

COMMERCIAL DISPUTES WEEKLY – ISSUE 18

10 MARCH 2020 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

Companies

The Court of Appeal has provided a valuable reminder to claimants that, although it is possible to bring a claim against a dissolved company, to avoid a strike out it will be necessary to take prompt action to apply to restore the company to the Register once proceedings have been issued.

Cowley v LW Carlisle & Company Limited

"To insist on definitive advice that no breach will be committed would have a chilling effect on legitimate commercial activity."

Allen (t/a David Allen Chartered Accountants)
v Dodd & Co Limited

Contract

Noting the potential chilling effect on legitimate commercial activity of claims for inducing breach of contract, the Court of Appeal has confirmed that a party will not have the requisite knowledge to be liable for the tort if they honestly rely on legal advice that their actions will probably not lead to a breach, even if the advice turns out to be wrong.

Allen (t/a David Allen Chartered Accountants) v Dodd & Co Limited

Disclosure

As the Disclosure Pilot Scheme for the Business and Property Courts enters its second year, the Chancellor of the High Court has emphasised that it should not become a disproportionately costly or time-consuming exercise, and that unduly granular and complex solutions should be avoided.

McParland & Partners Limited & Anr v Whitehead

Early neutral evaluation

In a sign of the growing use of the practice of Early Neutral Evaluation, by which an independent party is asked by the parties to express a non-binding opinion about the merits of a case, the High Court has provided useful guidance on the approach that can be taken when using the procedure before Queen's Bench Masters.

Telecom Centre (UK) Limited v Thomas Sanderson Limited

Enforceability

The High Court has confirmed that, unlike under the Foreign Judgments (Reciprocal Enforcement) Act 1933 and the Brussels Recast Regulation, the Administration of Justice Act 1920 can be used to enforce foreign judgments which are themselves enforcing a judgment of a third jurisdiction.

Strategic Technologies Pte Ltd v Procurement Bureau of the Republic of China Ministry of National Defence

Expert evidence

Drawing an important distinction between “genuine” experts appointed under the CPR, and experts who are appointed to undertake investigations and provide factual material, the High Court has held that a structural engineer and corrosion expert had not breached their duties to act impartially and independently by corresponding unilaterally with a jointly instructed testing house.

Blackpool Borough Council v Volkerfitzpatrick Limited & Ors

Maritime

In an important decision for owners, the Court of Appeal has confirmed that an inadequate passage plan that caused a vessel’s grounding rendered the vessel unseaworthy. Read our full briefing on the decision, available [here](#).

Alize 1954 & Anr v Allianz Elementar Versicherungs AG & Ors (The CMA CGM Libra)

Settlement

In a decision which offers further support for the settlement of disputes, the Court of Appeal has found that, when giving credit for settlement monies received from one defendant in proceedings against the remaining defendants, a claimant was entitled to choose how to allocate the monies, as long as that choice was not “obviously unsustainable”.

Marino v FM Capital Partners Ltd

Third party funding

In a significant judgment for third party funders, the Court of Appeal has found that the so-called Arkin cap, which limits a funder’s cost liability to the amount funding provided, is not an automatic rule and it may not be just to apply it in cases where the funder stands to gain a significant amount from the claim.

Chapelgate Credit Opportunity Master Fund Limited v Money & Ors

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

WATSON FARLEY & WILLIAMS

- Robert Fidoe
- 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 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.