

COMMERCIAL DISPUTES WEEKLY – ISSUE 103

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The immovables rule means not just that immovable property in this jurisdiction does not vest automatically in a foreign office-holder, but ...is exclusively subject to the laws of [England]."

Kireeva v Bedzhamov

Cross-border insolvency

The English Court had no power under common law in relation to immovable property situated in the UK that belonged to a Russian bankrupt. The Court of Appeal held that it could not order that title to the property be transferred to the Russian trustee in bankruptcy or confer possession and control of the property on the trustee in any other way.

Kireeva v Bedzhamov [2022] EWCA Civ 35, 21 January 2022

Interpretation

In a contract for the purchase of facemasks, the Court held that time for delivery of the masks was of the essence. The claimant buyer was therefore justified in terminating for repudiatory breach when the masks were not delivered on time.

There is no presumption that time of delivery is a condition or warranty, but the

urgency of the pandemic and the price volatility meant that it was important to get the masks as soon as possible and to be able to cancel if they had not arrived in time.

Pharmapac (UK) Ltd v HBS Healthcare Ltd [2022] EWHC 23 (Comm), 7 January 2022

Jurisdiction

Where an investment contract contained express reference to business terms that included an exclusive jurisdiction clause in favour of Switzerland and the parties had signed that contract, this indicated agreement to the jurisdiction clause. In those circumstances, actual communication of the clause was not necessary for the purpose of the Lugano Convention 2007, article 23.

Public Institution for Social Security v Banque Pictet & Cie SA, [2022] EWCA Civ 29, 26 January 2022

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Amendment of claim

The Court of Appeal allowed a claimant to amend its claim out of time to include a new allegation. The new cause of action had arisen from “the same facts or substantially the same facts” as the original claim and there was some flexibility to expand, elaborate or explain. Further, the new claim flowed naturally from the facts that the defendant had put in issue in its defence and the claimant was allowed to turn those matters back on the defendant.

Mulalley & Co Ltd v Marlet Homes Ltd, [2022] EWCA Civ 32, 24 January 2022

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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