

COMMERCIAL DISPUTES WEEKLY – ISSUE 75

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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.

"In a midnight deadline case even if the cause of action accrued at the very start of the day following midnight, that day was a complete undivided day ... it would impermissibly transcend practical reality if the stroke of midnight or some infinitesimal division of a second after midnight, led to the conclusion that the concept of an undivided day was no longer appropriate."

Matthews & Ors v
Sedman & Ors

Construction

The TCC has confirmed that an adjudicator was entitled to his fees in circumstances where he had resigned following receipt of the reply, having concluded that he lacked jurisdiction. While in fact there was no dispute over his jurisdiction and so his reasons for resigning were erroneous, the resignation did not represent an abandonment of his appointment and under his terms and conditions, and in circumstances where he had acted with diligence and honesty, he was entitled to payment.

Davies & Davies Associates Limited v Steve Ward Services (UK) Limited

Contract

In a notable judgment involving the binding nature of quality certificates and concerning the approach to inconsistency between specially agreed terms and printed standard terms of a contract, the Court of Appeal has found that where the contract contains an inconsistency clause, the question, which must be approached practically with regard to business common sense, is whether the two clauses can be read together fairly and sensibly so as to give effect to both. A printed term which effectively deprives the special term of any effect, or detracts from a special term which is part of the main purpose of the contract, is likely to be inconsistent.

Septo Trading Inc v Tintrade Limited

Disclosure

Although orders for disclosure from non-parties are the exception rather than the rule, in a case concerning a claim for fatal asbestos-related injury, the High Court has shown that where an application is reasonable, does not require the third party to undertake a disproportionate, onerous, vague or unfocussed search, the documents sought are potentially relevant, and they “may well” support the case, disclosure will be ordered.

Sparkes v London Pension Funds Authority & Anr

Judgments

Demonstrating that while an inordinate and inexcusable delay in giving judgment will be a serious dereliction of duty, it is not, in itself, a ground for allowing an appeal, the Court of Appeal has rejected arguments that a judgment concerning claims against guarantors under bank loans was flawed. While delivery of the judgment had been seriously delayed, there was no reason to dispute the judge’s findings, and in fact the Court of Appeal was convinced that the first instance judge had been correct.

Dansingani & Anr v Canara Bank

Judgments

The Court of Appeal has emphasised that, while a judgment in rem will bind the world, the mere fact that a judgment involves declarations as to proprietary rights or a party’s beneficial interest cannot, without more, make it a claim in rem. Accordingly, while the High Court had made declarations concerning monies paid pursuant to a fraudulent film finance scheme against one set of defendants, it was still necessary to plead and prove the claimants’ assertion that they had an interest in those monies as against a different defendant.

Ward v Savill (judgment not currently publicly available)

Limitation

The Supreme Court has found that where a cause of action accrues at midnight, then the day commencing with that midnight hour is not a fraction of a day, and so will count towards the calculation of the limitation period. That meant that where an action had to be completed by the end of Thursday 2 June 2011 but the defendant had failed to take the action in time, the six year limitation period for negligence and breach of trust commenced on Friday 3 June 2011, and so any claim against the defendant had to be issued on or before Friday 2 June 2017.

Matthews & Ors v Sedman & Ors

Oil and Gas

In an interesting judgment for parties involved in the purchase and sale of oil and gas assets, the Commercial Court has rejected arguments that an entire oil field, or sub-field, could be treated as an “offshore installation” when construing notices issued by the Secretary of State under the Petroleum Act 1998, or that such notices could cover wells which had been constructed many years after the notices were issued where there was no suggestions at the time of the notice of an intention to construct the wells or that they were “intended to be established”.

Apache UK Investment Limited v Esso Exploration and Production 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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