

## COMMERCIAL DISPUTES WEEKLY – ISSUE 152

28 FEBRUARY 2023 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...whether a novation can be inferred from the parties' conduct is a question of fact, with which this court will not lightly interfere."

Musst Holdings Ltd v  
Astra Asset  
Management UK Ltd

#### Contract interpretation – Novation

A dispute arose between parties as to whether one was liable to pay commission to the other. The issue was whether an introduction agreement had been novated. The Court of Appeal upheld the judge's conclusion and rejected an argument that the novation was ineffective as the introducer's prior written consent had not been obtained as per a contractual clause which required the parties not to "assign, transfer ... or deal in any other manner with any of its rights and obligations under this Agreement" without prior written consent. On the evidence, prior consent had not been obtained but subsequent consent was, and the introducer was treated as having waived the requirement for prior consent and any breach of that clause. Such clauses differed from no oral modification clauses and could be waived.

Musst Holdings Ltd v Astra Asset Management UK Ltd [2023] EWCA Civ 128, 13 February 2023

#### Adjudication

Four days before an adjudication decision was issued, the adjudicator (through his clerk) demanded a further payment on account of his fees. The defendant paid the requested sum under reservation as to jurisdiction but challenged the decision. One ground of challenge was that the demand indicated that the adjudicator was not impartial and this was akin to an attempt to exercise a lien (which has been unlawful since 2006). The court disagreed that there was any threat to impose a lien, given that the word lien was not used at all. Further, the court took the view that the defendant's solicitors did not, at the time, think that the adjudicator was threatening to exercise a lien. If they had done so, it was highly likely that they would have complained, in a similar way that they were entirely open about reserving their position on jurisdiction when making payments. The adjudicator's decision was enforced and there was no basis for a stay.

Nicholas James Care Homes Ltd v Liberty Homes (Kent) Ltd [2023] EWHC 360 (TCC), 21 February 2023

## Deeds – Formalities

In a dispute between a lender and borrower as to the validity of a guarantee and indemnity, the Chancery Court has provided guidance on witnessing and attestation of deeds as required by section 1 of the Law of Property (Miscellaneous Provisions) Act 1989. For a document to be signed in the presence of a witness, the witness had to observe the document being signed, rather than simply being in the room. But the witness need not be familiar with or recognise the signatory's usual signature. Attestation required the witness to observe the act of signing and then to sign to confirm that the document had been signed in their presence. There was no specific form of words that needed to be used, the usual signature underneath "and witnessed by" was sufficient. One attestation block underneath three signatures was clearly attesting all three signatures collectively. Finally, the witness did not have to sign in the presence of the signatories as long as she signed on the same day, although the court found as a matter of fact that the witness had signed in the presence of all three signatories.

Euro Securities & Finance Ltd v Barrett [2023] EWHC 51 (Ch), 11 January 2023

## Injunction

Mr Wang, a high net worth individual, was advised in his business dealings by Floreat. As part of that relationship, the First Defendant assisted Mr Wang in obtaining legal advice and thereby obtained access to substantial quantities of information, including instructions to lawyers and advice from lawyers. Mr Wang and Floreat parted ways amid a dispute as to fees owing. Various proceedings were commenced in the English courts, other jurisdictions and arbitration. Floreat used information obtained during the relationship in certain proceedings overseas and Mr Wang sought an injunction, alleging breach of confidence. The Commercial Court refused the injunction on the basis that (i) it would have the effect of cutting across proceedings in other jurisdictions; and (ii) the application was made late in the day and would interfere with other proceedings. But the court did order the defendants to give undertakings not to misuse the information.

Wang v Floreat Private Limited and others [2023] EWHC 224 (Comm), 1 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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