

COMMERCIAL DISPUTES WEEKLY – ISSUE 72

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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.

"Substantial injustice may be inferred from the nature of the irregularity and that inference may be so strong that "it almost goes without saying"."

**RAV Bahamas Ltd & Anr
v Therapy Beach Club
Inc**

Arbitration

In an interesting decision on a provision under the Bahamas Arbitration Act 2009 which is materially identical to section 68 Arbitration Act 1996, the Privy Council has confirmed that while it is necessary for a party to show that a serious irregularity has caused substantial injustice, and that it is good practice for an applicant and judge to deal with each element expressly and separately, a failure to do so will not mean the application must fail. What is important is where, as a matter of substance, substantial injustice has been considered and found.

RAV Bahamas Ltd & Anr v Therapy Beach Club Inc

Costs

Emphasising the importance of making appropriate settlement offers, the Senior Courts Costs Office has confirmed that a paying party should be liable for the costs of provisional assessment, notwithstanding the fact that nearly 45% of the receiving party's bill of costs had been disallowed.

Mullaraj v Secretary of State for the Home Department

Disclosure

Providing useful further guidance on the operation of the disclosure pilot scheme currently operating in the Business and Property Courts, the Commercial Court has emphasised that Model E extended disclosure (wide search-based disclosure) will only be ordered in an exceptional case, and it is not enough to say that the case is high value or involves allegations of fraud.

Kelly & Anr v Baker & Anr

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Disclosure

The High Court has confirmed that a party may seek disclosure from a third party under the Norwich Pharmacal jurisdiction, even if they are not an entirely passive and innocent facilitator.

Rowland & Anr v Stanford

Jurisdiction

Dismissing very significant claims brought by the Danish national tax authority, the Commercial Court has emphasised that “Dicey Rule 3”, which provides that the English courts have no jurisdiction to entertain foreign revenue claims, is a substantive rule of English law which will be applied by examining the substance of the claim rather than its form.

Skatteforvaltningen (Danish Customs & Tax Administration) v Solo Capital Partners LLP (in special administration) & Ors

Service

In the context of claims against foreign domiciled airlines, the Commercial Court has emphasised that where seeking an order for service by alternative means against a defendant outside of the jurisdiction, it will first be necessary to obtain permission to serve out.

Goshawk Aviation Limited & Ors v Terra Aviation Network SAS & 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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