COMMERCIAL DISPUTES WEEKLY – ISSUE 48

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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.

> "If a compelling case for expedition is made out, then the Commercial Court will find a way of accommodating the trial."
>
> Lopesan Touristik SA v Apollo European Principal Finance Fund III (Dollar A) LP & Ors

Arbitration

In a further case applying the principles of reflective loss recently confirmed in Sevilleja v Marex Financial Ltd (2020), the Commercial Court has also rejected arguments that claims brought under an alleged implied retainer with a law firm should be stayed pursuant to section 9 Arbitration Act 1996. The duties allegedly owed to the claimant were similar to those owed to a party who had a formal retainer with the law firm which was subject to an arbitration agreement, but that did not mean the claimant was claiming "under or through" the other party.
Naibu Global International Company Plc & Anr v Daniel Stewart & Company Plc & Anr

Costs

As the CJC Working Group on the guideline hourly rates prepares to make recommendations at the end of the year on updating rates, the Senior Courts Costs Office has emphasised the limited utility of the current rates, particularly in relation to international commercial cases where it is appropriate to appoint City solicitors.
Shulman v Kolomoisky & Anr

Contract

In a topical decision which demonstrates the complex issues that can arise when relying on material adverse effect (MAE) clauses, the Commercial Court has considered the meaning of a MAE clause in a share purchase agreement, holding that in deciding whether the Covid-19 pandemic had a relevant "effect" on the companies being sold, it was necessary to compare them with other participants in the broader payments industry, and not simply those in the "travel payments industry".
Travelport Limited & Ors v WEX Inc

Expedition

The Commercial Court has provided a useful reminder of the principles applicable to determining whether to order the expedition of a trial, holding that in circumstances where the urgency of the claim was qualified, it would not be appropriate to order expedition where there was a very real risk that trial preparations could not be fairly undertaken in time, the claimant had delayed in seeking a trial, and it was possible that expedition would mean another case would have to be stood out of the list.
Lopesan Touristik SA v Apollo European Principal Finance Fund III (Dollar A) LP & Ors

Unlawful means conspiracy and breach of confidence

The Court of Appeal has rejected suggestions that, in a case of unlawful means conspiracy it will be necessary for the defendant and at least one conspirator to know that the means in question is unlawful, holding that even in cases where the unlawful means involves the infringement of a private right, knowledge of that unlawfulness is not required. The Court also held that, where a defendant has made unauthorised use of confidential information received from a third party, reasonably relying on assurances and warranties from the third party that it was entitled to provide the information, the defendant will not be in breach of an equitable duty of confidence unless there are clear countervailing indications sufficient to override the contractual assurances received.
The Racing Partnership Limited & Ors v Sports Information Services Limited

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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