

COMMERCIAL DISPUTES WEEKLY – ISSUE 53

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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.

"A prohibition against allowing remote attendance of civil proceedings from abroad seems parochial."

Huber & Anr v X-Yachts (GB) Ltd & Anr

Construction

In a further reminder of the importance of strict compliance with contractual mechanisms for interim payment applications, the TCC has found that an application which was not issued on time in accordance with the relevant payment schedule, did not value the works up to the date in the payment schedule, and was sent to the wrong email address, was not clear or unambiguous so the parties could know what to do about it and when, and so it was invalid.

RGB Plastering Limited v Tawe Drylining and Plastering Limited

Contract

Upholding a decision that a claim could be brought against an individual for breach of a share purchase agreement even though he was not on its face a party to the agreement, the Court of Appeal has commented that while there was a cogent case that his liability was excluded, there was nevertheless a real prospect that the court would conclude otherwise at trial.

Bell v Ivy Technology Limited

Force majeure

As cases concerning the operation of force majeure clauses and the impact of the Covid-19 pandemic start to hit the English courts, the Commercial Court has rejected an application for an injunction in respect of a security deposit, holding that even if an aircraft charterer could rely on a force majeure clause and restrictions arising from the Covid-19 pandemic to contend that a wet lease agreement had terminated, there were strong arguments the lessor was nevertheless entitled to retain the security deposit.

Fibula Air Travel s.r.l. v Just-US Air s.r.l. [Judgment not currently publicly available]

Interim injunctions

In a noteworthy decision concerning interim injunctions, the High Court has commented that there was no reason why an applicant for an interim charging order should not be deemed to have given an implied undertaking in damages. However, in this case the charging order was final, and it was trite law that an undertaking in damages will not apply when a final order or injunction is made.

DSA Investments Inc (a company incorporated under the laws of the British Virgin Islands) v Optima Worldwide Group Plc & Ors

Norwich Pharmacal applications

The Commercial Court has granted permission to use information regarding an “authorised push payment scam” obtained from a bank pursuant to a Norwich Pharmacal order in potential proceedings against that bank, rejecting arguments that the decision could lead to speculative claims and encourage banks to oppose applications for such orders – the discouragement of speculative claims would instead be achieved by the striking out of hopeless claims.

I.F.T. S.A.L. Offshore v Barclays Bank Plc

Remote hearings

The rapid adoption of remote hearings has been key to the English courts’ success in maintaining access to justice through the Covid-19 pandemic. In a decision which provides further encouragement for their use, the High Court has confirmed that permission may be given for remote hearings to be attended by parties based outside the jurisdiction. However, given that remote attendance reduces the court’s ability to maintain control of the proceedings, the court imposed terms on attendance and commented that it may be a rarity for permission to be given.

Huber & Anr v X-Yachts (GB) Limited & Anr

Subject to contract

Emphasising the force of “subject to contract” wording, the Court of Appeal has allowed an appeal against a judgment which found that a binding settlement had been reached, notwithstanding the fact that all the relevant correspondence carried the “subject to contract” label.

Joanne Properties Limited v Moneything Capital Limited & Anr

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

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