

## HUGH SIMS QC AND SIMON PASSFIELD SUCCESSFULLY DEFEND STEVENS DRAKE APPEAL

31 Jul, 2017

The Court of Appeal has today handed down judgment in *Stevensdrake Limited v Hunt* [2017] EWCA Civ 1173, dismissing an appeal against the decision of HHJ Barker QC ([2016] EWHC 342 (Ch); [2016] BCC 515).



The case concerns an application by a firm of solicitors for payment of approximately £1 m claimed to be due and owing from a liquidator personally under the terms of a CFA where the underlying claim had been successful (in that the claim was settled) but there were insufficient recoveries into the liquidation estate.

At first instance, HHJ Barker QC concluded that there was a mutual understanding between the parties that the solicitors' right to payment under the CFA was conditional or contingent upon there being funds available from realisations or recoveries.

The Court of Appeal (Briggs and Hamblin LJJ) overturned his finding that a 'recoveries only' term was incorporated into the CFA as "a matter of construction or implication" (such term being directly contrary to the express terms of the CFA) but upheld his alternative finding that the solicitors were estopped by convention from seeking to enforce the CFA against the liquidator personally.

The judgment highlights the legal and practical issues which arise in relation to the funding of insolvency litigation in nil asset cases and raises (but does not answer) questions about the validity and enforceability of CFAs which are not expressly recoveries only but are nevertheless subject to a 'gentlemen's agreement' to that effect.

Hugh Sims QC and Simon Passfield were instructed by Jim Varley of Devonshires on behalf of the respondent liquidator.

[Click here](#) to read the full Judgment.

