

COMMERCIAL DISPUTES WEEKLY – ISSUE 116

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"It [the Policy] did not provide a common fund recourse to which was to be the RFU's sole redress for loss flowing from breaches by Conway."

The Rugby Football Union v Clark Smith Partnership Ltd

Construction – Insurance

A contractor has failed to avoid liability for defective installation of ducting on the basis that it was a coinsured with the employer under the project insurance policy. The terms of the underlying construction contract (on JCT standard terms, insurance option C) excluded damage caused by the contractor's own defective works and so there had been no obligation for the employer to put in place project insurance that covered such losses. As the contractor was not a coinsured, the employer's insurers could pursue a subrogated claim against the contractor and the ductwork designer could bring a claim for contribution under the Civil Liability (Contribution) Act 1978. *The Rugby Football Union v Clark Smith Partnership Ltd* and another [2022] EWHC 956 (TCC), 29 April 2022

Breach of judgment embargo

A defendant has been held to have committed a serious breach of the embargo on draft judgments by speaking to journalists in advance of the hand down. It was a

proper use of the draft judgment to discuss internally to prepare a press release for publication after hand down and to consider repercussions on the company's operations as a result of the decision. The Court considered that it was a genuine mistake that was deeply regretted and indicated that no proceedings for contempt of court would be pursued. However, the judge's preliminary view was the defendant should pay the claimants' costs on the indemnity basis, as the breach had been an abuse of process or was objectively unreasonable.

Match Group LLC and others v Muzmatch Ltd and another [2022] EWHC 1023 (IPEC), 4 May 2022

Procedure – Relief from sanctions

The Court of Appeal has upheld a decision that a formal application for relief from sanctions was not required. The claimant needed relief from sanctions because he had not complied fully with a court order. The Court had a discretion to grant relief without a formal application, to be exercised consistently with the overriding objective. An informal application had been made at the hearing and the defendants were able to oppose the application. The judge had sufficient evidence to determine that application and it would have been a waste of costs and time to adjourn so a formal application could be made. The delay was short and the defaults neither serious nor significant, due to an oversight rather than wilful disregard of the order. The judge was entitled to give relief from sanctions.

Park v Hadi and Abed [2022] EWCA Civ 581, 29 April 2022

Information Orders

Where a defendant was refused a freezing order against the claimant on the basis that it was an abuse of process, the Court also refused to grant orders for the provision of information as to assets. It rejected an argument that such orders could be made on a freestanding basis; information orders were ancillary to freezing or proprietary injunctions to ensure that those injunctions were effective. The Court had no jurisdiction to grant such orders unless it was just and convenient to assist execution of a freezing order.

Patel v Minerva Services Delaware, Inc [2022] EWHC 970 (Ch), 28 April 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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