

## COMMERCIAL DISPUTES WEEKLY – ISSUE 68

6 APRIL 2021 • ARTICLE



### 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 meaning of bribe, for the purposes of civil remedies, extends well beyond its popular connotation of a corrupt payment, to include any payment or gift made as an inducement to an "agent" and not disclosed to the "principal"."

Wood v Commercial First Business Limited : Business Mortgage Finance 4 Plc v Pengelly

#### Bribery

The Court of Appeal has confirmed that a fiduciary relationship is not a necessary pre-condition to the grant of relief in cases involving bribes or undisclosed commissions. Instead, the relevant question is whether the payee is under a duty to provide information, advice or recommendations on an impartial or disinterested basis.

Wood v Commercial First Business Limited : Business Mortgage Finance 4 Plc v Pengelly

#### Contract

In a notable decision concerning the interpretation of exclusion clauses, the Technology and Construction Court has rejected arguments that for a contractual term to be effective to exclude liability for a deliberate breach, then the use of express language to that effect is necessary. Exemption clauses are to be construed by reference to the normal principles of contractual construction and while the exclusion of a liability which would otherwise arise would be a departure from the norm and so such an interpretation would be inherently less likely, if the language of a clause is such that it is only properly capable of one meaning, effect must be given

to it.

Mott MacDonald Ltd v Trant Engineering Ltd

# WATSON FARLEY & WILLIAMS

## Disclosure

In a reminder of the importance of ensuring that privileged documents are not disclosed inadvertently, the Commercial Court has allowed defendants to use witness statements which had been disclosed by the claimants in error and provided for inspection, holding that there was nothing which would have put the defendants' solicitors on notice of any mistake.

Barclay-Watt & Ors v Alpha Panareti Public Limited & Ors

## Orders

The Court of Appeal has allowed an appeal from an order extending time for compliance with an unless order, finding that a creditor had not had a firm intention of funding the further conduct of litigation, and so there had been no material change of circumstances justifying the extension of time.

Athena Capital Fund SICAV-FIS SCA v Crownmark Ltd

## Privilege

In the context of claims that documents prepared by an in-house lawyer in the context of the phone hacking scandal were protected by privilege, the High Court has emphasised the difference between giving advice in the context of apparently iniquitous activity, which will not, by itself, be capable of removing privilege, and giving advice or doing other acts in order to further iniquity.

Various Claimants v News Group Newspapers Limited

## Tort

Rejecting arguments that a barrister owed a duty to instructing solicitors not to cause them financial loss, the Circuit Commercial Court has observed that there was no contractual duty pursuant to the COMBAR/CLLS Model Agreement, Basis A, and that where the parties could have contracted for the relevant duty but did not, there was no reason to impose a duty at common law.

McFarland-Cruickshanks v England Kerr Hands Solicitors Limited t/a England Kerr Hands

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](mailto:award@wfw.com)



### REBECCA WILLIAMS

PARTNER • LONDON

T: +44 203 036 9805

[rwilliams@wfw.com](mailto:rwilliams@wfw.com)

### DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.