

COMMERCIAL DISPUTES WEEKLY – ISSUE 63

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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.

"The international character of the Collision Regulations and the safety of navigation mean that they must be capable of being understood and applied by mariners of all nationalities, of all types (professional and amateur), in a wide range of vessels and in worldwide waters."

Evergreen Marine (UK)
Limited v Nautical
Challenge Ltd

Anti-suit injunctions

Emphasising that the English court will take strong action to ensure that parties comply with their contractual agreement, the Commercial Court has granted an "anti-anti-suit injunction", requiring a defendant to discontinue foreign proceedings where, in breach of an arbitration agreement, it had obtained an order restraining the claimant from proceeding with a London seated arbitration.

Specialised Vessel Services Limited v MOP Marine Nigeria Limited

Arbitration

In a successful challenge to a tribunal's jurisdiction under section 67 Arbitration Act 1996, the Commercial Court has rejected arguments that a GAFTA arbitration provision could be implied into a contract for the purchase of Ukrainian corn by trade custom, emphasising that it would have to be shown that all such trades invariably contained such a clause, and that evidence had not been provided.

Black Sea Commodities Ltd v Lemarc Agromond Pte Ltd

Arbitration

Rejecting arguments that an obligation in a dispute resolution provision to negotiate before arbitrating constituted an absolute bar to the earlier commencement of arbitration, the Commercial Court has commented that the issue of whether the case could be heard by the tribunal was a question of admissibility rather than jurisdiction, and so could not be challenged under section 67 Arbitration Act 1996.

Republic of Sierra Leone v SL Mining Ltd

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Costs

In a decision which emphasises the utility of contractual provisions to pay legal costs, the High Court has found that a provision which entitled a landlord to recover expenses “properly incurred” in recovering arrears of service charges did not preclude it from recovering costs on the indemnity basis.

Criterion Buildings Ltd v McKinsey & Company Inc (United Kingdom) & Anr

Freezing orders

The Commercial Court has emphasised that where a judgment remains unsatisfied a freezing order may be more readily granted, given that it will be easier to infer a risk of dissipation and factors such as delay, the absence of assets in the jurisdiction or the presence of related proceedings in another jurisdiction will have less weight if judgment has already been obtained.

Griffin Underwriting Limited v Varouxakis

Jurisdiction

Emphasising the importance of observing proportionality in relation to the litigation of jurisdiction issues, the Supreme Court has overturned decisions that claimants had failed to show real prospects of success, noting that on an application to serve out the analytical focus should be on the particulars of claim and whether, on the basis that the facts there alleged are true, the cause of action asserted has a real prospect of success. It would not generally be appropriate for the defendant to dispute the facts alleged through evidence of its own.

Okpabi & Ors v Royal Dutch Shell Plc & Anr

Maritime

In the first appeal in a collision action to come before it, the Supreme Court has provided important guidance on the application of the “crossing rules” set out in the International Regulations for Preventing Collisions at Sea 1972, finding that it was not necessary for either vessel to be on a steady course for the rules to engage, and setting out the circumstances in which the “narrow channel” rules would apply instead of the crossing rules.

Evergreen Marine (UK) Limited v Nautical Challenge Ltd

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:

Robert Fidoe	Rebecca Williams
Ryland Ash	Charles Buss
Nikki Chu	Dev Desai
Sarah Ellington	Andrew Hutcheon
Alexis Martinez	Theresa Mohammed
Tim Murray	Mike Phillips

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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