

COMMERCIAL DISPUTES WEEKLY – ISSUE 147

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...this interpretation is consistent with the contractual wording, it enables all the provisions of the leases to fit....and it avoids surprising implications and uncommercial consequences."

Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd

Landlord and Tenant

In a dispute over unpaid service charges in a lease, the UK Supreme Court has confirmed the effect of a clause that the landlord provide a certificate as to the amount of the total cost and the sum payable by the tenant and that it was to be conclusive in the absence of manifest or mathematical error or fraud. Neither party's proposed interpretation was appropriate and the court's chosen interpretation was that the certificate was conclusive of the amount payable, subject only to the permitted defences. It was not conclusive as to the underlying liability for the service charge and the tenant could challenge that at a later date. This interpretation ensured the landlord's cashflow was secured but gave the tenant scope to dispute liability. It was a 'pay now, argue later' provision. The tenant's appeal was refused but they were not prevented from bringing their counterclaim.

Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd [2023] UKSC 2, 18 January 2023

Maritime

The "THORCO LINEAGE" ran aground, part of its cargo was damaged and significant salvage costs were incurred. The English Commercial Court held that the carrier's liability under the Hague-Visby Rules was to be limited by reference to the weight of the full cargo, although not all of it was physically damaged. The salvage liability and other costs were incurred for the cargo as a whole and therefore the whole cargo was 'damaged' for the purposes of the Hague-Visby Rules on limitation. The decision irons out some anomalies from *The Limnos* (2008), in particular, the position that a small amount of physical damage will limit liability for physical and economic loss to a low sum, but if there is no physical damage, any claim for economic loss is unlimited.

Trafigura PTE Ltd v TTK Shipping Ltd ("The Thorco Lineage") [2023] EWHC 26 (Comm), 13 January 2023

Aviation – Leases

In a dispute that arose early in the Covid pandemic, the English Commercial Court has concluded that an airline was not obliged to take delivery of four aircraft that it had leased from the claimants. The claim that the airline had wrongfully refused to take delivery of the aircraft was rejected, along with assertions that there had been events of default and cross-defaults under the leases. The claimants' notice to take delivery was unreasonable and gave no time for the airline to consider whether the aircraft and documents were ready for delivery. Further, there were material deviations in the aircraft from the specification and therefore the airline was not required to accept them. As a result, the claimants had not been entitled to terminate the leases and their claim was dismissed.

Peregrine Aviation Bravo Limited and others v Laudamotion GmbH and another [2023] EWHC 48 (Comm), 17 January 2023

Declaratory relief

The English Commercial Court held in November 2021 that the time charterers were liable to the disponent owners under a letter of indemnity provided when they requested delivery of the cargo without production of the original bills of lading. The trial had been adjourned before deciding what further relief should be granted as proceedings were pending in Singapore against the demise charterers (from whom the disponent owners had chartered the vessel) by the bank who had financed the purchase of the cargo. In this decision the court granted declarations in favour of the disponent owners as to the time charterers' liability and obligations to indemnify. The court was satisfied that this would allow disponent owners to file a proof of debt in the Singapore proceedings, the English proceedings had dragged on with wasted time and costs and the declarations would bring an end to these proceedings. However, the order included liberty to apply to the English court if all did not go as expected in Singapore.

Navig8 Chemicals Pool Inc v Aeternum Energy International Pte Ltd [2023] EWHC 67 (Comm), 18 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:

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