

COMMERCIAL DISPUTES WEEKLY – ISSUE 66

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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 starting point in considering whether an express term of a contract is ineffective is that the parties are to be presumed to have intended the entire contract to take effect."

Adactive Media Inc v Ingrouille

Arbitration

The Court of Appeal has emphasised that a stay to proceedings will be ordered if any issue in respect of which the proceedings are brought are “matters” which the parties have agreed to refer to arbitration, even if the stay would be futile in practical terms, or lead to unwelcome case management complications.

The Republic of Mozambique v Credit Suisse International & Ors

Arbitration and open justice

Rejecting an application to remove an arbitrator on the basis of doubts as to his impartiality, the Commercial Court has also commented on the relationship between the “open justice” principle and the confidentiality of arbitration proceedings, noting that while not all arbitrations will need to be treated as confidential, it is a fact sensitive question, and that judgments should be given in public where this can be

done without disclosing significant confidential information, or by suitable anonymisation or redaction.

Newcastle United Football Company Limited v The Football Association Premier League Limited & Ors (1)

Newcastle United Football Company Limited v The Football Association Premier League Limited & Ors (2)

Enforcement

In an unusual case which illustrates the perils of arguably conflicting dispute resolution provisions, the Court of Appeal has refused to enforce a judgment of a US court, finding that the underlying proceedings had been brought in breach of an arbitration agreement and so the US court did not have jurisdiction.

Adactive Media Inc v Ingrouille

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Limitation

In the context of a claim for misselling of PPI policy, the Court of Appeal has considered the meaning of deliberate concealment under section 32 of the Limitation Act 1980, holding that the provision could be relied on if the defendant financial institution realised there was a risk that its failure to disclose information resulted in its relationship with the claimant being unfair, and it was not reasonable for it to take that risk of creating an unfair relationship.

Canada Square Operations Ltd v Potter

Tort

Agreeing with the High Court that it was arguable that a ship broker owed a duty of care to an individual employed by a Bangladeshi yard to demolish a vessel, the Court of Appeal has nevertheless found that subject to a possible “undue hardship” exception to the application of a foreign limitation period, the claim was statute barred under the applicable governing law.

Begum (on behalf of Mollah) v Maran (UK) 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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