

## COMMERCIAL DISPUTES WEEKLY – ISSUE 104

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"Whilst the separability doctrine is important... the arbitration agreement is not to be regarded as a mini-agreement which is in some way divorced from the main agreement."

DHL Project & Chartering Ltd v Gemini Ocean Shipping Co Ltd

#### Maritime – Arbitration

Where a charterparty recap was expressed to be "subject shippers/receivers approval" and that approval was never given, no contract was concluded. The Commercial Court also rejected the argument that the arbitration agreement had been concluded even though the rest of the charter had not. The arbitration clause was part of the bundle of rights and obligations under negotiation, all of which were qualified by the subjects clause. The tribunal therefore had no jurisdiction and owners' claim in arbitration for damages for repudiation of the charter failed. DHL Project & Chartering Ltd v Gemini Ocean Shipping Co Ltd [2022] EWHC 181 (Comm), 31 January 2022

#### Aviation – contract interpretation

The lessee of an aircraft, NAS, was refused rectification of an aircraft lease after it tried to insist on providing a replacement engine instead of carrying out

performance restoration of the existing engine. The lessor, Genesis, required that NAS carry out the performance restoration. The Commercial Court held that the contract could not be rectified to allow NAS to provide a replacement engine against Genesis's wishes. The evidence indicated that the common intention of the parties was that Genesis alone had the discretion to dispense with the performance restoration.

NAS Air Company v Genesis Ireland Aviation Trading 3 Limited [2022] EWHC 176 (Comm), 31 January 2022

#### Settlement – rectification

The Chancery Court has refused to rectify a deed of settlement where its provisions led to a surprising outcome and windfall for HCC. CMAL alleged unilateral mistake because the settlement left an indemnity in place in favour of HCC, HCC was aware of CMAL's mistake and took advantage of that mistake. However, CMAL failed to satisfy the very high bar for a claim to rectify the deed; it had the information at the time of contracting so there could be no mistake.

Caledonian Maritime Assets Limited v HCC International Insurance Company PLC [2022] EWHC 164 (Ch), 28 January 2022

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## Procedure – virtual hearing

The defendant to a personal injury claim was refused permission for its witnesses to give evidence from Kenya by video link. The Court confirmed that the default position was for hearings to take place in court. The defendant had not provided evidence of any good reasons why the witnesses could not attend court. Further the defendant had not provided information as to how the witnesses would give evidence remotely to reassure the Court that sufficient safeguards were in place.

Jackson v Hayes and Jarvis (Travel) Ltd, 27 January 2022 (judgment not yet publicly available)

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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