

## COMMERCIAL DISPUTES WEEKLY – ISSUE 99

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...SpiceJet might take legitimate points or objections to delay or prevent the enforcement process ...But [arguing] that the damages awarded amount to a penalty ...must be regarded as abusive and cannot be countenanced. "

SpiceJet Limited v De Havilland Aircraft of Canada Limited.

#### Appeals

The Court of Appeal sets out its reasons for imposing conditions on an appeal after the permission stage pursuant to CPR 52.18(1)(a) by making an “unless” order requiring the appellant to pay money into court. At the permission stage it was anticipated that the appellant may not pay the judgment and that the process of enforcement in India would take a long time. However, the court found that there were compelling new reasons to impose conditions because the appellant had resisted enforcement in India by alleging that sums awarded amounted to a penalty thereby re-opening a point on which the appellant had already lost in the court below and was not part of the appeal. Whilst the court was prepared to accept that in the circumstances an unless order to pay all of the judgment sum into court ran the risk of stifling the appeal, it considered that SpiceJet, with funding from its majority shareholder, could reasonably and proportionately be ordered to pay £5million into court out of a total judgment of £42million in order to see the appeal through.

SpiceJet Limited v De Havilland Aircraft of Canada Limited.

#### Insolvency

There are two judgments which are illustrative of the principles applied where a statutory demand against an individual or winding up petition against a company is opposed on the basis that the alleged debt is disputed in good faith and on substantial grounds. The cases have contrasting outcomes following the court’s examination of the available evidence and considering the test for taking into account further material reasonably expected at trial. In one case, the court upheld a decision by a District Judge that the dispute was fanciful and in the other case, the court ruled that the dispute was on genuine and substantial grounds and was not a matter suitable for disposal by way of petition.

Swallow v Marshreqbank PSC, The Petitioner v The Company

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The courts considered failures to comply with the provisions of Schedule B1 to the Insolvency Act 1986 (“Sch B1”) and the Insolvency Rules 2016 (the “Rules”) and whether these effected validity of actions of the administrators of three companies now in liquidation. In *Patisserie*, the use of the creditors committee to approve revised proposals (formerly rejected in a creditors meeting) for the company moving to a creditors voluntary liquidation (“CVL”) was acknowledged to be a procedure which was not permitted by the whole scheme of Sch B1. Notwithstanding this, the court held that the administrators had power to move the company to a CVL under Sch B1 para 83. Further, a non-compliance with the Rules for their appointments as liquidators for which no consequence was specified was found to be a non-fundamental requirement not leading to substantial injustice and therefore did not invalidate the appointments.

Re Patisserie Holdings plc (in Liquidation) & Ors

## Arbitration

The Commercial Court considers a challenge to an arbitration award for serious irregularity under s68 of the Arbitration Act 1996. The challenge includes multiple grounds including failure to adjourn to allow a visit to the construction site in the Democratic Republic of Congo, failure to adjourn due to counsel having contracted Covid-19, the decision to award costs including the failure to allow cross examination in relation to a litigation funding agreement and the awarding of compound interest on monthly rests. Other issues including anonymity (for parties and counsel), publication and redacting of sensitive information were also considered. All grounds of the challenge failed.

Tenke Fungurume Mining SA v Katanga Contracting Services SAS

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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