

COMMERCIAL DISPUTES WEEKLY – ISSUE 52

17 NOVEMBER 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.

"It would be impossible to resolve whether there was a concluded agreement or the terms of any such agreement without looking at the without prejudice communications."

Kings Security Systems Limited v King & Anr

Damages

Providing a useful insight into how to determine the correct counterfactual when assessing damages for breach of contract, the Commercial Court has found that an investment institution was liable for damages to an introducing broker on the basis of transactions it had entered into with relevant clients which it had not disclosed to the broker, whether or not the clients would have entered into those transactions if the investment institution had not reduced its fees.

Medsted Associates Limited v Canaccord Genuity Wealth (International) Limited

Interest

The High Court has upheld a decision finding that a right to interest on tortious damages was a procedural right, and therefore governed by English law as the law of the forum where the claim was brought, rather than Spanish law as the law of the

jurisdiction where the claim arose.

Troke & Anr v Amgen Seguros Generales Compania De Seguros Y Reaseguros SAU

Oil & Gas

In a decision which will be of particular interest to the oil and gas sector, the Court of Appeal has found that a farm-out agreement fell to be read together with a joint operating agreement as a cohesive whole when determining the level of "earn-in" costs payable by a purchaser. However, the Court emphasised that the decision was contract specific, and that the proper construction of such agreements and their interplay will always turn on the precise terms used.

Apache North Sea Limited v Euroil Exploration Limited & Anr

Open justice

Emphasising the fundamental rule that proceedings must be heard in public, the Court of Appeal has refused an application for a claimant's name to be anonymised and for certain details to be redacted from published judgments, holding that in assessing whether such an order is necessary the court must balance the interests of the parties and the public interest in open justice.

XXX v Camden London Borough Council

Privilege

Demonstrating that the without prejudice privilege rule is not absolute, the High Court has found that where there were questions as to whether a concluded agreement had been reached and whether the claimant had failed to mitigate its loss, evidence relating to a meeting covered by without prejudice privilege fell within exceptions to the rule and so was admissible in litigation.

Kings Security Systems Limited v King & Anr

Sanctions

The Commercial Court has rejected submissions that it is normal in commercial agreements to suspend payment obligations where payment would otherwise be in breach of unilateral US sanctions, holding that a clause providing that a defendant would not repay loans with the proceeds of sanctioned business activities was a negative covenant and not a condition to any repayment obligation. The court also emphasised the narrow exception under Ralli Bros to the rule that illegality under foreign law will not generally frustrate or relieve a party from performance of an English law contract.

Banco San Juan Internacional Inc v Petróleos De Venezuela S.A.

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
- Robert Fidoe
- Thomas Ross
- Marcus Dodds
- Ryland Ash

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.