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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "The subject in this case was a pre-condition the purpose of which was to prevent a binding contract coming into existence."
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> DHL Project & Chartering Limited v Gemini Ocean Shipping Co Limited

Maritime – Arbitration Agreement

Where charterparty negotiations resulted in a contract that was stated to be subject to suppliers' approval and that approval was never forthcoming, a dispute arose as to whether the charterparty had been concluded. Owners considered that the charterers were in breach of the charterparty in arranging carriage with another vessel and commenced arbitration against charterers claiming damages. Charterers asserted that the arbitrator had no jurisdiction; there was no arbitration agreement because no contract had been concluded. The Court of Appeal held that although it was possible for an arbitration agreement to exist independently of the main contract (the separability principle), that could only occur where the issue was whether the agreement was void or voidable. If the dispute was as to whether a legally binding agreement had been reached, there was nothing to which the separability principle could apply.

DHL Project & Chartering Limited v Gemini Ocean Shipping Co Limited, The "Newcastle Express" [2022] EWCA Civ 1555, 24 November 2022

Anti-suit injunction – Brexit

A dispute arose as to the validity of the terms and conditions of a foreign exchange currency services agreement between two Belgian companies. The defendant commenced proceedings in Belgium. The claimant responded with English proceedings on the basis that the terms and conditions contained an exclusive English jurisdiction agreement. The court considered that the defendant had been given sufficient notice of the jurisdiction agreement and was therefore bound. As a matter of ordinary commercial practice and common sense the director should have read the terms before ticking to signify his acceptance. If he chose not to do so, that was a matter for him but did not affect whether the terms had been incorporated. Further, there was nothing to suggest that he would not have agreed to English jurisdiction. The court granted an anti-suit injunction to restrain the Belgian proceedings. This would not have been possible before Brexit.

Ebury Partners Belgium SA/NV v Technical Touch BV [2022] EWHC 2927 (Comm), 18 November 2022

Landlord and Tenant

Lambeth carried out work on a block of flats to deal with a leak in the roof and then invoiced the lessees for the cost of the work in their annual service charge. Section 20 of the Landlord and Tenant Act 1985 required the landlord to consult with lessees in certain circumstances before carrying out works. One of the lessees objected on the basis that she had not received a consultation notice and applied for a determination that her costs should be limited to the statutory cap of £250. The Council was refused dispensation from the consultation requirements by the FTT, but the Upper Tribunal allowed the appeal. Although the Council had been very heavy handed in its approach and had failed in its statutory duty by sending the notice to the wrong address and after the works were completed, the lessee had not shown sufficient prejudice and loss by the lack of notice. Unconditional dispensation was given.

London Borough of Lambeth v Kelly and others [2022] UKUT 00290 (LC), 17 November 2022

Maritime

A professional crew engaged to deliver a yacht from France to the USA decided to turn back as the vessel was damaged. The yacht owner claimed damages equivalent to the repair costs on the basis of crew negligence. The Admiralty Registrar concluded that the damage resulted from manufacturing defects. The transatlantic voyage had been planned and carried out with reasonable care and skill. Based on the damage that appeared it was reasonable for the crew to be concerned and turn back. They had not breached their duty and there was no repudiatory breach. The crew were therefore entitled to the outstanding payments under the delivery contract and the owner's claim would be better directed to the manufacturer.

Arnold v Halcyon Yachts [2022] EWHC 2858 (Admlty), 18 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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