

COMMERCIAL DISPUTES WEEKLY – ISSUE 85

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"It is hard, indeed I would say impossible, to think of a sound reason why a declaration of legal right or obligation should automatically bar a subsequent claim for enforceable relief."

Zavarco Plc v Nasir

Construction

The TCC has rejected arguments that where an employer under a construction contract exercised a contractual right to take early possession, and there was no contractual mechanism to reduce the level of liquidated damages to reflect early possession, the liquidated damages clause was void and/or unenforceable, commenting that statements of general principle should not be elevated into an inflexible rule of law and in each case it is necessary to construe the relevant provisions of the contract in question.

Eco World – Ballymore Embassy Gardens Company Limited v Dobler UK Limited

Maritime

In a case which provides useful guidance on whether the costs of obtaining security in a foreign jurisdiction should be claimed as damages/expenses or are recoverable

as legal costs, the Commercial Court has held that a settlement agreement in a collision case superseded the terms of a pre-action Part 36 offer, and so governed the claimant's recovery of costs.

Falcon Trident Shipping Limited v Levant Shipping Ltd

Merger

In what appears to be the first case to address the point, the Court of Appeal has confirmed that the doctrine of merger, which will treat a cause of action as extinguished once judgment has been given upon it, does not apply in the case of a purely declaratory judgment, noting that there are now extensive tools available to control abuse of the court's process and there is therefore good reason for not widening the scope of the doctrine beyond established bounds.

Zavarco Plc v Nasir

Part 36

Observing that while contractual principles may still be relevant to Part 36 offers, it is a self-contained code and so a Part 36 offer does not necessarily need to have the same certainty a contractual offer requires, the Court of Appeal has confirmed that a valid Part 36 offer can be made, even if there are some matters, particularly relating to the mechanics of the offer, that have yet to be defined.

Adams v Options UK Personal Pensions LLP (formerly Options Sipp UK LLP & Anr)

Passport orders

The Court of Appeal has confirmed that while a passport order requiring an individual to surrender their travel documents so as to prevent them leaving the jurisdiction should be of limited duration and no longer than is necessary, and that the longer it remains in place, the greater the onus on a defendant to justify its continuation, any acceptance that after a particular length of time the order should be discharged would enable a determined contemnor to benefit from their own misconduct.

Lakatamia Shipping Company Limited & Ors v Su & Ors

Preliminary issues

The High Court has emphasised the difference between an application to determine a preliminary issue and an application for summary judgment, noting that the former requires the court to form the view that it is desirable to decide a preliminary issue while the latter can be made without first obtaining permission, and so an application for summary judgment cannot be made to determine issues which are not determinative of the claim or any part of it.

ADL Advanced Contractors Limited v Patel

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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