

COMMERCIAL DISPUTES WEEKLY – ISSUE 143

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The lessor's distinct security rights qua assignee under the PDSAs are ... contingent or parasitic upon the position under the charter."

Havila Kystruten AS and others v STLC Europe Twenty Three Leasing Limited and another

Contract interpretation

In a dispute arising out of the finance leasing arrangements for the purchase of four newbuild vessels the court has considered the interplay of termination clauses in the bareboat charter and security assignment. It held that the lessor could not demand payment of the termination sum as the result of a termination event and then enforce rights over the assigned property based on the same event without a change of circumstances. Further, failure to pay the termination sum immediately was not a fresh termination event where the payment would be in breach of sanctions (as per clause 4.3(a)). Payment of the termination sum into a frozen bank account would be sufficient to discharge the liabilities under the lease financing arrangements.

Havila Kystruten AS and others v STLC Europe Twenty Three Leasing Limited and another [2022] EWHC 3166 (Comm), 8 December 2022

Disclosure – collateral use

Defendants to English civil proceedings were also potentially facing criminal proceedings in Mozambique and Lebanon arising from similar facts. They were concerned that documents disclosed in the English proceedings would potentially incriminate them. The court refused to grant a stay of the English proceedings as the defendants had not identified a real risk of prejudice given the protections agreed by the claimant and evidence that many of the documents would not be admissible in the criminal proceedings. The claimant had agreed to some of the restrictions on collateral use of the documents and the court accordingly made orders binding the claimant. However, the court refused to make orders binding others as the application did not relate to specific documents and such restrictions should be dealt with on a document by document basis, as and when the document was about to enter the public domain.

The Republic of Mozambique v Credit Suisse International and others [2022] EWHC 3094 (Comm), 2 December 2022

Disclosure – Privilege

A court has ordered disclosure of certain documents notwithstanding that the defendant claimed privilege over them. Lakatamia had been trying to enforce various judgments against Mr Su since 2014. The documents were communications between Mr Su and his solicitors and there was evidence that he had abused the ordinary professional engagement of his solicitors. The instruction of lawyers in the period January to March 2019 was not for the purpose of providing a proper account of Mr Su’s assets as ordered by the court, but rather was an attempt to give the impression that there was compliance when in fact there was not. It was a “blind” or a “diversionary tactic”, with Mr Su seeking to give the impression that he was complying with orders of the court by “drip feeding” materials, whilst at the same time he was hiding assets or dealing with them in contempt. There was no suggestion that the solicitors were complicit with the concealment and contempt. The judge also ordered that the documents could be used for the purpose of other applications or proceedings.

Lakatamia and others v Su and others [2022] EWHC 3115 (Comm), 5 December 2022

Declaratory relief

In a patent dispute relating to drugs for the treatment of multiple sclerosis, the patent owners, Novartis, commenced proceedings in various European member state courts against Teva for infringement of the patent. They also sought a declaration known as an Arrow declaration relating to the obviousness of their usage of the drug. The first instance court refused the declaration and was upheld on appeal. The declaration was not necessary for the UK market for the drug and so would only be aimed at assisting the foreign courts. It was not appropriate for the English courts to make a declaration simply for the purpose of advising the foreign court on an issue under its own law.

Teva UK Limited and another v Novartis Ag and another [2022] EWCA Civ 2779 (Pat), 8 December 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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