

COMMERCIAL DISPUTES WEEKLY – ISSUE 132

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The typical proprietary injunction bars not only transfer of the relevant assets, but dealings with it that would diminish its value."

Meadow Designs Ltd and others v Rishco Leisure Limited and another

Injunctions

The Chancery Court has highlighted the differences between a proprietary and freezing injunction. The claimant sought specific performance of obligations under a shareholder agreement to transfer legal title in the shares and a proprietary injunction to prevent transfer before trial. As proprietary injunctions prevent use only of the asset whose ownership is in dispute, there is no need to show a real risk of dissipation but the respondent has a higher hurdle for liberty to use the assets to fund legal or business expenses. The more limited nature of the injunction also affects how the court will deal with breaches of the duty of full and frank disclosure. The injunction was continued in modified form, in spite of breaches of the duty of disclosure, but the claimant was penalised in costs.

Meadow Designs Ltd and others v Rishco Leisure Limited and another [2022] EWHC 2211 (Ch), 22 August 2022

Contractual Interpretation

The court has clarified when a contract will be void for common mistake in a dispute arising out of an agreement as to the use of a trademark. The required elements are a common assumption as to a state of affairs, that assumption being fundamental to the contract and wrong at the conclusion of the contract. Neither party should have warranted a particular state of affairs and the mistake must not have been the fault of one party. Performance would then be impossible or essentially and radically different and the parties would not have entered into the contract had the parties been aware that the common assumption was wrong. Finally, the contract must not have made provision for the event that the common assumption was mistaken. The judge held that the contract had allocated the risk of the assumed state of affairs being wrong to one party and performance was not impossible or essentially and radically different. Summary judgment was therefore awarded and the claim to avoid the contract on the basis of common mistake was dismissed.

John Lobb S.A.S v John Lobb Ltd [2022] EWHC 2306 (Ch), 8 September 2022

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Landlord and Tenant

The defendants appealed against a decision by the First Tier Tribunal (Property Chamber) (“FTT”) that she and her company were not “*fit and proper persons*” to hold licences in relation to management of a property (under Part 3 of the Housing Act 2004). Some evidence of the defendants’ unsuitability had come to light since the original decision by the local housing authority. The FTT was entitled to take this into account in reaching its decision.

Hussain and others v Waltham Forest LBC [2022] UKUT 241 (LC), 9 September 2022

Insolvency

Deposit Guarantee Fund, as representative of the Ukraine bank deposit guarantee scheme has been unsuccessful in its claim against Bank Frick to recover sums pledged to it by the National Credit Bank (“NCB”), which subsequently went insolvent. It was alleged that the pledges were to secure loans to entities which never intended to repay the sums and that the transactions were entered into knowing that once the money was pledged, NCB would not have sufficient assets to repay creditors. The court held that there was insufficient evidence that the transaction was at an undervalue and intended to defraud creditors under section 423 Insolvency Act 1986. The claim was therefore dismissed.

Deposit Guarantee Fund for Individuals (as liquidator of National Credit Bank PJSC) v Bank Frick & Co AG (a company incorporated in Liechtenstein) and another [2022] EWHC 2221 (Ch), 25 August 2022 (*the decision is not 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:

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