

## COMMERCIAL DISPUTES WEEKLY – ISSUE 37

4 AUGUST 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.

#### Foreign law

In the context of a case arising out of an accident in Egypt, the Court of Appeal has provided useful guidance on the “presumption” that foreign law is the same as English law, noting that it is a rule of evidence which represents a sensible and just way of avoiding the expense and complication of having to investigate and prove foreign law at the outset of a claim, provided both parties are content to proceed in such a way.

FS Cairo (Nile Plaza) LLC (incorporated under the law of Egypt) v Brownlie (widow & executrix of the estate of Sir Ian Brownlie CBE QC)

**"In an English court, issues of foreign law are issues of fact and are not to be debated at length on a preliminary application about jurisdiction."**

FS Cairo (Nile Plaza) LLC (incorporated under the law of Egypt) v Brownlie (widow & executrix of the estate of Sir Ian Brownlie CBE QC)

#### Freezing orders

Granting permission to a company subject to a freezing order to use assets to develop its new business, the Court of Appeal has emphasised that a freezing order is not intended to restrain conduct which is in the “ordinary and proper course of business”, even if it involves a substantial degree of risk or speculation.

Organic Grape Spirit Ltd v Nueva IQT SL

## **Jurisdiction**

In a multi-faceted judgment the Commercial Court has concluded that claims against EU member states should be served on those states pursuant to the EU Service Regulation, and that while claims concerning the failure to honour arbitration awards “related to” arbitration for the purposes of the State Immunity Act 1978 and fell within the arbitration exception to the Recast Brussels Regulation, claims concerning a failure to give effect to judgments entered to enforce the arbitration awards did not as they were too far removed from the arbitrations.

The London Steam-Ship Owners’ Mutual Insurance Association Ltd v The Kingdom of Spain

## **Maritime**

The Commercial Court has rejected claims that a non-binding agreement in principle for the chartering of a vessel stated to be “on subjects” was in fact concluded. Obtaining suppliers’ approval was a pre-condition to the contract coming into existence, encompassing all approvals the charterer wished to obtain on the supply side and not simply approval of the terminal from which the cargo was loaded.

Nautica Marine Ltd v Trafigura Trading LLC (Rev 1)

## **Remote hearings**

Demonstrating one of the hazards of remote hearings, the Court of Appeal has concluded that a judge who was overheard making pejorative comments about a party when a link to a virtual court room was left open should have recused herself on the basis that a fair minded and informed observer would have concluded there was a real possibility the judge was biased.

C (A Child)

## **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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