

COMMERCIAL DISPUTES WEEKLY – ISSUE 58

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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.

"On a proper analysis, the expert's overriding duty to the court could be said to be one of the prime reasons why the expert may indeed owe a duty of loyalty to his client."

Secretariat Consulting
Pte Ltd & Ors v A
Company

Abuse of process

The Court of Appeal has rejected arguments that a professional negligence claim against auditors was an abuse of process as it amounted to a collateral attack on a previous judgment, noting that the auditors were not parties to the previous proceedings and, while there was an overlap of issues, there was no suggestion that the claimant was pursuing the claim for a collateral purpose. A relitigation of the issues would not bring the administration of justice into disrepute, particularly given the auditors had resisted the claimants' earlier suggestion that the claims be heard together.

PricewaterhouseCoopers LLP v BTI 2014 LLC

Business interruption insurance

In a very significant judgment for businesses seeking to claim for Covid-19 losses under business interruption insurance policies, the Supreme Court has provided clarity on the construction of various "disease" clauses (which provide cover for losses resulting from the occurrence of a disease at or within a specified distance of business premises), "prevention of access" clauses (which provide cover where public authority intervention prevents or hinders access to or use of business premises) and "trends" clauses (which provide for loss to be quantified by reference to the performance of the business if the insured peril had not occurred). Look out for our detailed article on the decision, coming soon.

The Financial Conduct Authority v Arch Insurance (UK) Ltd & Ors

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Covid-19

Demonstrating the English courts' determination to continue to deliver justice, notwithstanding the ongoing Covid-19 pandemic, the High Court has refused to adjourn a trial where various witnesses were reluctant to attend court to be cross-examined, instead setting out detailed precautions to be taken for the in person hearing, and confirming that if necessary, the witnesses could give their evidence remotely.

Bilta (UK) Limited (in liquidation) & Ors v SVS Securities Plc & Anr

Enforcement

In the latest example of the use of technological developments in legal procedures, the High Court has confirmed that under the relevant legislation it is lawful for a High Court Enforcement Officer to carry out a "virtual visit" at a debtor's property pursuant to a writ of control and enter into a controlled goods agreement (CGA). However, the terms of the relevant Regulations mean that a "non-entry" CGA will offer limited enforcement options if breached.

Just Digital Marketplace Limited v High Court Enforcement Officers Association & Ors

Experts

In an important judgment on the nature of the relationship between an expert and their client, the Court of Appeal has confirmed that an expert owed its client contractual obligations of loyalty and so another entity in the same group could not accept an instruction in a related matter against that client. However, notwithstanding the fact that there was no conflict between the expert's duties to the court and a duty of loyalty to their client, the Court of Appeal was reluctant to conclude that a fiduciary duty was owed, noting that such duties normally arise in settled categories of relationship and concluding there was a duty here might have unforeseen ramifications.

Secretariat Consulting Pte Ltd & Ors v A Company

Privilege

The Court of Appeal has rejected arguments that a test of "good arguable case" should be applied to determine whether without prejudice statements should be admitted under the "unambiguous impropriety" exception, noting that while an overly demanding evidential standard may mean in some cases an abusive statement might not be admitted in evidence and impropriety might not be exposed, the courts have jealously guarded any incursion into the without prejudice rule and too low a standard may mean parties will be reluctant to speak freely in settlement negotiations.

Motorola Solutions, Inc & Anr v Hytera Communications Corporation Ltd & 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:

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