

## COMMERCIAL DISPUTES WEEKLY – ISSUE 110

22 MARCH 2022 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The exercise of reasonable endeavours required endeavours towards performance of that bargain; not towards the performance directed towards achieving a different result..."

MUR Shipping BV v RTI Ltd

#### COA – sanctions – force majeure

Vessel owners invoked the force majeure clause in a contract of affreightment ('COA') when the charterers' parent company became subject to US sanctions. They asserted that it would be a breach of sanctions to make dollar payments as required by the COA and performance of the carriage was prevented. The Commercial Court rejected charterers' argument that owners had to accept a payment in Euros, which could be converted to dollars, as part of owners' obligation to exercise reasonable endeavours to perform the contract. Reasonable endeavours did not require owners to accept non-contractual performance.

MUR Shipping BV v RTI Ltd [2022] EWHC 467 (Comm), 3 March 2022

#### Duty of care – banks

The Court of Appeal has confirmed that a bank could have a *Quincecare* duty of care to customers in relation to potential fraud where the customer authorised the transfer (known as authorised push payment), not an agent acting for the customer.

The duty is named after the decision in which it was first established; *Barclays Bank plc v Quincecare Ltd* [1992] 4 All ER 343. The Court allowed the appeal against summary judgment for the bank and said that it was appropriate for the matter to be decided at trial.

Philipp v Barclays Bank UK PLC [2022] EWCA Civ 318, 14 March 2022

#### Arbitration – enforcement

The State of Libya has failed in its application to set aside enforcement of a £16 million ICC award against it. The Commercial Court rejected Libya's allegation that it had immunity under the State Immunity Act 1978 and that General Dynamics had failed to disclose this when applying for the enforcement order. The Court emphasised the importance of the recognition of arbitration awards under the New York Convention being straightforward.

General Dynamics United Kingdom v The State of Libya [2022] EWHC 501 (Comm), 11 March 2022

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## Contract interpretation – guarantee

Geoquip agreed to provide offshore geotechnical investigation services for Tower Resources but was delayed in doing so by problems for Tower Resources in obtaining the relevant licenses and permits. Geoquip was unable to claim standby costs under the contract, nor as a matter of estoppel by convention. However, the guarantor of Tower Resources could not avoid its obligations on the basis of a material variation of the underlying contract. The same person was a senior figure in both Tower Resources and its guarantor, and in signing the variation on behalf of Tower Resources, was also approving the variation on behalf of the guarantor.

Geoquip Marine Operations AG v Tower Resources Cameroon SA and another [2022] EWHC 531 (Comm), 16 March 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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