

COMMERCIAL DISPUTES WEEKLY – ISSUE 78

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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 purpose of litigation privilege is to enable a litigant to obtain information which can be placed before their legal advisers for the purpose of pursuing their proceedings without having to worry that such information may have to be disclosed to the other party."

Ahuja Investments
Limited v Victorygame
Limited & Anr

Arbitration

The Commercial Court has rejected a State's attempt to extend time to challenge an UNCITRAL arbitration award, noting that the delay in bringing the challenge had to be judged against the yardstick of the normal 28 day time limit. Further, the fact that an applicant, whether a government or some other entity, may have a bureaucratic decision making process, did not justify delay.

STA v OFY

Construction

Construing the words "any work" in a contract concerning interrelated works to convert a power station to operate on biomass fuel, the TCC has found that an employer was entitled to withhold retention monies for works to a boiler system in order to remedy defects in works relating to the unloading, handling and storage of the biomass fuel. While the works were separate construction exercises, they were both covered by the same contract, and there was no obvious reason why the amount to be withheld from final payments in relation to the boiler works should be limited to the cost of defects in respect of the boiler works when other sums remained due to the employer under the same contract.

Shepherd Construction Limited v Drax Power Limited

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Costs

The High Court has rejected arguments that the fact that a defendant was subject to a Mental Health Crisis Moratorium under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 constituted a good reason not to make an order for the defendants to make a payment on account of costs. Even if the order could not be enforced, there was still a benefit to the claimants in having it made.

Axnoller Events Limited v Brake & Anr

Oil and Gas

Upholding a US\$17.2m claim in unjust enrichment for the return of sums paid for crude oil which was never delivered, the Commercial Court has observed that if the words of a contract are unambiguous then the court must honour them, even if a party can show that the relevant factual matrix creates a tension with the plain reading of the contract. In any event, in this case there was nothing which pulled against the natural reading of the words, which plainly provided for FOB delivery.

BP Oil International Limited v Vega Petroleum Limited & Anr

Privilege

In a notable decision on the application of litigation privilege, the High Court has observed that when assessing the dominant purpose of a document it is necessary to determine, objectively, the dominant purpose of the instigator, and so where a claimant had sent a letter of claim to a third party with the intention of obtaining information for use in separate proceedings, the letter of claim was covered by privilege, notwithstanding the fact that the true purpose of the letter had been concealed.

Ahuja Investments Limited v Victorygame Limited & Anr

Shorter Trials Scheme

Applying the well-known principles of contractual construction, the Court of Appeal has rejected arguments that a claimant was only entitled to a commission if it was the “effective cause” of the defendant obtaining funding to expand its hotel business, noting that this was not a typical introducer’s agreement, the implication of such a term was not necessary to give the contract commercial or practical coherence and it did not arise as a matter of obviousness. The case was brought under the Shorter Trials Scheme, but the Court commented that it was at the outer edges of suitability for the scheme, and that the abridged procedure is not an excuse for cutting corners in a way which conflicts with the overriding objective of dealing with cases justly and at proportionate cost.

EMFC Loan Syndications LLP v The Resort Group Plc

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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