

COMMERCIAL DISPUTES WEEKLY – ISSUE 157

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The contract formation issue is intention to be bound."

Smit Salvage BV and others v Luster Maritime SA and another

Salvage – Contract formation

In a dispute arising out of the 2021 grounding of the EVER GIVEN in the Suez Canal, the Admiralty Court held that no salvage contract had been agreed between SMIT Salvage BV and the vessel owners. As a result, SMIT could claim a salvage reward for the services provided under the International Convention on Salvage 1989 or at common law. Certain phrases could be used to make the parties' intentions clear, but there were no hard and fast rules and each case turned on its facts. Here, the communications between the parties indicated that they had reached agreement on the terms for remuneration. This enabled them to move on to negotiate the detailed contract terms by which they would be bound. The intention was that they would be

bound only by that detailed set of contractual terms.

Smit Salvage BV and others v Luster Maritime SA and another (The 'Ever Given') [2023] EWHC 697 (Admlty), 30 March 2023

Construction – Adjudication

The Technology and Construction Court handed down judgment in a claim for summary judgment of an adjudication decision, even though the parties had settled the claim after the draft judgment was released. The decision involved construction of an important element of the JCT Standard Building Sub-Contract Conditions SBCSub/C 2016 Edition. Elements was a subcontractor on a project for the design and construction of three buildings as part of a residential apartment scheme in Salford. It had sent a payment application to the employer at 22:07 on 21 October 2022. The court held that the reference to 'four days' for receipt of a payment application prior to the Interim Valuation Date (here 25 October 2022) did not mean clear days. Further, the application could be received up to 23:59:59 on that fourth day; it need not be received within office hours. This construction provided certainty. Therefore, the payment application was valid and the adjudicator's award could be enforced.

Elements (Europe) Limited v FK Building Ltd [2023] EWHC 726 (TCC), 30 March 2023

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Interest rates

The Commercial Court confirmed that the default interest rate for US dollar awards in the Commercial Court going forward should be US Prime, irrespective of whether the claimant has a US place of operations or not and irrespective of whether the claim is a maritime claim or not. This rate has been used in a number of Commercial Court decisions, both long-standing and more recent. It should be used in preference to LIBOR because LIBOR is in the process of being discontinued. Further LIBOR is not a commercial borrowing rate (being an interbank rate), but US Prime is and is therefore more appropriate.

Lonestar Communications Corporation LLC v Kaye and others [2023] EWHC 732 (Comm), 30 March 2023

Time bar – Deceit

In a dispute arising out of the ownership of property, the Court of Appeal confirmed that time for the period of limitation of a deceit claim only started running when the claimant discovered the essential facts of the fraud that is found proved by the court. Where the defendant told two lies that could form the basis of a claim in deceit or fraud and the claimant did not act when the first lie was uncovered, the question for limitation purposes was whether the two lies formed part of the same cause of action. The court held that they did and that time had started running in 2009 when the first lie was revealed. Although the claim in deceit was statute barred, there was also a claim for breach of fiduciary duties which was not statute barred and entitled the claimant to an indemnity from the defendant.

Seedo v El Gamal and others [2023] EWCA Civ 330, 30 March 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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