

COMMERCIAL DISPUTES WEEKLY – ISSUE 113

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The more valuable the right, the clearer the language of any exclusion clause will need to be."

**Soteria Insurance Ltd
(formerly CIS General
Insurance Limited) v
IBM United Kingdom Ltd**

Interpretation of contract

The supplier of an IT system wrongfully repudiated the contract after the buyer's refusal to pay a milestone contract following delays. The buyer's claim for wasted expenditure of £132 million was allowed as flowing from the repudiation and it did not fall within an exclusion for "*indirect or consequential losses, or for loss of profit, revenue [or] savings.*" Wasted expenditure was an obvious and common type of loss and where there was no express reference in the clause, the parties could not be taken to have excluded it. Further, it was not within the ordinary and natural meaning of loss of profit, revenue or savings. In addition, there was commercial common sense in excluding speculative and uncertain types of loss such as loss of profits, but not easily ascertainable losses such as wasted expenditure.

Soteria Insurance Ltd (formerly CIS General Insurance Limited) v IBM United Kingdom Ltd [2022] EWCA Civ 440, 4 April 2022

Adjournment of trial – Ukraine war

A trial due to start in June 2022 has been adjourned because of the war in Ukraine. The judge acknowledged that although it was in the public interest for trial dates to be maintained, there can be circumstances beyond the control of litigants which can result in an unfair trial if it is proceeded with. All participants were from Ukraine and the London lawyers had experienced substantial difficulties in obtaining instructions from their clients. The ability of the defendants, as well as their lawyers and assistants in Ukraine, to prepare for trial was impaired and martial law meant that the defendants were unlikely to be able to leave Ukraine to give evidence. Even remote evidence would present severe logistical difficulties. The trial was adjourned until June 2023.

JSC Commercial Bank Privatbank v Kolomoisky and others [2022] EWHC 775 (Ch), 1 April 2022

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Contract of carriage

A dispute arose in relation to the transport of wind turbine components by road from a Swedish port to the site of the wind farm in Sweden. The contract was subject to English law and the Convention on the Contract for the International Carriage of Goods by Road 1956. The transport company claimed unpaid invoices; the customer counterclaimed for set off of mobilisation and demobilisation costs. The Court held that the common law preventing set off against freight in a cargo claim applied only to freight in a narrow sense. This contract was more akin to a contract for hire than one for freight. Therefore, the no set off rule did not apply and there was no justification for extending it to payments other than freight.

Holleman Special Transport & Project Cargo SRL v CO UK Shipping and Trading Ltd [2022] QBD (Comm), 4 April 2022 (*judgment not yet publicly available*)

Undue influence

When the sole shareholder (and a director of Nature Resorts), Mr Dankou, sold 75% of his shares, the purchaser facilitated the purchase with a loan from First Citizens Bank. When the purchasers defaulted on the loan the Bank exercised its right of sale. Mr Dankou's claim that the mortgage was voidable was rejected because there had been no undue influence over Mr Dankou by Mr Wheeler, a lawyer and Nature Resorts' other director. The Court of Appeal had been entitled to reach the conclusion, based on the evidence, that Mr Dankou had been exercising a free and independent judgment.

Nature Resorts Ltd v First Citizens Bank Ltd [2022] UKPC 10, 4 April 2021

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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