COMMERCIAL DISPUTES WEEKLY – ISSUE 144

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "Deliberately subscribing one's name to an email amounts to a signature."
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> Hudson v Hathway

Property

The parties owned a property as joint tenants. Their relationship broke down and the appellant left the house. Several years later, he agreed with the respondent that the latter would receive the entire net proceeds of any sale of the property in return for him no longer contributing to the mortgage. He subsequently sought a sale of the house with an equal division of the net proceeds. The claim was rejected both at first instance and on appeal on the basis that he had released his equitable interest in the house. There was no particular form of words required to release a joint tenant's interest to the other (under section 36(2) Law of Property Act 1925). It had to be signed and in writing and an email with his name at the end of the message was sufficient for these purposes. The emails had demonstrated a clear intention by the appellant to divest himself of that interest immediately.

Hudson v Hathway [2022] EWCA Civ 1648, 14 December 2022

Injunction

A dispute arose in relation to carriage of a cargo of bagged rice resulting from non-payment of hire and lack of availability of bills of lading in a chain of charters. When the vessel arrived in Benin, West Africa, the local court made orders permitting discharge of the cargo once all the shippers and receivers had paid the shipowner for the cargo. The voyage charterer, E-star, applied for an anti-suit injunction. The court held that the application was in fact an anti-enforcement order with a requirement for the time charterer, Delta, to take steps to reverse the order. Such orders are not granted as it would give rise to serious comity considerations. There had been contested proceedings in Benin, involving various parties and it was not for the English court to tell the Benin court that it had come to the wrong decision. The application was far too late, without any satisfactory explanation for E-star's delay. A further application for relief under section 44 of the Arbitration Act 1996 was refused. The settlement agreement containing the alleged arbitration agreement clearly provided that the agreement was not binding if not signed by all parties. E-Star had failed to produce evidence that all parties had signed the agreement, so there was no binding arbitration agreement.

E-Star Shipping and Trading Company Ltd v Delta Corp Shipping Ltd [2022] EWHC 3165 (Comm), 7 November 2022 (*judgment only recently available*)

Landlord and Tenant

Rail for London ("RfL") was tenant of some railway arches and buildings in Hackney. The basic rent under the lease was calculated by reference to a sublease. The sublease was surrendered and so RfL asserted that basic rent was no longer payable under the lease. The court held that this was the correct interpretation of the lease but that a term would be implied into the lease on the grounds of business efficacy and because it was obviously reasonable and equitable, when considered in the context of the broader commercial transaction. The implied term was that basic rent would still be payable notwithstanding the surrender of the sublease, calculated on the same formulae with consequential amendments.

Rail for London Ltd and another v Mayor and Burgesses of the Hackney London Borough Council [2022] EWHC 2929 (Ch), 12 December 2022

Damages

A bank was found to have wrongfully debited sums from a customer's accounts. The customer claimed damages to restore them to the position they would have been in without the bank's breach. The customer's claim for the cost of replacement borrowing failed. If a claimant pleads that it has incurred loss by having to borrow replacement funds, what it must prove are the facts and circumstances from which a court can properly infer on the balance of probability that the claimant has borrowed funds to replace that which has been withheld from it. The customer had not done that. The Privy Council held that the simplest method was to reconstitute the accounts and apply interest at the rates prevailing at the relevant time.

Sagicor Bank Jamaica Ltd v YP Seaton and others (Jamaica) [2022] UKPC 48, 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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