

COMMERCIAL DISPUTES WEEKLY – ISSUE 115

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The notion that a new contract 'springs up', tends to imply that no contract exists at the time when the holder of the bill and the charterer are the same."

Unicredit Bank AG v
Euronav NV

Maritime – Bills of Lading

A bank's claim against shipowners for delivering cargo without production of the bill of lading has failed because the bill of lading did not contain or evidence the contract of carriage. The bill of lading had been issued to the seller of the cargo who was also the charterer of the vessel. The bill of lading was therefore simply a receipt for the goods and the charterparty contained the relevant contract of carriage.

When the charterparty was novated and the bill of lading remained with the original charterer, this did not mean that the bill of lading then contained the contract of carriage. When the bill of lading was endorsed to the bank, it did not provide a basis for its claim.

Unicredit Bank AG v Euronav NV [2022] EWHC 957 (Comm), 28 April 2022

Construction

The Technology and Construction Court has confirmed the need for a party making a fire safety cladding claim to provide proper details of its allegations of negligent design and inspection. In this claim against a firm of architects, Evolve argued that it needed full disclosure of the designs for the building and inspections records before it could provide further information on its claims. The Court took the view that sufficient documentation had already been provided and that the defendant was entitled to know the basis on which Evolve put its case. Evolve was therefore ordered to provide the requested information.

Evolve Housing and Support v Bouygues (UK) Ltd and others [2022] EWHC 906 (TCC), 13 April 2022

Appeal Courts Procedure

In a dispute as to whether money was a loan or a gift, the Court of Appeal has re-emphasised the approach of appeal courts to appeals against findings of fact. It is not for the appeal court to reach an independent conclusion as a result of its own consideration of the evidence. The appeal court should consider whether the judge was entitled to reach the conclusion that they did; whether the decision was rationally supportable. The appeal was dismissed and criticised for seeking to try the case afresh, providing only selective evidence and seeking to persuade the appeal court to evaluate the reliability of witness evidence when that was the domain of the trial judge who had seen and heard the witnesses.

Volpi v Volpi [2022] EWCA Civ 464, 5 Apr 2022

Interim injunction – cyber attack

Ward Hadaway had suffered a cyber attack and had documents stolen from its systems. The unidentified defendant was holding those documents to ransom and demanding payment of US\$6 million. Ward Hadaway was allowed a continued injunction preventing the data from being published or accessed and preventing the defendants from accessing its IT systems. A further injunction was granted ordering the defendant to disclose the identity of all journalists and websites involved in publication or storage of the data. The defendant was also ordered to deliver up or delete all data it had.

Ward Hadaway LLP v Persons Unknown [2022] QBD, 26 April 2022 (*judgment 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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