

COMMERCIAL DISPUTES WEEKLY – ISSUE 138

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...a claim in respect of damage to the ship cannot sensibly be... subject to tonnage limitation by reference to the tonnage of the damaged ship in question."

MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV, Conti 11. Container Schiffahrts-GmbH & Co. KG MS "MSC FLAMINIA" and others

Maritime – Tonnage Limitation

A fire occurred on board the MSC FLAMINIA as a result of the auto polymerisation of a cargo of divinylbenzene, killing three members of the crew, destroying hundreds of containers and severely damaging the ship. The Admiralty Court held that the shipowner's claim against the charterers was not subject to limitation under the 1976 Limitation Convention because claims for damage to the vessel by reference to the tonnage of which limitation is to be calculated are not within the wording of Article 2(1) of the Convention and are therefore not limitable. This included any consequential losses suffered by the shipowner following damage to the ship. The court rejected the charterer's argument that if cargo damage causes damage to the ship, the shipowner's claim against the charterer for damaging the ship was subject to limitation as a claim in respect of cargo damage.

MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV, Conti 11. Container Schiffahrts-GmbH & Co. KG MS "MSC FLAMINIA" and others [2022] EWHC 2746 (Admlty), 2 November 2022

Contribution Claims

A claimant suffered a brain injury during his birth in a hospital in Germany whilst his father was stationed with the UK armed forces there. The defendants employed the attending midwife. It was common ground that the claim against the defendants was governed by German law. The defendants brought a claim for contribution against the owners of the hospital under the Civil Liability (Contribution) Act 1978. The Supreme Court held that the 1978 Act did not have overriding or mandatory effect such that it applied automatically to all contribution claims brought in England and Wales. It only applies when the domestic choice of law rules indicate that the claim in question was governed by the law of England and Wales. As a result, the contribution claim was governed by German law and so was time barred.

Roberts v The Soldiers, Sailors, Airmen and Families Association – Forces Help and others [2022] UKSC 29, 2 November 2022

Notice Requirements

A landlord gave a tenant notice to quit but was unaware that the tenancy had been assigned. As a result, the notice went to the right address but was addressed to the wrong tenant. The appropriate question for the judge was whether the tenant had been given the notice, not what the notice meant. If a notice fails to satisfy the substantive conditions on which its validity turns, the question of how it is to be interpreted does not arise. The landlord could have simply addressed the notice to the tenant, rather than name them specifically. Under the common law requirements, a notice could be rescued where the name of a correctly identified recipient was spelled incorrectly but not where the wrong recipient was named. The notice had not been given to the correct tenant and so was not valid.

OG Thomas Amaethyddiaeth Cyf and another v Turner and others [2022] EWCA Civ 1446, 3 November 2022

Landlord and Tenant – Waking Watch Costs

A landlord was found to have behaved reasonably in commissioning a report on the cladding of two apartment blocks and setting up a waking watch for the blocks following the report's conclusion that their external walls contained combustible materials which presented a risk to the occupants. The waking watch was to continue until the remedial work was completed. The costs were therefore reasonably incurred and reflected in service charges demanded from leaseholders as required by section 19 of the Landlord and Tenant Act 1985. However, the amount was reduced as the quality of service provided did not merit the full amount.

Assethold Limited v Alexandra Adam and others [2022] UKUT 282 (LC), 2 November 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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