a value which the client neither owned, recovered, nor could lawfully recover. That would be a commercially unrealistic result, particularly in a solicitor-client retainer drafted by the solicitors themselves.

[70.] PW’s construction would treat the relevant value as either US\$67 million or US\$40 million, notwithstanding that the Claimant was never legally or beneficially entitled to recover either sum in its entirety. It would calculate the solicitor’s fee by reference to property belonging substantially to others. In my judgment, that construction is neither commercially coherent nor supported by the language of the engagement agreement.

[71.] The Claimant’s interest was a 12.5% shareholding in DSL and such creditor or oppression remedies as he might establish. The proceeds of sale represented the value of the Islands as a whole and were held for all persons entitled to share in them. They were not recovered solely for the Claimant. It follows that the relevant inquiry is not the gross

value of the Islands, but the value of the Claimant's actual legal and economic interest. That was the interest PW was retained to protect, preserve, or recover.

[72.] I accept that the Claimant may, at some point, have expressed a desire to obtain more than his minority interest. But litigation aspiration is not the same as legal entitlement. A solicitor's fee formula cannot sensibly be anchored to an objectively unattainable goal, particularly where the solicitor's professional role includes advising the client on the legal limits of the claim.

[73.] PW's own evidence is that it advised against pursuing full recovery of the Islands. That advice reflected the legal reality that the Claimant's entitlement was limited. PW cannot now calculate its fee by reference to a value which, on its own preliminary analysis, was not realistically recoverable by the Claimant. To do so would convert an unrealistic litigation ambition into a contractual fee entitlement. The parties cannot objectively be taken to have intended that result. PW cannot simultaneously maintain that full recovery of the Islands was legally unattainable while calculating its remuneration as though such recovery formed the true value of the dispute entrusted to it.

[74.] This conclusion is reinforced by the equitable nature of the remedy sought. A solicitor's charging lien is not an independent source of entitlement to remuneration. Rather, it is an equitable security which attaches to the fruits of litigation recovered, preserved, or protected for the client through the solicitor's professional services. The lien, therefore, attaches only to the client's interest in the relevant fund or property and cannot extend beyond that interest.

[75.] Accordingly, even if PW were correct in its construction of the engagement agreement, it would not follow that the lien could be enforced in the manner sought. The equitable remedy remains limited by the nature and extent of the Claimant's actual legal and beneficial interest in the fund against which the lien is asserted.

[76.] The consequence is that any lien recognised by this Court could attach, at most, to the Claimant's share of the proceeds or to such other fund as was recovered or preserved for his benefit. It could not attach to proceeds beneficially belonging to other shareholders or to property in which the Claimant had no legal or beneficial interest.

[77.] This poses a further, independent difficulty for PW's application. The application was advanced on the footing that the Court should recognise and enforce a lien calculated by reference to the value of the Islands as a whole or the entirety of the sale proceeds. Even assuming, contrary to my primary conclusion, that the engagement agreement permitted remuneration to be calculated on that basis, the equitable lien itself could not extend beyond

the Claimant's own recoverable 12.5% interest. Equity does not permit a solicitor to obtain security over property belonging to persons who were never the solicitor's clients and who are not liable for the solicitor's fees.

### **Contra Proferentem / Modern Approach to Ambiguities**

[78.] Further, if it is concluded that, after utilising the objective approach, clauses 5, 7 and 19 of the engagement agreement are capable of more than one meaning, any remaining ambiguity should be resolved against PW, as the drafters of the engagement agreement. **In Persimmon Homes Ltd v Ove Arup & Partners Ltd**, *Jackson LJ* stated at paragraph 52 that **“the contra proferentem rule requires any ambiguity in an exemption clause to be resolved against the party who put the clause forward and relies upon it”**, while also observing that, **“in relation to commercial contracts, negotiated between parties of equal bargaining power, that rule now has a very limited role.”**

[79.] This rule holds that ambiguous clauses should be construed against the drafter, except in commercial contracts between parties with equal bargaining power, in which the rule may still be applied to a lesser extent. The Court believes that the exception does not apply in the present circumstances.

[80.] The engagement agreement was a professional retainer agreement prepared and advanced by PW. It was not a commercial contract negotiated between parties of equal bargaining strength. PW relies upon clause 7.8 as producing a significant exclusionary effect, namely that invoices not challenged within five days become effectively conclusive and that the client thereafter loses the ability to dispute the amount, scope, type, reasonableness, or recoverability of the services charged. PW likewise relies upon clause 5.1 and the minimum fee provision to contend that the phrase “amount or value in dispute” permits the calculation of fees by reference to values far exceeding the Claimant's actual legal and beneficial interest. If those provisions are genuinely capable of bearing more than one meaning, any remaining ambiguity must be resolved against PW, as the party that drafted them and now seeks to rely on them.

[81.] If the parties intended consequences of such significance—whether the loss of the client's right to challenge invoices, or the imposition of a minimum fee calculated by reference to a value not clearly and expressly identified in the retainer—clear and unequivocal language was required. No such language appears in the engagement agreement. In those circumstances, and to the extent that any ambiguity remains after the ordinary principles of contractual interpretation have been applied, the ambiguity must be construed against PW and in favour of the construction which is less onerous to the Claimant. The less onerous interpretation is that the amount or value in dispute must be confined to the Claimant's 12.5% shareholding.

[82.] The position of PW also fails simply because it does not equate to a fair or reasonable agreement in the circumstances. The authorities make clear that a solicitor seeking to enforce a remuneration agreement must satisfy the Court not only that the agreement was fairly entered into but also that its terms are fair and reasonable. In this regard, the Court relies on **Re Stuart, ex parte Cathcart**, where at page 205 *Lord Esher* MR wrote:

“I am of opinion that the meaning is that when an agreement is challenged the solicitor must not only satisfy the Court that the agreement was absolutely fair with regard to the way in which it was obtained, but must also satisfy the Court that the terms of that agreement are reasonable. If in the opinion of the Court they are not reasonable, having regard to the kind of work which the solicitor has to do under the agreement, the Court are bound to say that the solicitor, as an officer of the Court, has no right to an unreasonable payment for the work which he has done, and ought not to have made an agreement for remuneration in such a manner. On this question it is quite clear to me that we cannot arrive at any other conclusion than that arrived at by the Divisional Court. It is impossible to say that work which according to information given by the taxing master to the Divisional Court would be properly remunerated by a sum of 20*l.* can be reasonably charged at nearly 100*l.* The decision of the Court below must be affirmed, and the appeal dismissed.”

[83.] The Court further endorsed this reasonableness test in **Jemma Trust Co Ltd v Liptrott and others**. Where *Mance LJ* wrote at paragraph 45:

“I do not dissent from Peter Gibson and Longmore LJJ's guidance with regard to the bands and percentages that could be appropriate in 1993, when the present bills were rendered, if charging on a dual basis was itself appropriate. But it is worth looking at their practical effect—whilst repeating that the ultimate test to be applied by the costs judge is what overall sum would be fair and reasonable to both solicitor and entitled person, having regard to all the circumstances of the case.”

[84.] Even if the language of the engagement agreement were capable of bearing the construction advanced by PW, the Court would be slow to enforce it in the manner contended for. On that construction, the solicitor's remuneration would be calculated not by reference to the Claimant's actual legal or beneficial interest, but by reference to property which the Claimant neither owned nor stood to recover. The effect would be to treat the Claimant as though he had recovered, or was entitled to recover, the entirety of the Islands or the entirety of the sale proceeds, when that was never his legal position. In the Court's judgment, such a result would bear no reasonable relationship to the true subject matter of the retainer or to the interest which PW was engaged to protect and advance on the Claimant's behalf.

[85.] Such a result would be disproportionate and inconsistent with the solicitor's position as an officer of the Court. It would also sit uneasily with the equitable nature of the lien, which exists to secure proper remuneration out of the client's recovery and not to confer a windfall measured by reference to property beneficially belonging to others. The Court's supervisory jurisdiction over solicitor-client remuneration exists precisely to guard

against such outcomes and to ensure that remuneration agreements operate fairly and reasonably in all the circumstances.

[86.] I therefore reject PW's contention that the relevant "amount or value in dispute" should be interpreted as the appraised value of the Islands or the gross sale price. Even if such a construction were available as a matter of language, the Court would regard the resulting remuneration as unreasonable and would decline to enforce it pursuant to the principles stated in **Re Stuart, ex parte Cathcart** and reaffirmed in **Jemma Trust Co Ltd v Liptrott and others**.

#### **Whether the Claimant is estopped or contractually barred from disputing PW's fees?**

[87.] PW submits that the Claimant is contractually precluded from disputing the fees claimed. It relies principally on clause 7.8 of the engagement agreement, which requires specific written objections to invoices within five days of their issuance, and on clause 19, which contains the dispute resolution and arbitration provisions. PW also relies on clause 19.7, by which the firm may elect to bring court proceedings to recover fees, and the client agrees not to contest such proceedings.

[88.] Clause 7.8 of the engagement agreement provides:

“You agree to make specific objections to an invoice, including amount, type, scope and reasonableness of services, to the Firm in writing within five (5) days from the issuance of the Invoice. You agree that any Invoice not objected to within such time period will be deemed final and, in reliance thereon, the Firm may continue to render services.”

[89.] The proper construction of clause 7.8 falls to be determined objectively. As stated above, the Court must ascertain what a reasonable person, possessed of all the background knowledge reasonably available to the parties at the time of contracting, would have understood the language of the clause to mean when read in the context of the engagement agreement as a whole. The question is what meaning the words used would convey to a reasonable person reading them in their contractual and commercial context.

[90.] The clause provides only that, absent objection, the invoice shall be deemed final for the purposes of the ongoing retainer and that PW may continue to render services in reliance upon that position. It does not provide that the client irrevocably admits liability for the invoice, waives all future objections, or forfeits the right to challenge the invoice in subsequent proceedings.

[91.] Clause 7.8 may have contractual and evidential significance. A failure to raise timely and specific objections may be relevant to whether an invoice was accepted, whether any complaint was made contemporaneously, and whether PW continued to act in reliance

on the absence of objection. However, the clause is not expressed in language sufficiently clear or comprehensive to extinguish every defence otherwise available to the client.

[92.] In particular, clause 7.8 cannot prevent the Court from determining whether the fee arrangement relied upon is lawful, enforceable, properly construed, reasonable, and capable of supporting equitable relief. Nor can it prevent the Court from determining whether the sum claimed is, in truth, the sum properly due under the retainer.

[93.] The nature of PW's application reinforces that conclusion. PW does not merely seek an ordinary debt judgment. It seeks recognition and enforcement of a solicitor's equitable lien. That remedy is equitable in character and depends upon the Court's supervisory jurisdiction over solicitors and the administration of justice. Where a solicitor invokes that equitable jurisdiction, the Court must be satisfied that the underlying claim to remuneration is one which can properly support the equitable relief sought.

[94.] Solicitor-client retainers are not invariably treated as ordinary commercial bargains between parties of equal standing. The authorities on solicitor remuneration emphasise solicitors' duties and the need for clients to have sufficient information about costs to make informed decisions. In **Belsner v CAM Legal Services Ltd** [2020] Costs LR 1371, the Court addressed the importance of transparency and informed consent in the context of solicitors' fees. In **Herbert v HH Law Ltd** [2019] Costs LR 253, the courts similarly scrutinised solicitor-client remuneration arrangements for fairness and enforceability. Those principles do not mean that solicitor retainers are unenforceable or that agreed fee terms are to be ignored. They do mean, however, that the Court will not enforce such provisions mechanically where doing so would prevent proper scrutiny of the solicitor's entitlement to remuneration.

[95.] Nor can contractual language be used to foreclose objections going to illegality, public policy, champerty, unconscionability, or the Court's supervisory jurisdiction in relation to solicitors' remuneration. In **Awwad v Geraghty & Co** [2000] 1 Costs LR 105, the Court of Appeal emphasised that solicitor fee arrangements remain subject to public policy constraints. Where a client raises a genuine issue as to the legality or enforceability of the fee arrangement, the Court must determine that issue before granting relief based upon the arrangement.

[96.] I also accept the force of the Claimant's submission that PW cannot, without more, invoke this Court's equitable and coercive jurisdiction while maintaining that the Claimant is contractually disabled from disputing the very claim which PW has chosen to advance. If PW elects to seek relief from the Court, the Court must be able to hear all parties and determine the issues which bear on that relief, including the validity and construction of the retainer, the meaning and application of any fee formula, the recoverability of the invoices, and any objection based on legality, public policy, unconscionability, or the Court's supervisory jurisdiction.

[97.] Accordingly, the Court rejects the submission that clause 7.8 precludes the Claimant from disputing the fees now claimed. The clause cannot reasonably be construed

as barring the Claimant from raising bona fide objections to the amount recoverable when those fees are later placed before the Court for determination.

[98.] The arbitration clause does not alter that conclusion. Arbitration agreements are ordinarily enforceable and are construed on the basis that commercial parties are likely to have intended disputes arising out of their relationship to be determined in one forum: see **Fili Shipping Company Ltd v Premium Nafta Products Ltd and Fiona Trust & Holding Corporation v Privalov** [2006] EWHC 2583 (Comm). But PW has not applied to stay these proceedings in favour of arbitration. On the contrary, PW has elected to bring proceedings before this Court for recovery of fees and for equitable relief. Having taken that course, PW cannot rely on the arbitration clause as a basis for preventing the Claimant from advancing substantive defences to the claim which PW itself has brought.

[99.] I therefore hold that the Claimant is not estopped, contractually barred, or otherwise precluded from disputing PW's fees in these proceedings. Clause 7.8 and clause 19 may be relevant to the assessment of particular factual or evidential matters, including whether objections were raised promptly and whether PW acted in reliance on the absence of objection. They do not, however, prevent the Court from examining the validity, construction, legality, enforceability, reasonableness, proportionality, and quantum of the fee arrangement on which PW relies. Nor do they preclude the Claimant from raising genuine defences to PW's claim for recovery of its fees and for equitable relief.

### **Consumer Protection Act**

[100.] The Claimant also invokes the **Consumer Protection Act** and the **Unfair Terms in Consumer Contracts Act**. In my judgment, it is unnecessary on this application to determine whether, and if so, to what extent, those Acts apply to an attorney-client retainer of this kind.

[101.] PW seeks the recognition and enforcement of a solicitor's equitable lien. That remedy is discretionary and is subject to the Court's inherent and supervisory jurisdiction over attorneys, their retainers, and their remuneration.

[102.] The considerations raised by the Claimant under the consumer legislation — transparency, fair notice, imbalance in standard terms, and the reasonableness of the fee claimed — are therefore, in the circumstances of this application, consumed or subsumed within the equitable inquiry which the Court must, in any event, undertake before enforcing the lien.

[103.] Having concluded that PW's construction of the fee clause is not commercially or equitably sustainable, and that the lien cannot attach to anything beyond the Claimant's

own recoverable interest, it is not necessary to decide the consumer legislation points separately.

## **Conclusion**

[104.] PW's application was advanced on the footing that it was entitled to enforce a charging lien calculated by reference to 2% of either \$67 million or \$40 million. For the reasons already given, that footing is not established. The lien, if available, could attach only to the Claimant's property or to a fund recovered or preserved for the Claimant. It could not attach to the share of the sale proceeds that beneficially belong to other shareholders. Nor could the fee base be enlarged by treating the Claimant as having been entitled to recover the Islands as a whole.

[105.] Properly construed, the phrase "amount or value in dispute" refers to the Claimant's actual recoverable legal and economic interest. It does not refer to the gross value of the Islands, nor to the gross sale proceeds. If the percentage-fee mechanism is engaged at all, the relevant value is confined to the Claimant's actual recoverable interest, namely his 12.5% share of the net proceeds of sale and any other recoverable relief properly established. On the material before the Court, that interest is said to be approximately \$3.5 million, subject to expenses and other proper deductions. Two per cent of \$3.5 million equates to \$70,000. \$70,000 is materially less than the amount asserted by PW on its time-costed invoices.

[106.] The consequence is that, even on PW's own formulation of the engagement agreement, the minimum percentage fee does not displace the time-costed basis of charging once the "amount or value in dispute" is properly confined to the Claimant's actual recoverable interest. The engagement agreement provides for fees calculated by time spent, subject to a minimum of 2% of the amount or value in dispute, whichever is greater. On the evidence before the Court, the time-costed invoices exceed the 2% figure calculated on the proper contractual base. PW's entitlement, if any, therefore must be confined to such sum as may properly be due on the time-costed invoices.

[107.] The present application, however, was not advanced as a claim for assessment of costs or recovery of any outstanding balance under PW's hourly billing arrangements. The evidence as to that balance is not finally resolved: PW asserted outstanding time-costed fees of approximately US\$184,500, while the Claimant contends that a further payment of US\$125,000 reduced any remaining balance to approximately US\$59,500. The Claimant disputes whether that amount is due. I therefore make no determination as to whether any such sum remains due or in what amount.

[108.] The foundation upon which PW sought recognition and enforcement of the charging lien has failed. The application was advanced upon the premise that PW was entitled to calculate its remuneration by reference to the gross value of the Islands or the gross sale proceeds. For the reasons already given, that premise is legally and factually unsustainable."

### **Orders**

[109.] For the foregoing reasons, it is ordered that:

- a) The Notice of Application filed on 26 November 2024 seeking recognition and enforcement of a solicitor's charging lien is dismissed.
- b) The application for directions that any proceeds of sale or distribution due to the Claimant be paid into Court or held pending payment of the Applicant's fees is refused.
- c) The Applicant shall pay the Claimant's costs of the application, such costs to be summarily assessed if not agreed.
- d) For the avoidance of doubt, no determination is made in this application as to whether any sum remains owing by the Claimant to the Applicant under the engagement agreement on a time spent basis.

Dated 3<sup>rd</sup> of July 2026

Darron D. Ellis

Justice