

COMMERCIAL DISPUTES WEEKLY – ISSUE 153

7 MARCH 2023 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...the aim of RROs is to encourage landlords to comply with the law and to drive them out of the market if they do not."

Rakusen v Jepsen and others

Landlord and Tenant

Tenants of a flat sought a rent repayment order against their landlord under section 40(2) of the Housing and Planning Act 2016 on the basis that he had committed the offence of managing an unlicensed house in multiple occupation. The Tribunals allowed the claims, but they were rejected by the Court of Appeal and Supreme Court. The tenants' immediate landlord was a management company, but they had sought the orders against the superior landlord. Such orders could only be made against the immediate landlord of the tenancy that generates the relevant rent. The Supreme Court reached this conclusion on the interpretation of the statute and it was supported by the purpose of the statute which was and always had been to restrict rent repayment orders to those who directly benefit from the payment of the rent. To allow such orders against a superior landlord would create complexity

where there is a chain of tenancies.

Rakusen v Jepsen and others [2023] UKSC 9, 1 March 2023

Maritime – Termination

In a dispute arising out of bareboat charters and lease financing arrangements, the claimant lessees were liable to pay termination sums to the defendant lessors under the bareboat charters for each vessel. However, the lessees were awarded their costs in the earlier litigation because they were the substantial winners. The Commercial Court dealt with various disputed elements of the termination sums. It held that the definition of break costs distinguished between pre- and post-delivery, including different elements according to the scenario. The applicable deposit interest rate was an objective question, namely the highest rate which the lessor could obtain by taking reasonable steps to investigate its options with leading banks for the relevant deposit period. To allow a subjective rate could lead to the lessor deliberately fixing the lessee with a higher shortfall. The court also decided that although the parties could agree in the contract that one party could recover legal costs incurred as an unsuccessful litigant in any dispute as to termination, this had not been agreed in the current contract. The defendant lessors could not therefore claim their legal costs as part of the contractual indemnity.

Havila Kystruten AS and others v STLC Europe Twenty Three Leasing Ltd and another [2023] EWHC 444 (Comm), 27 February 2023

Negligence – Oil pollution

In the ongoing claims against Shell arising out of the 2011 oil spill in the Bonga oilfield off the coast of Nigeria, the court was asked to determine the date on which actionable damage was suffered by the claimants. The purpose was to decide whether the claims against the anchor defendant STASCO were statute barred for limitation and therefore whether the English court had jurisdiction to hear the substantive claims. The claims are made in negligence, nuisance and *Rylands v Fletcher* liability under Nigerian law. The court held that the applicable limitation period under Nigerian law is five years. However, it concluded that the claimants had not successfully established a mechanism for the oil becoming trapped, then remobilised years later, migrating upstream and inland and impacting any of the claimant communities in 2014 and 2015. There were a number of alternative credible explanations for any oil pollution such as other oil spills or leaks in the Niger Delta region caused by crude oil theft, sabotage, illegal refining or otherwise.

Jalla and others v Shell International Trading and Shipping Company Limited and another [2023] EWHC 424 (TCC), 28 February 2023

Maritime – Commodities

Glencore sold a cargo of crude oil to NIS which was found on delivery to be contaminated by organic chlorides. This led to NIS having to pay storage fees for the contaminated oil to the terminal operator. US\$2,094,000 was paid by Glencore under a performance bond. The parties entered into a settlement agreement which defined Glencore's liability for storage charges, providing that Glencore was liable for the costs to the extent that it reflected the actual loss suffered by the terminal and the prevailing market rates for storage. NIS had agreed to pay the terminal's emergency rates which were significantly higher than the prevailing market rates. NIS failed to establish any actual loss suffered by the terminal and so was only entitled to the market rate for storage. NIS was therefore ordered to repay US\$1,032,000 to Glencore.

Glencore Energy UK Ltd v NIS JSC NOVI SAD [2023] EWHC 370 (Comm), 23 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:

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



REBECCA WILLIAMS
PARTNER • LONDON

T: +44 203 036 9805

rwilliams@wfw.com

ANDREW WARD
PARTNER • LONDON
T: +44 20 7863 8950
award@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.