

COMMERCIAL DISPUTES WEEKLY – ISSUE 55

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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.

"Although there is undeniable force in the argument that section 32(1)(c) should be construed as being confined to mistakes of fact, the balance of the arguments in our view favours giving the language of section 32(1)(c) its ordinary meaning, so that it is applicable also to actions for relief from the consequences of a mistake of law."

Test Claimants in the Franked Investment Income Group Litigation & Ors v Commissioners for Her Majesty's Revenue and Customs

Appeals

Rejecting an application to reopen a final decision refusing permission to appeal from decisions in judicial review proceedings, the Court of Appeal has observed that while the rule enabling final appeals to be reopened provides a valuable protection against manifest injustice, unmeritorious applications undermine the principle of finality in legal proceedings and in practical terms the requirements may be "almost impossible" to meet.

R (on the application of Wingfield) v Canterbury City Council & Ors

Arbitration appeals

The High Court has confirmed that applications to appeal from decisions under section 69 Arbitration Act 1996 must be made at the hearing at which the decision to be appealed is made. If a party wishes further time to consider whether to make an appeal, they should ask the court to adjourn the hearing.

Kirby & Ors v Baker & Metson Limited

Contempt

The Court of Appeal has confirmed that, once knowledge of an order is proved and it is proved that a contemnor knew they were doing or omitting to do certain things, it is not a necessary ingredient of contempt that the contemnor also knows that they are breaching an order, or that they intended to breach the order.

Varma v Atkinson & Mummery (as joint liquidators of Grosvenor Property Developers Limited (in liquidation))

Costs

Emphasising that a summary costs assessment may be “broad brush” but still requires a judge to consider each individual element of a bill on an item-by-item basis, the High Court has suggested that if there is insufficient time to carry out such an exercise, the court should either seek the party’s consent for a less forensic approach, order the assessment to be carried out on paper, re-list the matter for summary assessment, or direct that the costs be the subject of detailed assessment.

Cohen v Fine & Ors

Enforcement

In an important judgment which highlights the principle of reciprocity underlying the Administration of Justice Act 1920, the Court of Appeal has found that a judgment on a judgment cannot be registered and enforced in England. The Act only permits registration of a judgment given by a relevant foreign court which has adjudicated on the merits of the underlying claim.

Strategic Technologies Pte Ltd v Procurement Bureau of the Republic of China Ministry of National Defence

Limitation

The Supreme Court has confirmed that the extended limitation period under section 32(1)(c) Limitation Act 1980 applies to mistakes of law as well as fact, but has concluded that time begins to run when the claimant discovered, or could with reasonable diligence have discovered, their mistake and recognise that they had a worthwhile claim, and not the date that the true state of the law is established by a court of final jurisdiction.

Test Claimants in the Franked Investment Income Group Litigation & Ors v Commissioners for Her Majesty’s Revenue and Customs

Orders

In a further judgment underlining the fundamental importance of the principle of finality, the Court of Appeal has found that a judge should not have reconsidered an order which granted permission to enforce an arbitration award after it had been handed down but before it had been sealed. An application for reconsideration should only be made in such circumstances if there is a sufficiently compelling reason justifying reconsideration, and while a change of circumstances might in principle suffice, in this case there had been no such change.

AIC Ltd v Federal Airports Authority of Nigeria

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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