

COMMERCIAL DISPUTES WEEKLY – ISSUE 34

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

The Commercial Disputes Weekly will be taking a short break for the next few weeks, returning on 21 July.

We appreciate that our clients, partners and friends are currently facing unprecedented challenges as a result of the spread of the COVID-19 virus. Click [here](#) for a message from our Managing Partners, and [here](#) for all of our latest updates and articles on the subject. If you have any questions or require support, please do not hesitate to speak to your usual contact at WFW.

Construction

The English court has once again suggested that the ambit of works excluded from the mandatory adjudication regime under the Construction Act 1996 should be reconsidered, holding that the primary activity at an energy from waste plant was power generation rather than waste treatment, and so an adjudicator lacked jurisdiction and her adjudication awards were unenforceable.

Engie Fabricom (UK) Limited v MW High Tech Projects UK Limited

Contract

Holding that an exemption clause in an intercreditor agreement meant that receivers would only be liable for breach of the equitable duties they owed to a mortgagor in cases of gross negligence or wilful misconduct, the Commercial Court has commented that even if the construction of exemption clauses involves the same approach as that used for the construction of other contractual terms, special principles of construction traditionally used to construe exemption clauses still remain relevant to that exercise.

CNM Estates (Tolworth Tower) Ltd v VeCREF I SARL & Ors

Covid-19

The High Court has rejected arguments that the economic downturn anticipated as a result of the Covid-19 pandemic, and its effect on the financial wellbeing of a company involved in the provision of products and services for the maintenance and repair of pipelines for oil and gas, justified the making of an order for security for costs. At this point, there was no reason to believe the company would be unable to pay the defendants' costs if ordered to do so in the future.

International Pipeline Products Limited v IK UK Limited & Ors

"The fact that, in one commercial and contractual setting, particular words have been held to be capable of applying to negligence does not, in my view, automatically entail that those words have the same effect in a different commercial and contractual setting."

CNM Estates (Tolworth Tower) Ltd v VeCREF I SARL & Ors

Orders and judgments

Providing an important reminder that parties cannot simply disengage from litigation at will, the High Court has rejected applications to set aside orders made in the claimant's absence. Even though the claimant had suffered a serious accident, he had subsequently allowed almost six years to pass without making any inquiries about the proceedings, and such delay was sufficient on its own to refuse the applications.

Balengani v Sharifpoor

Part 36 offers

In a case arising out of travel restrictions imposed during the Covid-19 pandemic, the High Court has found that a Part 36 offer was a genuine offer to settle, even though it was only 0.3% less than the total amount claimed. Where the claimant had near-certain chances of success, an offer to settle which involved foregoing an amount equal to interest or costs was capable of being a genuine offer. However, since the insolvency of the defendant meant it had been unable to accept the offer, it was held that it would be unjust to impose all the costs consequences set out in Part 36.

Rawbank SA v Travelex Banknotes Limited

Stakeholder applications

The Commercial Court has found that, where one claimant asserted an absolute entitlement to a debt as creditor, and another asserted a proprietary or security interest either in the debt itself or in any payment made in relation to it which could be relied upon against the borrower, there were competing claims and so there was jurisdiction for the borrower to apply to the court for directions under the stakeholder application provisions in CPR 86.1.

Skatteforvaltningen (The Danish Customs and Tax Administration) v Shah & 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:

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