

COMMERCIAL DISPUTES WEEKLY – ISSUE 15

4 FEBRUARY 2020 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

Abuse of process

The Court of Appeal has confirmed that although a unilateral decision not to pursue a claim for a substantial period while maintaining an intention to pursue it at a later juncture (also known as “warehousing”) may constitute an abuse of process, it does not necessarily do so. It will all depend on the reason the proceedings were put on hold, the strength of that reason, and the length of the period in question.

Alibrahim v Asturion Fondation

"... for legal advice privilege to apply to a particular communication or document, the proponent of the privilege must show that the dominant purpose of that communication or document was to obtain or give legal advice."

The Civil Aviation Authority v R (on the application of Jet2.com Limited) & Anr

Appeals

It will be an unusual step to take, but the Commercial Court has held that a court hearing an appeal from an order registering a foreign judgment in England has the power to order disclosure. Nevertheless, parties will be reassured to know the court will generally be reluctant to order disclosure in such circumstances unless strictly necessary and appropriate.

The Kingdom of Spain v The London Steam-Ship Owners' Mutual Insurance Association Limited

Maritime

In a case concerning in rem proceedings against an arrested vessel, the Admiralty Court has noted that since other parties may have a claim against the vessel, pursuant to the Civil Procedure Rules it is not appropriate to grant judgment in default of a defence unless the court is satisfied that the claim has been proved.

Qatar National Bank QPSC v The Owner of the Yacht Force India

WATSON FARLEY & WILLIAMS

Privilege

The Court of Appeal has handed down its second significant judgment on privilege in as many weeks, confirming that a dominant purpose test applies to legal advice privilege as well as litigation privilege, and so when assessing whether emails sent to both lawyers and non-lawyers are covered by privilege, it is necessary to identify the purpose of the communication.

The Civil Aviation Authority v R (on the application of Jet2.com Limited) & Anr

Settlement

Subsequent changes to the law can mean that past decisions taking a contrary view can be set aside for common mistake.

However, the High Court has emphasised that when deciding whether a settlement agreement should be set aside for mistake, it will be necessary to consider the change of law and whether the parties simply made a misprediction about the course of future legal events, rather than a mistake.

Elston v King & Anr

FOR MORE INFORMATION

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

- Andrew Ward
- Rebecca Williams
- Charles Buss
- Dev Desai
- Andrew Hutcheon
- Robert Fidoie
- Thomas Ross

KEY CONTACTS

ANDREW WARD

PARTNER • LONDON
T: +44 20 7863 8950
award@wfw.com



REBECCA WILLIAMS

PARTNER • LONDON

T: +44 203 036 9805

rwilliams@wfw.com

DISCLAIMER

WATSON FARLEY & WILLIAMS

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.