

COMMERCIAL DISPUTES WEEKLY – ISSUE 77

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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.

"Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person taking into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to the parties to the contract."

**European Film Bonds
A/S & Ors v Lotus
Holdings LLC & Ors**

Contract

Commenting that words in the English language are rarely capable of only one meaning, the Court of Appeal has held that in context an obligation to “return” materials pursuant to the terms of a film completion guarantee meant that they should be delivered to the recipients, and not handed over to the delivery service. *European Film Bonds A/S & Ors v Lotus Holdings LLC & Ors*

Contract

The Court of Appeal has confirmed that the “signature principle”, which provides that where a party signs a contract with no qualification as to the capacity in which they sign, they will be a party to the contract unless the document makes it clear that they contracted as agent, is a firmly established principle of English law, and is not just confined to shipping cases. Further, the mere description of that person as an agent in the heading of the contract will not be sufficient to outweigh the effect of an unqualified signature. The claimant was therefore entitled to specific performance of a contract for the purchase of a Ferrari 250 GTO and its engine, even though the heading of the contract described it as “agent for an undisclosed principal”.

Gregor Fiskens Limited v Carl

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Costs

In a notable but unusual case on the perils of exaggerated claims, where a claimant had been awarded just £2,000 in a claim for £3.7m, the TCC has not only refused to award the claimant its costs, but also ordered that the claimant pay a significant amount of the defendant's costs. The claim was described as being opportunistic, advanced on a factually false basis from a certain point in the litigation, and the claimant had also failed to accept very generous Part 36 offers, meaning it plainly sat outside the norm.

Beattie Passive Norse Limited & Anr v Canham Consulting Limited

Warranty claims

In an interesting case on the interpretation of warranty provisions in an SPA, the Commercial Court has held that a buyer could not simply notify within the relevant time limit that an unspecified contravention might occur at some point in the future. Were such a "contingent" claim possible, then the time limit for warranty claims would be rendered redundant.

TP ICAP Limited v Nex Group Limited

Without notice applications

The High Court has warned that although allegations of an applicant's failure to give full and frank disclosure on a without notice application are now almost inevitable, a judge "must really have his timbers shivered by something serious that has gone wrong" to discharge the relevant order. Nevertheless, in another recent case where an application had been made for an extension of time to serve out of the jurisdiction, it was held that something serious had indeed gone wrong and material matters had been presented so unfairly that the relevant order should be set aside.

PJSC "Pharmaceutical Firm Darnitsa" v Metabay Import/Export Limited

Formal Holdings Limited & Anr v Frankland Assets Inc & 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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