

## COMMERCIAL DISPUTES WEEKLY – ISSUE 130

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"The terms of the charter underline both the importance of operating the vessel safely and the importance attached to decisions made by the Master."**

CM P-Max III Ltd v  
Petroleos Del Norte SA,  
The STENA PRIMORSK

#### Maritime – Demurrage

A voyage charterer challenged owner's claim for demurrage on the basis that time had been suspended by owner's decision to leave the berth and not return. The Commercial Court held that the Master's decisions were made for safety reasons; he was concerned that the under keel clearance was inadequate. The charterparty term as to under keel clearance was an important term of the charter and so the owner was entitled to reject the charterer's request to berth. Further, the NOR was valid, although free pratique had not been expressly granted. It was customary at the port to grant free pratique by default, with no formal mechanism and the coastguard had boarded the vessel as if free pratique had been granted. The owner was not in breach of the charter and was entitled to the demurrage claimed.

CM P-Max III Ltd v Petroleos Del Norte SA, The STENA PRIMORSK [2022] EWHC 2147 (Comm), 12 August 2022

#### Construction – Bribery

The Scottish Court of Session has awarded damages in favour of a property developer as the company ("D1") appointed to provide project management services had awarded a building contract (to D2) on the basis of bribery. The evidence which indicated that D1 had been induced to award the contract to D2 included an email referring to receiving "*sweeties for making it happen*", payments and highly sensitive information passing from an employee of D1 to D2, sometimes via consulting engineers and building work being carried out by D2 at the house of the employee's sister which was then charged to the project and therefore the claimant. Given that the employee's actions were closely connected with his employment, D1 was liable to the claimant. The court also said that there was no distinction between English and Scots law in the treatment of bribery.

Oil States Industries (UK) Ltd v "S" Ltd and others [2022] CSOH 52, 4 August 2022

## Dispute Resolution Clauses

A construction contract for redevelopment works at a hospital contained a dispute resolution clause which required the parties to refer disputes to a liaison committee for resolution and only to go to court if that was unsuccessful. The defendant contractor challenged the issue of a claim form on the basis that the procedure had not been followed. The court held that the dispute resolution clause was a condition precedent to the right to commence proceedings (in spite of it not using the words ‘condition precedent’). However, it was not sufficiently clear and certain as to what was required and was not enforceable. Issue of the claim form was therefore valid.

Children’s Ark Partnerships Limited v Kajima Construction Europe (UK) Limited and another [2022] EWHC 1595 (TCC), 22 June 2022

## Adjudication – Notice

Disputes from a contract for construction of a mosque were referred to adjudication. The adjudicator had no jurisdiction because the Notice of Adjudication had not been included with the papers served. However, the contractor had served a valid default notice and the employer had not served a Pay Less Notice, nor paid the outstanding sum. The employer could not therefore commence a true value adjudication and so the contractor was entitled to suspend the work. The contractor did not have to obtain a monetary adjudication award in its favour before it could prevent the commencement of a true value adjudication.

AM Construction Ltd v The Darul Amaan Trust [2022] EWHC 1478 (TCC), 17 June 2022 (*the judgment is 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:

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

## 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)

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