

## COMMERCIAL DISPUTES WEEKLY – ISSUE 123

5 JULY 2022 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"Her arrival... constituted 'full performance of the Seller's obligations' in terms of the delivery of the Vessel"**

**NKD Maritime Ltd v  
Bart Maritime (No. 2)  
Inc.**

#### **Maritime – Force Majeure**

Where a vessel being sold to a recycling yard was delayed in obtaining certification to enter the inner anchorage at Alang due to Covid-19 lockdowns, the Commercial Court has held that termination was not valid under the force majeure clause (which operated where the seller was unable to transfer title to the vessel due to restraint of governments). A transfer of title in accordance with the MOA did not need that certificate. Further, the vessel had reached the contractual delivery location (the outer anchorage Alang) and the lack of certificate merely delayed transfer of title; it did not mean the parties were 'unable' to transfer title.

NKD Maritime Ltd v Bart Maritime (No. 2) Inc. [2022] EWHC 1615 (Comm), 24 June 2022

#### **Damages – Warranties**

The sellers of a waste management company were found to have breached warranties in the share purchase agreement as to the company's compliance with the relevant laws and regulations. Damages were to be calculated by the difference between the warranties being true and the actual value of the shares where the warranties were false. However, there was no justification for reducing the damages on the basis that a contingency that reduced the value of the shares at the date of purchase had not materialised. Further, the value of the shares where the warranties were false was reduced to reflect the evidence of forensic accountants that where a purchaser was aware of the breaches, they would not have paid as much for the shares.

MDW Holdings Ltd v Norvill [2022] EWCA Civ 883, 28 June 2022

## Maritime – Arbitration – Immunity

Following a collision between a Venezuelan navy patrol vessel and a cruise liner, Venezuela brought claims against the cruise liner's P&I insurers in the courts of Dutch Curaçao. The Commercial Court held that Venezuela's claims were characterised as enforcing rights under the vessel owner's insurance policy directly against the insurers. This meant that Venezuela was bound by the arbitration agreement in the insurance policy. The claims were ordinary civil claims in private law and therefore not of a sovereign character. However, the insurers were not entitled to an anti-suit injunction because section 13(2)(a) of the State Immunity Act 1978 prohibited injunctive relief against a State. Although arguably, this prevented the insurers' access to justice under the ECHR, the restriction was legitimately justified and proportionate on the grounds of comity, procedural propriety and international sensitivities.

UK P&I Club NV and another v Republica Bolivariana de Venezuela [2022] EWHC 1655, 28 June 2022

## Post Termination Covenant

With a franchise agreement where the franchisor was the largest emergency plumbing company in the country and the franchisee was an individual with no experience, there was a significant inequality of bargaining power. In the circumstances, the franchise agreement was more like a contract of employment than a contract for the sale of a business. A post termination restrictive covenant preventing competing business for 12 months was unreasonable because of the unequal bargaining power and the fact that prior to the franchisee starting his business, there was no other competing business in that area. In addition, the length of the restriction was unreasonable because it failed to distinguish between early termination and where the franchise had been running for the full 10 year period.

Dwyer (UK Franchising) Ltd v Fredbar Ltd [2022] EWCA Civ 889, 30 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:

Robert Fidoe	Ryland Ash
Charles Buss	Nikki Chu
Dev Desai	Sarah Ellington
Andrew Hutcheon	Alexis Martinez
Theresa Mohammed	Tim Murray
Mike Phillips	Rebecca Williams

## KEY CONTACTS



### JOANNE CHAMPKINS

KNOWLEDGE COUNSEL  
• LONDON

T: +44 203 036 9859

[jchampkins@wfw.com](mailto:jchampkins@wfw.com)



### REBECCA WILLIAMS

PARTNER • LONDON

T: +44 203 036 9805

[rwilliams@wfw.com](mailto:rwilliams@wfw.com)

### ANDREW WARD

PARTNER • LONDON

T: +44 20 7863 8950

[award@wfw.com](mailto:award@wfw.com)

## DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.