

Equity cures, events of default, waivers and limits on the power to act as a majority

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The first half, deals with the current approach to contractual interpretation in the context of finance documents by reference to the decision of Lewison J., in *Strategic Value Master Fund Ltd v. Ideal Standard International Acquisitions Sarl* [2011] EWHC 171 (Ch); [2011] 1 BCLC 475. This case dealt with: (i) the meaning of an “equity cure”; (ii) the proper approach to events of default triggered by the borrower’s insolvency; and (iii) the distinction between waiver of a right and waiver of a term. Each of these points will be discussed in order to illustrate the current approach to contractual interpretation in this area, including the extent to which the Courts are driven by arguments based on the commercial purpose of particular provisions in finance documents.

The second half, aims to address the question whether contractual rights or discretions are fettered by an obligation to act in good faith for a proper purpose. Finance documents frequently grant lenders the right to make majority decisions that are capable of binding all those who are parties to the relevant agreement. The extent to which the majority lenders are constrained by a duty to act in good faith for a proper purpose in such circumstances was considered by Rimer J., in *Redwood Master Fund Ltd v. TD Bank Europe Ltd* [2002] EWHC 2703 (Ch), [2006] 1 BCLC 149. This important decision will be explained in detail and the limits of the principle established by Rimer J., will be discussed by reference to more recent case law on this point.