

A solicitor's lien explained



brightlegal
SOLICITORS

Litigation solicitor Parvien Akhtar at Bright Legal highlights section 73 of the Solicitors Act 1974

When a client fails to pay an invoice, most solicitors are aware that they have the right to exercise a lien over the client's file papers until the account has been settled in full. However, how many are aware of the provisions of Section 73 of the Solicitors Act 1974?

Under this Act, Solicitors are also entitled to a charge on any property recovered or preserved through their instrumentality for their assessed costs in relation to that matter or proceeding.

The rules are set out in Part 67 of the Civil Procedure Rules. Paragraph 67.2 states an application for an order must be made by issuing a Part 8 Claim form or if the application is made in existing proceedings, by application on notice in accordance with Part 23.

Lord Kitchin described the solicitor's equitable lien in the following terms in the case of

Candey Ltd vs Crumpler & Anor [2022] UKSC 35 at [40]:

"Another feature of the solicitor's equitable lien, and one which it shares with other equitable liens, is that does not depend upon possessions of the property over which it exists. Instead, it operates by law as a first ranking right of the solicitor to be paid his or her fees out of the proceeds of the litigation, and as a form of equitable charge which binds third parties with notice of it. It is in this sense akin to a right of salvage. But it will not be effective against a purchaser for value of a legal estate without notice of it."

The key point here is whether any property was recovered or preserved through the efforts of the solicitor. The classic definition of property which has been recovered or preserved is to be

found in the speech of Lord Simon of Glaisdale in *Hanlon -v- The Law Society* [1981] AC 124 at 180:

"...Property has been recovered or preserved if it has been at issue in the proceedings – recovered by the claimant if it has been the subject of successful claim, preserved to the respondent if the claim fails. In either case it is a question of fact, not of theoretical "risk." In property adjustment proceedings, in my view, it has only been "recovered or preserved" so as to be the subject of a legal aid charge. What has been in issue is to be collected as a matter of fact from pleadings, evidence, judgement and/or order. I can see no reason for extending the words to items of property, the ownership or possession of which has never been questioned."

In a case I was recently involved in, all these issues were tested. A firm had been engaged by the husband to respond to the wife's claim for financial remedies including her claim that her husband had a beneficial interest in a property that was registered in the name of the husband's brothers.

Those proceedings concluded some eight years prior. It was held that the brothers were on notice of the lien despite the firm not issuing a Part 8 claim against the husband and interveners until recently. The fact that a letter had been sent to the intervening brother's solicitors putting them on notice of the firm's claim at the time was held to be sufficient notice. Despite the claim being for modest legal costs, the ongoing litigation costs are in excess of £100,000.

In conclusion this is a great piece of legislation, very helpful to solicitors when a lien over papers is simply ineffective. Given the trend towards electronic files, I suspect we will see a few more applications under the Act. ■

