

COMMERCIAL DISPUTES WEEKLY – ISSUE 114

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...an arbitration award gives rise to estoppels... by reference only to the matters finally decided by the award..."

MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV and others

Tonnage limitation and Arbitration

In an action arising from a fire on board the MSC FLAMINIA, the time charterer MSC has been awarded summary judgment in relation to owner's defence to a limitation decree based on the loss having resulted from MSC's personal act or omission (Article 4 of the 1976 Limitation Convention). An arbitration award had finally concluded between the parties that MSC had not been negligent in shipping the cargo as it did. The Article 4 defence sought to argue the same point and so owners could not put forward that defence.

[MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV and others, The MSC FLAMINIA \[2022\] EWHC 835 \(Admlty\), 12 April 2022](#)

Statutory interpretation – enfranchisement

The Court of Appeal has upheld a decision of the Upper Tribunal in relation to calculation of the purchase price of the freehold under the Leasehold Reform Act 1967. Section 9(1A)(d) required an assumption that the price be diminished by any increases in value due to work carried out by the tenant at their own expense (any increase which would not have happened but for the improvements). Here this meant valuing the house as if it was still split into five flats (although it had been reconverted to a single dwelling). On the valuation date, it was unlawful to reconvert the house to a single dwelling, although it had been lawful at the time of the reversion. The language and purpose of the statute were plain; the planning status of the house (that it did not need planning permission) resulted from the improvements. In valuing the freehold, it was therefore necessary to assume that it was unlawful as a matter of planning control on the valuation date to use the house as a single dwelling.

[Cadogan Holdings Ltd v Alberti \[2022\] EWCA Civ 499, 13 April 2022](#)

Judgment handed down after settlement

The Court has upheld a decision to hand down judgment in a defamation claim even though the parties had settled after trial but before circulation of the draft judgment. There was a public interest in the judge's conclusions in relation to allegations of malice and dishonesty. Further, the decision dealt with a novel and important legal point; namely, whether the defence of absolute privilege to defamation proceedings applied to answers to requests under a pre-action protocol. The judgment contained comments that would be useful to insurers and also any parties who may consider instructing the first claimant to produce medico-legal reports.

[Jabbar and others v Aviva Insurance UK Ltd and others \[2022\] EWHC 912 \(QB\), 13 April 2022](#)

Sanctions

A trial date has been vacated where the defendants' parent company became a designated person under the UK sanctions regime against Russia. Adjourning the trial was a last resort but a fair trial would not be possible. The defendants could not pay for legal representation or experts and there was considerable work to be done on the serious and complex issues in dispute. That could not be done without the assistance of lawyers and experts. The delay to wait for the outcome of an OFSI licence application would make an already tight timetable unworkable.

[Maroil Trading Inc v Cally Shipholdings Inc, QBD \(Comm\), 12 April 2022](#) (*decision 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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