

COMMERCIAL DISPUTES WEEKLY – ISSUE 96

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"[An intention to liquidate only some of the damages] ought to be clearly stated. Such an agreement forfeits many of the benefits of a liquidated damage clause, which in general, provides valuable certainty and avoids dispute."

K Line Pte Limited v
Priminds Shipping (HK)
Co Limited

Maritime

The Court of Appeal ruled that, unless there is a contrary indication in the charterparty, demurrage liquidates all damages arising from a charterer's failure to complete cargo operations within the laytime in breach of charter. In doing so the Court of Appeal considered the ambiguity in case law and divergent views in leading textbooks and restored the previous position on the understanding of demurrage.

Eternal Bliss

Part 36 offers

This Chancery Division judgment decided that a Landlord's Pt 36 offer offering a minor discount to a claim for arrears in rent was valid and in principle triggered the consequences set out in CPR 36.17. However, due to the wholly exceptional circumstances created by the covid pandemic it would be unjust to apply it with "full rigour". Consequently, the "additional amount" (£75,000) and the enhanced interest on the rental arrears would not be awarded and interest on costs would be reduced.

London Trocadero (2015) LLP v Picturehouse Cinemas Limited & Ors

Evidence

The Court of Appeal considered a number of conjoined cases with a common issue concerning the reliance a judge should place on documents produced in order to prove an assignee's title to sue but with the documents partly redacted on grounds of irrelevance and confidentiality. The question was ultimately one of judicial discretion as to whether the court could safely reach a conclusion based on the material before it. The judgment also considers the protection to debtors offered by section 136 of the Law of Property Act 1925 concerning assignments of debts or other legal things in action.

Promontoria (Oak) Ltd v Emanuel & anor

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Cryptocurrency trading

The Commercial Court considered the nature of a cryptocurrency swap transaction which was seemingly a sale and buy-back agreement and therefore could not lead to a trust over swapped currency even when the currency was held on a joint OTC account. However, the conduct of one of the parties including the transferring of the currency into another wallet and using it for purposes other than those agreed in the swap transaction was arguably conduct which would create a real risk of dissipation justifying a continuing freezing order against that party's assets.

Wang v Darby

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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