

COMMERCIAL DISPUTES WEEKLY – ISSUE 80

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The justice of Part 36 is that decisions about litigation should be economically utilitarian: it actively discourages litigation on 'points of principle' by making litigation not fought on a commercial basis a high stakes activity."

(Shah & Anr v Shah & Anr)

Arbitration

In an interesting judgment on the limits of national courts' powers to set aside arbitration awards on public policy grounds, the Privy Council has confirmed that the question for the court is whether, on the findings of law and fact made in the award, there is any conflict between the award and public policy.

Betamax Ltd v State Trading Corporation (Mauritius)

Costs

Emphasising that the award of costs is at the discretion of the judge and will only be overturned if the judge reached a decision they were not properly entitled to make at all, the High Court has confirmed a decision that claimants were entitled to the normal costs consequences of beating a Part 36 offer, even though they had been awarded nominal damages of just £10. The judge had been entitled to find that the offer of £1 was genuine and that the claimants were the successful parties.

Shah & Anr v Shah & Anr

Default judgment

The High Court has emphasised that a failure to make an alternative application to set aside default judgment at the same time as challenging jurisdiction will not be perceived as a lack of promptness if the jurisdiction challenge subsequently fails and an application to set aside is then made – the jurisdiction challenge is effectively a challenge to the default judgment and an application to set aside made at the same time runs the risk of an argument that the defendant has submitted to the jurisdiction.

Alli-Balogun v On the Beach Limited & Ors

Enforcement

A majority of the Supreme Court has confirmed that an order permitting enforcement of an arbitration award against a foreign state must be served through diplomatic process in accordance with section 12 State Immunity Act 1978, and it is not possible to dispense with service of the order, even in exceptional circumstances.

General Dynamics United Kingdom Ltd v State of Libya

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Remote hearings

Providing an important reminder that rules relating to the recording of hearings apply to remote hearings as well as in-person hearings, the High Court has emphasised that the court's permission is required for any real-time transcript of proceedings.

JR & B Farming Limited v Hewitt & Anr

Third parties

The Court of Appeal has rejected arguments that the rule in *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* (1982) (the rule against reflective loss) meant that a shareholder with rights under a joint venture agreement could not bring claims against an individual because the company in which it held shares had also acquired rights under the joint venture agreement pursuant to the Contract (Rights of Third Parties) Act 1999. The rights created by the Act were not intended to affect the rights of a promisee to enforce any term of the contract.

Broadcasting Investment Group Limited & Ors v Smith & Anr

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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