

COMMERCIAL DISPUTES WEEKLY – ISSUE 70

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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.

"Outside very limited exceptions, evidence of without prejudice negotiations may not be adduced in existing or future proceedings, even if such evidence undermines a case run by one of the parties."

**Berkeley Square Holdings Limited & Ors
v Lancer Property Asset Management Limited & Ors**

Demand bonds

The Commercial Court has refused to order a beneficiary to withdraw a demand made under a first demand bond in a case where an emergency arbitrator had been appointed, holding that the same principles on restraining beneficiaries are applicable whether an injunction is sought in support of arbitration or not, and in this case none of the circumstances that must exist before such an injunction can be ordered had been made out.

Shapoorji Pallonji & Company Private Limited v Yumn Ltd & Anr

Limitation

In the context of a claim alleging the defendant was a party to a price fixing cartel, the Court of Appeal has confirmed that the fact that a company is insolvent may be taken into consideration when determining whether it could have discovered concealment of facts relevant to its cause of action, and so whether the limitation period should be postponed.

OT Computers Limited (in liquidation) v Infineon Technologies AG & Anr

Negligence

Striking out the bulk of a multi-million pound claim arising out of one of the largest Ponzi schemes in history, the Court of Appeal has emphasised that a Quincecare duty, under which a banker must refrain from executing an order if they have reasonable grounds to believe the order is an attempt to misappropriate the funds of their corporate client, is owed to the company and not to the company's creditors. The Court also confirmed that if dishonesty and blind eye knowledge is to be alleged against a corporation, it has to be evidenced by the dishonesty of one or more natural persons.

Stanford International Bank Limited (in liquidation) v HSBC Bank Plc

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Privilege

Providing an important reminder that the protection offered by without prejudice privilege is not absolute, the Court of Appeal has upheld a decision that mediation statements which would otherwise be covered by the privilege were admissible in order to determine the authority of an agent to enter into settlement deeds whose validity had been put in issue by the claimants. However, the Court declined to confirm the existence of a further exception, applicable where one party raises an issue which cannot, or cannot fairly be decided without recourse to without prejudice negotiations, but also resists disclosure or use of such evidence.

Berkeley Square Holdings Limited & Ors v Lancer Property Asset Management Limited & Ors

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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