expert, professional, friendly...

judge&priestley
SOLICITORS • EST. 1889

Legally Speaking - Judge & Priestley's Quarterly Legal Update for Commercial Clients

SUMMER
2021

INVESTOR IN PEOPLE

Lexcel
Practice Management Standard
Law Society Accredited

Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your business.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

Judge & Priestley LLP
Justin House
6 West Street
Bromley
Kent BR1 1JN

Judge & Priestley announce merger with Cunningham Blake Solicitors (Blackheath)

Judge & Priestley LLP, the Bromley based solicitors firm, is delighted to announce that the merger with Cunningham Blake Solicitors, based in Blackheath, has been successfully completed, with effect from Monday 12th April 2021.
The merged practice will continue to trade from Cunningham Blakes existing offices located in Blackheath Village at 1 Spencer Yard, Blackheath, London, SE3 0DE, under the name of Judge & Priestley Solicitors.

Cunningham Blake partner Matthew Blake will work for the new business as a Consultant and the other Cunningham Blake staff, including Conveyancing manager Michael Cornwall, will also remain in the new practice.

Steven Taylor, Managing Partner at Judge & Priestley, commented; "Many thanks to the staff from both businesses, who have worked so hard to bring these two long established and highly respected local practices together. We are very excited to be adding an office in the heart of Blackheath Village to our business and look forward to meeting and working with Cunningham Blakes clientele and delivering expert legal advice and support to the wider community of Blackheath and surrounding neighbourhoods in South East London".

Judge & Priestley LLP is based in central Bromley, with its head office at 6 West Street, Bromley, BR1 1JN. The practice offers

Partners and staff from J&P and Cunningham Blake in Blackheath; L to R – Steven Taylor, Kelly Sharman, David Chandra and Madelaine Henwood (all J&P), Matthew Blake, Michael Cornwall and Ken Cunningham (Cunningham Blake).

a comprehensive range of legal services to both individuals and business clients from offices in Bromley, Beckenham and now Blackheath. It is listed in the Legal 500 as a leading practice in the South East region.

For more information please contact Nita Newsome: nnewsome@judge-priestley.co.uk

Judge & Priestley announce major round of partner promotions

Judge & Priestley LLP, the fast-growing South-East London solicitors practice, based in Bromley, is pleased to announce a significant round of partner promotions at the start of the 2021 / 2022 financial year.

Most significantly, five previously salaried members have been promoted to the equity members senior team. Brian Tan (Private Client), Kavitha Rajah (Residential Property), Kelly Sharman (Family), Louise Hyland (Residential Property) and Uday Patel (Debt Recovery and Commercial Litigation) have all been promoted to equity holding members as of May 2021.

Steven Taylor, Managing Partner at Judge and Priestley, commented; "All five have been partners for a while now and, during this time, have shown that they can make a valuable contribution as full members of the Senior Management

(Left to right: Steven Taylor (Managing Partner), Uday Patel, Kavitha Rajah, Louise Hyland, Kelly Sharman, Brian Tan and Peter Taylor).

Team. These are exciting times for Judge & Priestley as we continue to grow and develop new areas of work. I am certain that the firm will benefit from the additional management skills that all five can bring".

Additionally, Peter Taylor (Private Client), has been promoted to a salaried member within the practice. David Chandra, Head of Wills, Trusts and Probate, commented; "Peter's attitude and contribution has had a positive impact of the continued growth of the department. This is a well-deserved promotion and we wish him every future success."

For more information on this story, please contact Nita Newsome, Marketing Manager: nnewsome@judge-priestley.co.uk

Commissioner to crack down on late payments

The newly appointed Small Business Commissioner is to spearhead a national effort to crack down on late payment of invoices – which causes thousands of small businesses to close every year.

Former journalist Liz Barclay will be the first woman to hold the position, which was created in 2016 to help small businesses secure the payments owed to them and to galvanise UK businesses behind a new culture of prompt payment.

Over £23.4 billion is owed in outstanding invoices to UK businesses.

Barclay said: “We need a real culture change around business payments in the UK to take pressure off our phenomenal entrepreneurs. People who have already delivered goods and services have to be able to turn their attention to their next client and next order rather than chasing up late payments and worrying about their cashflow.

“I know from personal experience how damaging that can be to mental and emotional health. By working with businesses and ensuring their concerns are listened to, I hope to be able to deliver a payment regime that keeps cash flowing and works for everyone.”

Barclay’s term as Small Business Commissioner begins on 1 July when she replaces current interim Commissioner, Philip King.

Last year, the government consulted on new powers for the Commissioner, including the power to order payments, levy fines and open investigations based on third-party information. The responses to the consultation and further proposals will be published later this year.

Barclay is a small business and consumer affairs broadcaster. She works with boards and small businesses on improving governance, trust and culture, diversity, and understanding customer behaviour.

Please contact us if you would like advice about debt collection and credit control.

Can you refuse to rehire unfairly dismissed employee?

The Court of Appeal has confirmed that an employer could be justified in not re-engaging an unfairly dismissed employee if it had a rational belief that he could not carry out the duties required in a new role or if there had been a genuine breakdown of trust.

The case involved Mr Scott Kelly, who had been Group Marketing Director of the PGA European Tour for many years until it decided he was not capable of fulfilling the role it wished him to perform and dismissed him.

An employment tribunal rejected his claim of age discrimination, but PGA conceded that the dismissal had been unfair.

Kelly sought reinstatement in his old job or, alternatively, re-engagement to the role of Commercial Director, China.

The tribunal found that his old role had been substantially replaced by a different role and had effectively ceased to exist. PGA objected to re-engaging him in the China role on the basis that it did not believe him capable of it; he did not satisfy an essential requirement of the role, to speak, write and read Mandarin, and because of a perceived breakdown in trust and confidence.

The tribunal determined that his willingness to learn Mandarin, and his proficiency in languages, meant that it was practicable for him to be re-engaged in the China role. It found that the issue of trust and confidence arising from doubts about his capability and integrity were not so significant as to make re-engagement impracticable.

PGA appealed. The case went all the way to the Court of Appeal, which ruled in PGA’s favour.

The court held that under employment law, re-engagement meant engaging a dismissed employee in a role comparable to that from which they had been dismissed or in other suitable employment.

However, that did not require looking at comparable or suitable alternative employment carried out by other employees. An employer could not realistically employ someone to perform a role occupied by another employee.

The court also reiterated that it would not be practicable to order re-engagement where the employer had a genuine and rational belief that the employee had engaged in conduct which had led to a breakdown in trust and confidence. In this case, PGA’s doubts stemmed from Kelly having covertly recorded meetings in which the terms of his departure were discussed.

That had not contributed to the dismissal because the employer did not know about it at the time.

Where the conduct had not caused or contributed to the dismissal, it was necessary to test whether the employer's belief in the breakdown of trust was genuine and rational.

The tribunal in this case had not considered whether the PGA’s doubts about Kelly’s capability and integrity to perform a senior leadership role were genuine and rational. It had merely substituted its own view on the matter.

Please contact us for more information about the issues raised in this article or any aspect of employment law.

Landlord wins rent dispute despite Covid defence

A commercial landlord has won a dispute over unpaid rent of more than £166,000 despite the tenant citing Covid-19 as the reason for its failure to pay.

The case involved Commerz Real Investmentgesellschaft MBH and TFS Stores Ltd.

Commerz was the leasehold owner of the Westfield Shopping Centre; TFS was of its tenants.

As a result of the Covid-19 pandemic, TFS had been obliged to close its shop for several months during lockdown periods.

It had not paid any rent since April 2020 and the monthly service charge for April, May and June 2020 was also outstanding.

Commerz sought judgment for rent amounting to £166,884.82 plus interest.

TFS argued that the claim was issued prematurely, contrary to the Code of Practice for Commercial Property Relationships during the Covid-19 Pandemic and was a means of circumventing measures put in place to prevent forfeiture, winding up and recovery.

It further submitted that Commerz was trying to exploit a “loophole” in the restrictions placed upon the recovery of rent put in place by the Government because of Covid.

The High Court found in favour of Commerz.

It held that it was clear from the first paragraph of the Code that it did not affect the legal relationship between landlord and tenant. It was also clear that the Code encouraged landlords and tenants to take a balanced view.

The Code was not a charter for tenants declining to pay any rent.

The government had placed restrictions upon some, but not all remedies that were open to landlords as part of the measures taken to protect the economy. However, there was no legal restriction placed upon a landlord bringing a claim for rents and seeking judgment upon that claim.

Please contact us for more information about the issues raised in this article or any aspect of commercial property law.

Invoking ‘Covid-19 restriction’ to avoid winding-up order

The High Court has clarified the issues involved when a company wished to invoke the ‘Covid-19 restriction’ to prevent being subjected to a winding-up order.

It said that under the Corporate Insolvency and Governance Act 2020 (the Act), the company did not have to show that the pandemic had had a direct financial effect upon it; as an alternative it could rely on an indirect effect.

The case involved PGH Investments Ltd and Mr Sean Ewing.

The issue arose after Ewing entered into a Share Purchase and Loan Assignment Agreement with a third party. PGH acted as guarantor for the third party.

Ewing later claimed that the third party had defaulted on his obligations, triggering PGH’s liability under the guarantee and indemnity.

PGH disputed its liability to pay the alleged debt so Ewing petitioned for a winding-up order.

PGH then applied to have the winding-up petition dismissed on various grounds, including ‘the Covid-19 restriction’ introduced in the Act, which prevented winding-up petitions against companies whose finances had been affected by the pandemic.

The court granted the application to dismiss Ewing’s winding-up petition for several reasons and clarified the requirements of the Covid-19 restriction.

It said the restriction applied where a company was unable to pay its debts but established a prima facie case that, before the presentation of the petition, its financial position had worsened because of Covid-19. In such a case, the court could only make a winding-up order if it were satisfied that the company would have been unable to pay its debts regardless of the pandemic.

PGH did not argue that Covid-19 had a direct financial effect upon it. Rather, it relied on an indirect effect, arguing that the pandemic had prevented the third party from discharging his obligations under the agreement, thereby triggering its liability under the guarantee and indemnity, and putting it in a worse financial position than otherwise.

To invoke the restriction, it was sufficient to demonstrate a prima facie case that coronavirus had an indirect financial effect. The definition of “financial effect” was wide, and it was enough for a company to demonstrate that its financial position worsened “in consequence of” or “for reasons relating to” Covid-19.

Please contact us for more information about the issues raised in this article or any aspect of debt and insolvency.

Directors who act unfairly face new sanctions

The government is introducing new legislation to target company directors who dissolve their businesses for their own gain and leave staff or taxpayers out of pocket.

The Insolvency Service will be given powers to investigate directors of companies that have been dissolved, closing a legal loophole and acting as a strong deterrent against the misuse of the dissolution process.

The process will no longer be able to be used as a method of fraudulently avoiding repayment of Government backed loans given to businesses to support them during the Coronavirus pandemic.

Extension of the power to investigate also includes the relevant sanctions

such as disqualification from acting as a company director for up to 15 years. These powers will be exercised by the Insolvency Service on behalf of the Business Secretary.

At present, the Insolvency Service has powers to investigate directors of live companies or those entering a form of insolvency. If wrongdoing or malpractice is found, directors can face sanctions including a ban of up to 15 years.

The measure will also help to prevent directors of dissolved companies from setting up a near identical business after the dissolution, often leaving customers and other creditors, such as suppliers or HMRC, unpaid.

The measures included in the Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill are retrospective and will enable the Insolvency Service to also tackle directors who have inappropriately wound-up companies that have benefited from Bounce Back Loans.

Please contact us for more information about insolvency and company law issues.

Sub-contractor entitled to immediate payment of £1m

A construction company was entitled to immediate payment of £1m that it had been awarded by an adjudicator following a contract dispute.

That was the decision of the Technology & Construction Court in a case involving Quadro Services Ltd and FP McCann Ltd.

The issue arose after McCann had been engaged to construct buildings for a university and entered into a sub-contract with Quadro worth more than £4 million.

McCann later terminated the contract following a dispute over its terms.

Quadro referred the case to an adjudicator who decided that McCann was in repudiatory breach of contract and awarded Quadro over £1 million.

McCann issued proceedings to challenge the adjudicator's decision, so Quadro applied for summary judgment to make sure that it was enforced.

McCann sought a delay and for the judgment sum to be paid into an escrow account pending the outcome of the proceedings.

It feared that the financial difficulties caused by the Covid pandemic meant that Quadro might not be able to repay the money if the decision was overturned at the full hearing.

The court refused the application and ordered that the sum should be paid immediately.

It held that a delay should only be imposed in exceptional circumstances, such as if there were serious concerns that a company would not be able to repay the money if the award were overturned.

That did not apply in this case. While Quadro had been impacted by the COVID-19 pandemic, its accounts showed that it continued as a going concern.

Please contact us for more information about the issues raised in this article or any aspect of contract law.

j&p
judge&priestley
SOLICITORS · EST. 1889

Lexcel
Practice Management Standard
Law Society Accredited

INVESTOR IN PEOPLE

Services

- Buying and Selling Businesses
- Contracts
- Debt Recovery
- Developments
- Dispute Resolution
- Employment
- Property

Meet the team


Mark Oakley


Pam Bachu


Rachel Addai


Lucy Rudd


Neil Cuffe


Steve Taylor


Paul Stevens


Nitika Singh

For further information **T.** 020 8290 0333 **F.** 020 8464 3332 E. info@judge-priestley.co.uk
Justin House, 6 West Street, Bromley, Kent BR1 1JN www.judge-priestley.co.uk