COMMERCIAL DISPUTES WEEKLY – ISSUE 59

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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.

> "It should only be in a rare and exceptional case that the court should require a cross-undertaking in favour of a claimant as a condition of ordering security for costs."
>
> Rowe & Ors v Ingenious Media Holdings Plc & Ors

Funding

In a significant decision which may pave the way for increased use of Damages-Based Agreements (DBAs), the Court of Appeal has confirmed that a clause in a DBA providing for the lawyer to receive payment in the event that the client terminates the retainer will not invalidate the whole agreement.

Zuberi v Lexlaw Limited & Anr

Inducing Breach of Contract

Emphasising that the tort of inducing breach of contract requires some conduct involving persuasion, encouragement or assistance, the Court of Appeal has rejected arguments that a company was liable for the tort where their actions meant the contract breaker simply had no choice but to breach their contract, adding that in any event, the defendant did not intend the contract to be breached.

Kawasaki Kisen Kaisha Ltd v James Kemball Limited

Reflective loss

Refusing attempts to reopen an application for permission to appeal, the Court of Appeal has confirmed that in last year's decision in *Sevilleja v Marex* (2020) the Supreme Court did not leave open the possibility that the rule against reflective loss may be applicable to an ex-shareholder.

Nectrus Ltd v UCP Plc

Security for costs

The Court of Appeal has rejected arguments that a cross-undertaking in damages should be provided by a defendant where an order is made for security for costs, holding that such an order should, at the very least, be an exceptional remedy, particularly in cases where the claimants have the benefit of litigation funding.

Rowe & Ors v Ingenious Media Holdings Plc & Ors

Service

In a useful judgment for claimants, the High Court has confirmed that service on a company at the address of its UK establishment stated on the Companies House website was good service, even though the company had moved office and alerted Companies House, but the website had not yet been updated.

Helice Leasing SAS v PT Garuda Indonesia (Persero) TbK

Settlement

Although a failure to engage in settlement negotiations will often result in adverse costs consequences, in a case involving allegations of phone hacking the High Court has found that a claimant was entitled to wait for disclosure of certain documents before engaging in discussions.

Pallett v MGN 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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