

COMMERCIAL DISPUTES WEEKLY – ISSUE 139

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"In approaching this issue, I have found the sanction which Petraco seeks to impose for non-compliance with the order to provide security revealing."

VTB Commodities Trading DAC v JSC Antipinsky Refinery and Petraco Oil Company SA

Sanctions

The Commercial Court has illustrated how to manage a case where one of the parties is subject to sanctions and unable to pay either its lawyers or court fees. VTB was a designated person under the Russian sanctions and its lawyers came off the record for non-payment. Its CEO was given permission to represent VTB at the case management hearings. An application by the intervener, Petraco, for security for costs was refused as the court was not persuaded that VTB's position of having an indemnity in an undertaking enforced against it was sufficiently analogous to that of a claimant to justify ordering security for costs. The court considered the wording of the OFSI General Licence for provision of legal services and given the uncertainty as to whether it allowed VTB's solicitors to be paid and come back on the record, the trial was adjourned from May to November 2023. VTB was ordered to apply to OFSI for a contingent licence in respect of any costs liability in the case. It was also required to respond to the requests for further information submitted by Petraco.

Further, the court warned that VTB should prepare for disclosure and the November

hearing on the assumption that it may not be able to instruct lawyers as the hearing was likely to go ahead.

VTB Commodities Trading DAC v JSC Antipinsky Refinery and Petraco Oil Company SA (intervener) [2022] EWHC 2795 (Comm), 4 November 2022

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Jurisdiction

Two defendants resisted enforcement in England of two judgments given by the Texas courts on the basis that the court did not have jurisdiction. The Commercial Court rejected D1's argument that he had not been properly served with the claim and had no knowledge that an attorney had purportedly filed pleadings on his behalf until the day of the trial. D1 had a proper opportunity to defend the proceedings, but he had not raised any objection to the manner of service and had allowed the trial to proceed with the attorney as his representative. D2 argued that under section 33(1)(c) of the Civil Jurisdiction and Judgments Act 1982 she should not be treated as having submitted to the Texas jurisdiction as she had only appeared to protect or obtain release of property seized in the proceedings. This was also rejected. D2 had engaged with the proceedings on the merits and did not dispute the jurisdiction of the court. Further, she had invoked the Texas court's jurisdiction by advancing a counterclaim.

Moss and others v Martin and Bone [2022] EWHC 2788 (Comm), 4 November 2022

Privilege

In a dispute relating to the purchase of notes by Loreley from Credit Suisse, Credit Suisse requested Loreley to disclose who was authorised to give instructions on its behalf, as Loreley was a special purpose vehicle with no employees whose directors were supplied by a professional services company. The court rejected Loreley's claim that this information was inherently privileged. However, the court said that the question of privilege of individuals should be tested as it arose in relation to particular communications, not in the abstract. The general principle was that in order to determine whether litigation privilege extends to the identity of the persons communicating with a solicitor in relation to litigation, it is necessary to consider whether disclosure of that identity would inhibit candid discussion between the lawyer and the client. If so, the identity of such persons should be privileged. But if not, to extend privilege to the identity of such persons was unnecessary and may deprive the court of relevant evidence needed in order to arrive at a just determination of litigation.

Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd and others [2022] EWCA Civ 1484, 10 November 2022

Landlord and Tenant

The defendant leaseholder was a receiver appointed by a bank who had lent funds to the claimant freeholder. The receivership had been discharged but the lease remained vested in the defendant. The claimant sought specific performance of the defendant tenant's repairing obligations. Although there was a common understanding that the defendant was no longer responsible for providing services at the building once the receivership ended, the defendant had not relied on that understanding to their detriment and therefore the claimant could hold them to future lease obligations. However, the defendant was entitled to be indemnified by the claimant as it acted as agent for the claimant. Specific performance was therefore not appropriate.

Alma Property Management Ltd v Crompton [2022] EWHC 2671 (Ch), 28 October 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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