

Case Update: Little & Anor v Olympian Homes Ltd (2024)

Following on from our recent alert ([Court of Appeal puts default interest rate clause to the test in *Houssein v London Credit Limited* \(2024\) \(cms-lawnow.com\)](#)), the recent case of *Little & Anor v Olympian Homes Ltd* [2024] EWHC 1766 (Ch) (08 July 2024) also concerned payment of default interest and whether the lender had waived its rights to require payment.

Little & Anor v Olympian Homes Limited (2024) concerns two applications to set aside statutory demands based on personal guarantees given in respect of a loan. The loan was not repaid in full by the due date and the lender claimed default interest on the outstanding amount, which the applicants disputed on the grounds that the lender had waived payment of the interest, firstly either by way of contractual waiver (in email correspondence), or, alternatively, due to waiver by estoppel (arising as a result of the lender's conduct).

Contractual waiver

The court rejected the applicants' first argument for waiver by contract. Looking at the email correspondence which the applicants relied on as the basis of the contractual waiver, there was no clear request to waive the interest; the emails mainly concerned the repayment of the principal and the release of the security. The applicants also could not rely on any argument for an oral waiver as the loan agreement contained a clause requiring any waiver to be in writing. It was noted obiter in the judgment that whilst both parties believed that contractual waiver needed to be supported by consideration, the judge's view was that consideration is not essential unless the waiver in fact comprises a variation to the contractual terms.

Waiver by estoppel

The court accepted there was a genuine triable issue on the argument for waiver by estoppel. First, there was a clear and unequivocal representation or promise in an email from the lender which stated that the applicants were released from the terms of the loan agreement and attached a draft deed of release. The operation of estoppel is also not prevented by a no oral-variation clause. Second, there was an intention to induce reliance on that representation, which was evidenced by the language, the attachment of the draft deed, and the fact that the email was from an authorised agent of the lender. Third, there was actual and reasonable reliance by the applicants, who did not arrange to pay the interest or take advice, and who went on to provide an interest-free loan to a related entity and provided advisory services for no charge. Fourth, it would have been inequitable for the lender to go back on its promise, given that it did not raise the issue of interest for almost a year.

The court therefore concluded that the debt was disputed on substantial grounds and that the statutory demands should be set aside.

Use of email

The judge confirmed that waivers completed via email qualify as “in writing “. While a long-form signed and dated waiver letter is preferred, inevitably this is not always possible and waivers may need to be done in short order over email (which we often see in practice where there is a strong commercial need). Courts have covered this before such that emails are capable of being validly signed electronically. Where this route is taken, the email should include the name and contact details of the sender added to the foot of the email with an appropriate sign off (such as “Kind regards “) that connects the name with the body of the email.

In light of this judgment, lenders must:

- (a) check the terms of the loan agreement and related finance documents to determine whether there are any specific formalities for giving effect to a waiver;
- (b) be aware that email correspondence may be construed as giving rise to a waiver by estoppel, regardless of the intention and whether there is consideration; therefore be cautious about how any correspondence is worded;
- (c) always seek in the first instance to grant a waiver in a standalone signed and dated document; and
- (d) ensure that, where a waiver is being granted over email:
 - (i) the specific provisions being waived are clear (and cross-refer to the loan agreement);
 - (ii) reservation of rights language is included so that, save for the contents of the email, the finance documents remain in full force and effect; and
 - (iii) the email includes a clear sign-off, name and contact details of the sender.