

## COMMERCIAL DISPUTES WEEKLY – ISSUE 112

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"An implied term of accuracy is inappropriate for something as inherently judgmental as the valuation of an aircraft."**

Lombard North Central  
PLC v European Skyjets  
Ltd

#### Aviation – loan facility

Lombard was entitled to terminate a loan facility granted to Skyjets and repossess the aircraft following Events of Default arising from breach of representations in relation to maintenance agreements, a material adverse change clause and reduction of the asset cover percentage below the required level. However, Lombard had waived any right to treat late payments as entitling them to terminate the facility and a 'no waiver' clause did not apply because the waiver was from positive statements in a letter, rather than a delay in exercising the right. The clause entitling Lombard to repayment of the full outstanding balance following an Event of Default was not a penalty clause. Further, Lombard had exercised its equitable duty in selling the aircraft following repossession for the best price reasonably obtainable. *Lombard North Central PLC v European Skyjets Ltd* [2022] EWHC 728(QB), 30 March 2022

#### Cryptocurrency

The developers/controllers of bitcoin networks did not owe fiduciary or tortious duties to the owner of digital currency. The claimant's computer had been hacked and the private keys allowing access to the digital currency had been removed, thus preventing any dealing with the currency. The claimant failed in its argument that the defendant developers/controllers of the networks owed duties to the effect that they should assist in regaining control and use of its assets, by producing a software 'patch'.

*Tulip Trading Limited v Bitcoin Association for BSV and others* [2022] EWHC 667 (Ch), 25 March 2022

## Financial Services

The Court of Appeal has clarified the level of knowledge required for an offence to have been committed under section 21 of the Financial Services and Markets Act 2000. Section 21 prohibited the communication of an invitation to engage in investment activity without authority. The former director's appeal against a finding that she had committed an offence was allowed. She had had a reasonable belief that the content of the communication was prepared or approved by an authorised person. It was not enough that she knew of the facts which gave rise to the contravention; she needed to also know of the facts that made it a contravention (that prevented a disapplication from operating).

Financial Conduct Authority v Ferreira [2022] EWCA Civ 397, 25 March 2022

## Arbitration – enforcement

The Commercial Court has refused an application in which the applicant tried to prevent enforcement of an arbitration award against him using section 103(2)(c) Arbitration Act 1996. The Court held that the evidence fell far short of proving on the balance of probabilities that the applicant did not have knowledge of the proceedings such that he could not put forward his case. In reaching this conclusion, the Court confirmed the default position that an arbitration award must be recognised and enforced under the New York Convention unless one of a limited number of grounds is established.

Kei v Hua She Asset Management (Shanghai) Company Limited [2022] EWHC 662 (Comm), 25 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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