COMMERCIAL DISPUTES WEEKLY – ISSUE 158

18 APRIL 2023 • ARTICLE

BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...ambiguity is not confined to linguistic ambiguity since there can be ambiguity of meaning..."
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> Palladian Partners LP and others v The Republic of Argentina and another

Contract Interpretation – Securities

The Republic of Argentina ("Argentina") issued two tranches of Euro-denominated securities, linked to its GDP, in 2005 and 2010 as part of a major sovereign debt restructuring. The claimant investors asserted that the terms had been satisfied in 2013 and subsequent years and Argentina was obliged to make payment under the securities. The dispute centred on the interpretation of the adjustment provision, a clause which rebased the base case GDP against which performance was measured. The court held that the claimants' case of an annual adjustment construction was correct and rejected Argentina's case of a one-off overlap construction. Argentina was liable to the claimants for approximately €1.330bn, with interest at 2% above Eurobor from 15 December 2014.

Palladian Partners LP and others v The Republic of Argentina and another [2023] EWHC 711 (Comm), 5 April 2023

Jurisdiction – Third Parties

The claimants were victims of fraud and obtained disclosure orders against two Australian banks for information needed to establish the whereabouts of the claimants' monies. In response to a challenge by the banks to those orders, the High Court held that although the application for disclosure orders had fallen within a jurisdictional gateway (CPR PD6B 3.1(25) "*… to obtain information regarding…what has become of the property of a claimant…*"), that was not enough to withstand the challenge from the banks. Such orders by the English courts against overseas banks should only be given in exceptional circumstances, given that complying with the order may put the bank in breach of their local laws. Australian courts have powers to grant disclosure orders similar to those granted in England. Exceptional circumstances that justify the English courts making the order, rather than the claimant being required to go to the overseas court, may be where there is urgent necessity (sometimes described as the commercial equivalent of 'hot pursuit'). The claimants had not established any such necessity; at best the pursuit was 'lukewarm'. The disclosure orders were discharged.

Scenna and another v Persons unknown using the identity "Nancy Chen" and others [2023] EWHC 799 (Ch), 5 April 2023

Contract Interpretation

Contra issued proceedings against Mark Bamford alleging breach of a written agreement for Contra Holdings ("Contra") to provide services. The dispute related to what sums were owed to Contra. The judge found that although the agreement was not lengthy nor had it been drafted by lawyers, it was nonetheless a logically structured and largely clear document. Although context carries greater weight with a more informal document, it does not trump the obvious and clear meaning of the text. The express terms of the contract set out clearly when and what payments were due, and there was nothing uncommercial about the arrangement. The implied terms proposed were contrary to the express terms of the contract, and neither necessary for the contract to work nor so obvious that it went without saying. The Court of Appeal rejected Contra's challenge that the judge had misdirected himself as to the correct approach to interpretation of informal contracts and that there were compelling reasons for the matter to proceed to trial. The appeal was dismissed.

Contra Holdings Ltd v Bamford [2023] EWCA Civ 374, 5 April 2023

Assignment – Loan Agreement

The claimant ("CRF") was the assignee lender in respect of a sovereign debt of about €70m to Banco Nacional de Cuba ("BNC"). The debts arose out of loan agreements dating to the mid-1980s. CRF was a company established to invest in defaulted Cuban debt and sued BNC and its guarantor, the Republic of Cuba ("Cuba"), for those debts. The Commercial Court rejected the defendants' challenge to its jurisdiction based on allegations that the debt agreements and guarantee were not validly assigned. BNC had capacity to consent on its own behalf but not on behalf of Cuba. Accordingly, the rights and obligations under the loan agreements were validly assigned to CRF and CRF could rely on the contractual provisions as to jurisdiction of the English court, waiver of sovereign immunity and service of process. The English court had jurisdiction to try the debt claims.

CRF I Ltd v Banco Nacional de Cuba and the Republic of Cuba [2023] EWHC 774 (Comm), 4 April 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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