

COMMERCIAL DISPUTES WEEKLY – ISSUE 150

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...just how far
section 27A goes in
restraining what
would otherwise be
the parties' freedom
of contract."

Aviva Investors Ground
Rent GP Ltd v Williams

Landlord and Tenant

A lease provided for the tenants to pay a service charge to cover the costs of insurance, building services and estate services. The tenants challenged the landlord's practice, based on reapportionment provisions in the lease, of demanding the service charge in different proportions from those in the lease. The Supreme Court held that the revised apportionment was valid. Section 27A of the Landlord and Tenant Act 1985 gave the First Tier Tribunal jurisdiction to decide whether a service charge would be payable. The reapportionment provisions were not contrary to section 27A(6) because they did not seek to oust the Tribunal's jurisdiction. The provisions entitled the landlord to adjust the proportions of the service charge and the Tribunal were still able to review whether the adjustments were reasonable. The

Tribunal had concluded that the service charge reapportionments were reasonable.

Aviva Investors Ground Rent GP Ltd v Williams [2023] UKSC 6, 8 February 2023

Cryptocurrency – Fiduciary duties

The Court of Appeal has allowed a claim in the English court to be brought against software developers who looked after the cryptocurrency Bitcoin and were based outside its jurisdiction. The decision involved assessing whether there was a serious issue to be tried and the court concluded that it was arguable that the developers owed fiduciary duties to Bitcoin owners. The developers were a sufficiently well-defined group to be capable of being subject to fiduciary duties and they had undertaken a role involving discretionary decisions and exercising power for and on behalf of others, in relation to property with which they had been entrusted. However, the court did acknowledge that it would involve a significant development of the common law on fiduciary duties for the claim to succeed.

Tulip Trading Ltd v van der Laan [2023] EWCA Civ 83, 3 February 2023

Supply of goods

In a dispute arising out of the supply of stone to be used as external walling stone for houses which then cracked and had to be replaced, the Technology and Construction Court held in favour of the buyer, BDW. The contract between BDW and the supplier, Lantoom, was made on the terms and conditions incorporated by reference in the purchase order, which Lantoom accepted by commencing the supply of the stone ordered. It was an express or implied term of the contract that the stone would be of satisfactory quality as external walling stone and that it would be fit to use as external walling stone and/or the external leaf of a cavity wall. Lantoom had been aware of these requirements at the time of contracting. The stone supplied was not of satisfactory quality or fit for those purposes (the court stressed that this was not a general statement about all Lantoom stone). Lantoom was therefore in breach of the contract and liable to BDW for damages.

BDW Trading Limited v Lantoom Limited [2023] EWHC 183 (TCC), 3 February 2023

Freezing order

Where a party subject to a freezing order was permitted to spend a reasonable sum on legal advice and representation, the proviso that they disclose where the money would come from did not also require them to disclose how much was being spent. The Commercial Court judge said that the language of the order did not require that disclosure and as such an obligation would be highly invasive, it could only be imposed by express language. The provision was not intended to police the amount spent, but rather to ensure that the money was being spent from a disclosed source of assets.

CRO v REC [2023] EWHC 189 (Comm), 3 February 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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