

COMMERCIAL DISPUTES WEEKLY – ISSUE 35

21 JULY 2020 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

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.

Contract

Acknowledging that the law on implying obligations of good faith into “relational” contracts is still in a state of development, the High Court has nevertheless rejected arguments that such obligations should be implied into a long-term aircraft engine maintenance contract, holding that an engine maintenance contract was not an obvious one for the implication of a good faith obligation.

Cathay Pacific Airways Limited v Lufthansa Technik AG

"Except in the clearest of cases, the question of relevance to the process of construction is one that the court should be left to decide for itself."

Hancock v Promontoria (Chestnut) Limited

Contract

Although in this case a party was permitted to rely on a redacted deed of assignment, the Court of Appeal has emphasised that given the unitary nature of the approach to construction of contracts, which requires the document as a whole to be considered, the starting point must always be that the entire document should be made available to the court, and that any redactions on the grounds of irrelevance should either be forbidden or, if permitted at all, convincingly justified and kept to an absolute minimum.

Hancock v Promontoria (Chestnut) Limited

Contract

Emphasising that in circumstances where a contract is a standard form, evidence of the particular factual background will have a more limited part to play in the process of interpretation, the Court of Appeal has upheld a decision that a borrower was not immediately obliged to make payments under a facility agreement in light of the effect of US secondary sanctions on the lender. Read more about the decision in our article [here](#).

Lamesa Investments Limited v Cynergy Bank Limited

Covid-19

Noting the “unprecedented national health emergency” caused by Covid-19, the High Court has set aside judgment in default granted in circumstances where a claim was served on a defendant’s offices just as the country was put into lockdown.

Stanley v London Borough of Tower Hamlets

Damages

Helpfully reiterating the principles on remoteness of damage for breach of contract, the Judicial Committee of the Privy Council has confirmed that a claim for loss of profits was not too remote in circumstances where the parties had entered into two agreements to build and then manage a water reclamation treatment plant, but due to the defendant’s breach the plant was never built and so the claimant had no opportunity to earn the profits it would have made under the management agreement.

Attorney General of the Virgin Islands v Global Water Associates Ltd

Funding

The High Court has gone some way towards clearing up one of the uncertainties which have contributed to the lack of enthusiasm for use of damage-based agreements, holding that an obligation that a client pay costs and expenses already incurred if it chooses to terminate such an agreement will not render the agreement unenforceable.

Lexlaw Ltd v Zuberi

Hearings

The Court of Appeal has emphasised the difference between unsuccessful applications to adjourn hearings and applications to set aside judgments made in the absence of a party, holding that an application to set aside justifies a less draconian approach and thus a separate exercise of discretion unfettered by any previous exercise of discretion on an adjournment application.

Fatima v Family Channel Limited & Anr

Maritime

In a decision with potentially far-reaching implications for the shipping industry, the High Court has refused to strike out a claim for negligence brought by the widow of an individual working on the demolition of an oil tanker. [Read more about the decision in our article here.](#)

Begum v Maran (UK) Ltd

Maritime

Upholding an arbitration award, the Commercial Court has rejected arguments that intermediary brokers owed a duty to disclose the “spread” between the rate of hire paid by a charterer, and the rate received by the owner. If it could be said that such brokers were agents, their duties were limited to the duty to communicate messages honestly.

CH Offshore Limited v Internaves Consorcio Naviero SA & Ors

Reflective loss

In an important decision the Supreme Court has clarified the law on the “reflective loss” principle, the majority holding that it is a rule of company law which provides that a shareholder cannot bring a claim in respect of a diminution in the value of their shareholding or a reduction in their distributions which is merely the result of a loss suffered by the company in consequence of a wrong done by the defendant, even if no proceedings are brought by the company. The principle did not, therefore, apply to a case in tort brought by the creditor of two companies alleging the defendant had stripped the companies of their assets, rendering them insolvent. *Sevilleja v Marex Financial Ltd*

"The problems and uncertainties which have emerged in the law have arisen because the “principle” of reflective loss has broken from its moorings in company law."

*Sevilleja v Marex
Financial Ltd*

Witness evidence

Proposals of the Witness Evidence Working Group to improve the current approach to factual witness statements are currently under review, but in the meantime the High Court has criticised the content and length of statements made in relation to an application for summary judgment, noting that they were, to a substantial extent, not witness evidence but argument, and that a polished and “heavily lawyered” statement far removed from any account the witness could have given in examination in chief increases costs, and lengthens and increases the hostility of cross-examination and the witness’s vulnerability to that cross-examination.

Skatteforvaltningen (The Danish Customs and Tax Administration) v Solo Capital Partners LLP & 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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