

FromCounsel: Judgments in Brief

October 2018



Contractual interpretation – *United Co Rusal plc v Crispian Investments Ltd* [2018] EWHC 2415 (Comm)

The High Court considered whether a shareholder had validly and effectively commenced a right of first refusal (ROFR) procedure contained in a shareholders' agreement. On the facts, the court held that the offer was not made by a bona fide third party and was therefore not a valid offer.

The defendant, relying on *Re Coroin Ltd* [2013] EWCA Civ 781, contended that special principles of contractual interpretation should apply to the shareholders' agreement. The court rejected this argument, distinguishing *Re Coroin* on its facts, and held that the agreement was to be interpreted according to the usual principles of contractual interpretation applicable to commercial contracts.

See [FC Feature 4 October 2018](#).

Administration – *Re Zinc Hotels (Holdings) Ltd* [2018] EWHC 1936 (Ch)

The High Court considered an interim application by the Zinc group shareholders to appoint additional administrators. The court determined that once an administration has been commenced, it has the power to appoint an interim additional administrator pursuant to para 74(5)(d) Schedule B1 IA 1986. However, in this case, the conditions of para 103 Schedule B1 had not been met as the shareholders did not have standing to make the interim application without the administrators' consent. An additional administrator could only be appointed by a floating charge holder or by the court on application by the existing administrators.



See Raquel Agnello QC's comments on the decision in [FC Feature 5 October 2018](#).



Contract terms – *Simantob v Shavleyan (t/a Yacob's Gallery)* [2018] EWHC 2005 (QB)

The High Court considered whether there was good consideration at law to allow part payment of a pre-existing debt. The case concerned a settlement agreement entered into by the creditor and the debtor. The creditor orally agreed to accept a lesser sum in full discharge of the debtor's liabilities under the settlement agreement. The issue for the court was whether the debtor had provided good consideration. The court held that the disputed nature of a debt meant that there was good consideration for the variation of a settlement agreement by the parties, with the creditor accepting part payment of the disputed debt in full discharge of the debtor's liability.

See Nigel Dougherty's comments on the decision in [FC Feature 12 October 2018](#).

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Schemes of arrangement – *Vernalis plc and Abzena plc*

In these schemes the High Court considered how to deal with the risk that ‘gone-away’ shareholders would not cash cheques sent to them as consideration under the scheme. In *Vernalis plc* there was a high-level of ‘gone-away’ shareholders whilst in *Abzena plc* the evidence was that there were none. Both schemes were transfer schemes that contained a (market standard) clause to the effect that the bidder was only released from liability to make payment to the scheme shareholders on encashment of the cheques. Snowden J was concerned with how this clause would operate where scheme shareholders did not cash their cheques before they expired and subsequently approached the bidder seeking payment.

To deal with these concerns, in *Vernalis plc* Snowden J required the bidder to provide undertakings that a third party service provider would hold the scheme consideration for 12 years during which time a ‘gone-away’ shareholder could seek payment. Snowden J was content to sanction the scheme in *Abzena plc* without any such undertakings, on the basis that there were no ‘gone-away’ shareholders and therefore no reason to believe that any scheme shareholder would not cash their consideration cheque.

See Andrew Thornton’s comments in [FC Feature 26 October 2018](#).

Unfair prejudice – *Cool Seas (Seafoods) Ltd v Interfish Ltd [2018] EWHC 2038 (Ch)*

The High Court considered an unfair prejudice petition under s 994 CA 2006 issued by a majority shareholder. A key issue for the court was whether a majority shareholder can obtain relief under s 994. Rose J granted the petition on the basis that the majority shareholder did not have the power to remedy the unfair prejudice by reason of its majority shareholding, since a ‘reserved matters’ clause in a shareholders’ agreement provided that the consent of the minority shareholder was required for the commencement of proceedings by the company.



See James Potts QC and Chantelle Staynings’ comments in [FC Feature 29 October 2018](#).

This publication notes FC Features covering judgments which have been published by FC during October 2018.

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