

COMMERCIAL DISPUTES WEEKLY – ISSUE 111

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The Defendants have not provided any credible explanation for the breaches, or offered any apology for them."

OCM Maritime Nile LLC
and others v Courage
Shipping Co and others

Maritime – bareboat charter – sanctions

The owner of two vessels had been entitled to terminate the bareboat charters when the owner of the charterer companies, Mr Mallah, became a designated person. The designation triggered events of default under the charters and exposed the owner to the risk of penalties, thus entitling the owner to repossess the vessels, without being required to serve a notice. Although rights under a bareboat charterparty could be protected by relief from forfeiture, the charterers' misconduct debarred them from such relief.

OCM Maritime Nile LLC and others v Courage Shipping Co and others [2022] EWHC 452 (Comm), 4 March 2022

Embargo on draft judgment

The Court of Appeal has warned parties and their lawyers to take the utmost care not to breach the embargo under which draft judgments are provided to parties in advance of hand down. In a decision following such a breach of the embargo, the Court reminded the parties that judgments were handed down in draft to enable the correction of errors, prepare submissions, agree orders on consequential matters and to prepare for the publication of the judgment. Any breach had to be drawn to the Court's attention as soon as it was identified.

Public Institution for Social Security v Banque Pictet & Cie SA [2022] EWCA Civ 368, 22 March 2022

Trusts

The Privy Council concluded that a Quistclose trust had not arisen where a sum of money was paid by Mrs Lee (as part of a loan arrangement with Prickly Bay) to BAICO with the intention of being used to pay a debt that would arise in two years' time. When BAICO failed to pay the money, Prickly Bay submitted that BAICO held that money on trust and should return it to Mrs Lee. The Privy Council held that the contractual arrangements were inconsistent with there being a resulting Quistclose trust. In a commercial setting there must be clear evidence that parties intended a trust to arise in circumstances where a trust would not normally exist, and in particular if a trust would be contrary to settled commercial practice.

Prickly Bay Waterside Ltd v British American Insurance Company Ltd (Grenada) [2022] UKPC 8, 21 March 2022

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Banking – investment fund losses

A bank accused of illegal anti-competitive manipulation of foreign exchange markets to the detriment of investors has been barred from defending that claim on the basis that the investment funds have avoided or passed on losses incurred where investors have subsequently redeemed or withdrawn their investment at a net asset value lower than it would have been but for the alleged infringements. The bank's defence on that point was struck out.

Allianz Global Investors GmbH v Barclays Bank PLC [2022] EWCA Civ 353, 23 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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