

COMMERCIAL DISPUTES WEEKLY – ISSUE 71

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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 equity of a suggested implied term is an essential but not sufficient pre-condition for inclusion. A term should not be implied into a detailed commercial contract merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them."

Yoo Design Services Limited v Iliv Realty Pte Limited

Appeals

In circumstances where a judgment debtor's bankruptcy meant that, even if the judgment creditor's appeal in relation to the making of a third party debt order was successful, it had no prospect of being able to keep the benefit of the order, the Court of Appeal refused to hear the appeal, holding no substantive purpose would be served and it should not exercise its discretion to hear the appeal solely for the sake of costs.

Michael Wilson & Partners Ltd v Sinclair & Ors

Contract

Emphasising that a term will only be implied if necessary to give business efficacy to a contract, or if the term is so obvious that it goes without saying, the Court of Appeal has refused to imply a term into a design service contract which obliged the marketing and sale of apartments in a development within a reasonable time. Such an obligation was not necessary to make the contract practically or commercially coherent, nor would it be obvious.

Yoo Design Services Limited v Iliv Realty Pte Limited

Injunctions

Granting an application for an injunction to allow for surveys to be carried out for the construction of an offshore windfarm, the High Court has found that in a case where there are competing statutory and common law rights, it is open to the court to decide which should take precedence on the basis of an examination of all the circumstances.

Re: Ørsted Hornsea Project Three (UK) Limited

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Limitation

In a notable judgment on the scope of section 36 of the Limitation Act 1980, the Court of Appeal has confirmed that the six year limitation period applicable to a claim based on the tort of deceit will apply by analogy to equitable claims to rescind on the grounds of fraudulent misrepresentation.

IGE USA Investments Ltd (formerly IGE USA Investments) & Ors v The Commissioners for Her Majesty's Revenue & Customs
(judgment not currently publicly available)

Security for costs

In a decision which will be of interest to both funded parties, and those facing claims from funded parties, the Court of Appeal has determined that the potential recoverable cost of an ATE insurance premium is a relevant factor for the court when determining the manner in which security for costs is to be provided.

Infinity Distribution Ltd (in administration) v The Khan Partnership LLP

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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