

COMMERCIAL DISPUTES WEEKLY – ISSUE 17

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

Note: *The Commercial Disputes Weekly will be taking a short break for the next few weeks, returning on 10 March.*

Arbitration

In the latest judgment on the availability of interim measures in support of arbitration, the Commercial Court has confirmed that since section 44 Arbitration Act 1996 does not apply to non-parties, there was no power to make an order for the taking of a witnesses' evidence in support of a foreign seated arbitration.

[A & Anr v C & Ors](#)

"Even in modern times the law does not always provide a remedy for every annoyance to a neighbour, however considerable that annoyance may be."

Fearn & Ors v The Board of Trustees of the Tate Gallery

Contract

The Court of Appeal has provided an important reminder that a disclosed and identified principal will usually be able to enforce a contract entered into on their behalf by an agent, unless the terms of the contract and surrounding circumstances demonstrate an intention to exclude the disclosed principal from the contract.

[Filatona Trading Limited & Anr v Navigator Equities Limited & Ors](#)

Costs

Emphasising the dangers in bringing, and persisting in, weak and speculative claims, the Court of Appeal has held that a defendant was entitled to indemnity costs (rendering any costs budget irrelevant), where the claimants should have realised their claims were likely to fail and acted unreasonably in failing to accept an early Part 36 offer made by the defendant, taking the case out of the norm.

[Lejonvarn v Burgess & Anr](#)

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Procedural errors

Although care should always be taken when commencing and serving proceedings, claimants will be relieved by the High Court's decision that a failure to serve a sealed claim form bearing a claim number could be remedied under CPR 3.10 in circumstances where there had been no prejudice to the defendant and it was clear that the error was one of procedure invalidating a procedural step, rather than a complete failure of service.

[Dory Acquisitions Designated Activity Company v Frangos](#)

Property

In the much publicised dispute between the Tate Modern and flat owners directly opposite its viewing gallery, the Court of Appeal has refused to extend the common law tort of private nuisance to cases of overlooking, emphasising that the issue in such cases is invasion of privacy and it would be better to leave the fashioning of any remedy to the legislature rather than the courts.

[Fearn & Ors v The Board of Trustees of the Tate Gallery](#)

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](#)
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