

COMMERCIAL DISPUTES WEEKLY – ISSUE 122

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"The word
'occupier'...has no
fixed meaning but
must take its content
from the context."**

**Cornerstone
Telecommunications
Infrastructure Ltd and
another v Compton
Beauchamp Estates Ltd
and others**

Statutory Interpretation

The Supreme Court has given guidance as to who is an occupier of land for the purposes of the Electronic Communications Code contained within the Communications Act 2003. It held that an operator who already has electronic communications apparatus ("ECA") installed on the land under the previous code was different from the occupier of land. This meant that the operator could apply for additional code rights in respect of the same land under the 2003 code. However, not all occupation of operators with ECA installed was to be disregarded, only those operators who sought to have a new code right conferred on it. One appeal was therefore allowed, another dismissed and in respect of a third appeal, submissions from the parties were sought because the tenancy conferring old code rights was protected by Part 2 of the Landlord and Tenant Act 1954.

Cornerstone Telecommunications Infrastructure Ltd and another v Compton

Beauchamp Estates Ltd and others [2022] UKSC 18, 22 June 2022

Arbitration – Appointment

Whether appointment of an arbitrator had taken place was a question of interpretation of the relevant contract and the court would take a broad and non-technical approach to construction. The Commercial Court held that JJJ had been appointed by the respondent, where the correspondence indicated that the only condition of the appointment was clearing conflicts. The respondent had made it clear to JJJ that once they confirmed that conflicts were clear, the appointment would be confirmed to the other side. That confirmation to the claimant with copy to JJJ was unequivocal. The fact that JJJ subsequently said that they could not participate as an arbitrator because the payment rates were too low did not invalidate the appointment. The claimant could not appoint their arbitrator GGG as sole arbitrator.

ARI v WXJ [2022] EWHC 1543 (Comm), 20 June 2022

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Construction

Mallino was the developer and employer on a construction project and EDC was the contractor under a JCT Standard Building Contract Without Quantities 2016 Edition. EDC carried out phases 1 and 2 of the project but phase 3 was awarded to another contractor, notwithstanding that the contract included a retender requirement. Mallino had an obligation to retender but a discretion as to how to perform that obligation. EDC was awarded damages for Mallino's breach as no competitive retender process had taken place. The court found that EDC had a 66% chance of being appointed for phase 3 and so was awarded 66% of the damages as assessed by the experts.

Mallino Development Limited v Essex Demolition Contractors Limited [2022] EWHC 1418 (TCC), 10 June 2022 (*the judgment is not yet publicly available*)

Contract Interpretation

Two companies entered into a trading agreement under which Lambert performed marketing activities and Credico found clients wishing to conduct marketing campaigns. The trading agreement contained two non-competition covenants that covered the period of the agreement and for six months post termination. The Court of Appeal upheld the judge's decision that such a restrictive covenant was justified and enforceable during the contract, given the time and money that Credico had invested in supporting and training the agents. However, there was no justification to continue the restrictions after termination of the agreement. The information gained was not sufficiently special to make it unjust to use it after termination and it was not in the public interest to prevent competition between businesses without a special justification.

Credico Marketing Ltd and another v Lambert and another [2022] EWCA Civ 864, 23 June 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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