

COMMERCIAL DISPUTES WEEKLY – ISSUE 129

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"It was significant that the Claimant immediately released the POLA DEVORA when registration documents and the bareboat charters were produced."

**Eastern Pacific
Chartering Inc v Pola
Maritime Ltd**

Maritime

A bulk carrier was held to have underperformed on a voyage from Europe to the USA and so 16 hours was deducted from the chargeable hire period. The appropriate method of assessing performance was establishing that during good weather the vessel had not achieved the warranted speed and performance and then pro-rating it against the entire period. The benefit of positive currents would not be deducted when measuring the vessel's speed unless the charterparty expressly provided for it (here the clause provided only that time spent sailing in adverse currents was not to be treated as good weather for the purposes of the performance warranty). Another vessel had been arrested for security as it was wrongly thought to be in the charterer's beneficial ownership. However, the arrest was not wrongful; the owner's conduct in arresting the POLA DEVORA did not give rise to an inference of bad faith or gross negligence. There was a lack of clarity in the public documents as to the

registered ownership of the POLA DEVORA and so the arrest was a genuine and understandable mistake.

Eastern Pacific Chartering Inc v Pola Maritime Ltd [2022] EWHC 2095 (Comm), 10 August 2022

Disclosure – Privilege

The Chancery Division has ordered disclosure of privileged Russian law advice. The trustees in bankruptcy had quoted part of the advice in support of a section 366 Insolvency Act 1986 application. The advice had therefore been 'deployed' in court. The trustees had waived privilege over the advice that related to their application. Other sections of the advice that related to other issues remained privileged and could be severed from the deployed advice. As a result, there was limited danger of anyone being tipped off so as to frustrate the trustees' conduct of the bankruptcy.

Thomas and others v Yurova, Metro Bank plc and others [2022] EWHC 2112 (Ch), 9 August 2022

Jurisdiction – Insurance

In a challenge to the jurisdiction of the English court, the Commercial Court has interpreted a somewhat “odd” provision in a suite of seventeen multi-risks insurance policies for business interruption loss. The clause provided that “*APPLICABLE LAW AND JURISDICTION: In accordance with the jurisdiction, local laws and practices of the country in which the policy is issued. Otherwise England and Wales UK Jurisdiction shall be applied, Under liability jurisdiction will be extended to worldwide excluding USA and Canada.*” The policies were issued in UAE, Qatar and Kuwait. The court concluded that the clause was a non-exclusive jurisdiction clause in favour of English jurisdiction. The English court therefore had jurisdiction and the application to set aside service or decline jurisdiction failed.

Al Mana Lifestyle Trading LLC and other v United Fidelity Insurance Company PSC and others [2022] EWHC 2049 (Comm), 27 July 2022

Leaseholds – Right to Manage

A lessee attempted to acquire the right to manage their block under the Commonhold and Leasehold Reform Act 2002. The freeholder alleged that the claim notice was invalid due to non-compliance with the procedural requirements. The tribunal held that the notice was valid. The statute required strict compliance with the requirements but that did not mean that the slightest defect in the claim notice would render it invalid. It was irrelevant whether the recipient of the notice suffered any prejudice or not. The lack of signature on the notice was not an issue as the statute did not expressly require a signature. The notice had also missed out one of the four paragraphs of notes in the prescribed form. That was also not fatal to the notice; the notes referred to the 2002 Act and the recipient could easily identify the missing paragraph.

18 Langdale Road RTM Company Limited v Assehold Limited [2022] UKUT 215 (LC), 9 August 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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