

## COMMERCIAL DISPUTES WEEKLY – ISSUE 146

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"The bargain which the innocent party has lost is the contract as varied at the date of default."**

Sharp Corp Ltd v  
Viterrra BV

#### Commodities – Measure of damages

The buyer of a cargo of grain failed to pay for it by the time the ship arrived at the discharge port. The seller discharged the goods into storage without the buyer taking delivery but with a letter of indemnity from the buyer. Customs clearance was granted. When the buyer indicated it was unable to pay the contract price, the seller sold the goods under court order to a third party. The GAFTA Appeal Board held that the buyer was liable to pay damages to the seller. On appeal as to the measure of damages, the Court of Appeal held that the "actual or estimated value of the goods, on the date of default" (default clause, GAFTA contract no. 24) had to take account of the fact that the goods had been customs-cleared. The measure of damages to

put the innocent party in the position as if the contract had been performed involved taking account of any variations in the contract. The notional substitute contract was equivalent to an ex warehouse sale of the specific goods stored there on instalment paying terms, but with the risk already passed to the buyer.

Sharp Corp Ltd v Viterrra BV (previously known as AS Glencore Agriculture BV) [2023] EWCA Civ 7, 11 January 2023

#### Adjudication – Limitation

In a dispute arising out of a construction contract for works on a development property, there was an issue as to when the cause of action arose and consequently whether the claim was time-barred. The works were finished in October 2014 and the builder referred payment disputes to adjudication in September 2022. The court held that section 5 of the Limitation Act 1980 (*Time limit for actions founded on simple contract*) did apply to adjudication. It also overturned the adjudicator's conclusion that the cause of action only accrued when the employer had not paid by the final date for payment which was 28 August 2022. The payment due date was in fact 28 November 2014 and this was when the cause of action accrued. The unpaid balance of the sums did not somehow become due again for limitation purposes simply by virtue of being demanded again over 7.5 years later. The claim was statute barred and therefore the adjudication decision was unenforceable.

LJR Interiors Limited v Cooper Construction Limited [2023] EWHC 3339 (TCC), 11 January 2023

## Adjudication – Notice of dissatisfaction

A dispute as to whether works were defective under a contract based on the NEC3 Engineering and Construction Subcontract 2005 was referred to adjudication. The adjudicator found in the defendant’s favour and the claimant referred the dispute to arbitration. The arbitrator found that the adjudicator’s decision was final and binding because the claimant had failed to serve a valid notice of dissatisfaction. The TCC rejected the claimant’s appeal under section 69 Arbitration Act 1996. Construing a notice involved the same process as construing a contract. The wording of the notice was unambiguously a reference to disputing the jurisdiction of the adjudicator, not of referring the substantive dispute on the merits to arbitration. It was not a valid notice of dissatisfaction.

Ravestein BV v Trant Engineering Ltd [2023] EWHC 11 (TCC), 9 January 2023

## Contract Interpretation

The successful bidder for the assets of a dissolved partnership paid a deposit and was required to exchange contracts with the sellers within seven days. The sellers only provided drafts of the sale contracts on the final day and so exchange did not occur within the deadline. The Court of Appeal rejected the judge’s conclusion and held that the bidder was only required to exchange contracts within seven days of being presented with a contract in a form capable of being executed and exchanged (based on the text of the clause and the factual matrix). Alternatively, a term must be implied that the bidder has a reasonable time to exchange after such presentation. In addition, the parties were subject to an implied duty of mutual cooperation.

Malik v Hussain and others [2023] EWCA Civ 2, 11 January 2023

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:

Robert Fidoe	Rebecca Williams
Ryland Ash	Charles Buss
Nikki Chu	Dev Desai
Sarah Ellington	Andrew Hutcheon
Alexis Martinez	Theresa Mohammed
Tim Murray	Mike Phillips

## KEY CONTACTS



**JOANNE CHAMPKINS**  
KNOWLEDGE COUNSEL  
• LONDON

T: +44 203 036 9859

[jchampkins@wfw.com](mailto:jchampkins@wfw.com)



**REBECCA WILLIAMS**  
PARTNER • LONDON

T: +44 203 036 9805

[rwilliams@wfw.com](mailto:rwilliams@wfw.com)

**ANDREW WARD**  
PARTNER • LONDON  
T: +44 20 7863 8950  
[award@wfw.com](mailto:award@wfw.com)

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