COMMERCIAL DISPUTES WEEKLY – ISSUE 159

25 APRIL 2023 • ARTICLE

BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...insurable interest is not dependent on proprietary interest."
>
> Quadra Commodities SA v XL Insurance Company SE and others

Commodities – Insurance

The Court of Appeal rejected the insurers' appeal against a decision that they were liable under the misappropriation clause in a Marine Cargo Open Policy to Quadra, who had paid for a cargo of grain that had not been delivered. The first instance judge had been correct to find that Quadra had an insurable interest in the grain, notwithstanding that multiple warehouse receipts had been issued for the same grain. There was ample evidence that grain corresponding in quantity and description to the cargo was physically present in the grain elevators at the time when the warehouse receipts were issued. The policy definition of insurable interest was wide and provided that what was physically present in the elevators was generically corn, wheat or barley, that would be sufficient evidence of the physical existence of goods covered by the policy for Quadra to establish an insurable interest. It was not necessary for Quadra to prove that the goods should be ascertained in the same sense as required for determining whether or not a buyer has a proprietary interest in goods for the purposes of the Sale of Goods Act 1979. If neither property nor risk has passed, payment or part-payment of the price will give the buyer an insurable interest, because if the goods were lost or damaged and the seller was insolvent the buyer might not be able to recover the money which he had paid for them.
Quadra Commodities SA v XL Insurance Company SE and others [2023] EWCA Civ 432, 21 April 2023

Construction – Insurance

The Rugby Football Union ("RFU") obtained an insurance payment for damage to cabling due to defective ductwork that had been installed to carry the cables. A subrogated claim was brought by the insurers against the subcontractor, FM Conway ("Conway"), who was co-insured under the policy. Conway denied negligence and sought declarations that it had the benefit of the policy on the same terms as the RFU, that the RFU could not claim against Conway under the policy and that the insurer could not exercise subrogation rights against Conway because the loss and damage was covered under the terms of the policy. The Court of Appeal upheld the judge's conclusion that Conway could not rely on the policy because the claim was not fully covered; the insurance did not include cover for a claim by Conway for the costs of rectifying damage caused by its own defective work. The mere fact that the RFU and Conway were insured under the same policy did not mean that they were covered for the same loss or unable to make claims against one another.
FM Conway Ltd v The Rugby Football Union and others [2023] EWCA Civ 418, 19 April 2023

Loan Notes – Injunction

The claimant issued loan notes under a loan note instrument to the defendant. Under the terms of the notes, cash interest was due in May, August, November 2022 and February 2023, but had not been paid by the claimant. The claimant justified non-payment by its reliance on various assurances and advice from the defendant that it could pay the interest at a later date. On 21 March 2023, the defendant asserted that the non-payment of interest was an Event of Default ("EoD") and demanded repayment of all outstanding principal and interest. The claimant unsuccessfully sought an injunction to prevent enforcement of the security rights. Whatever the situation with misrepresentations in relation to the 2022 payments, the claimant had been under no such misapprehensions in relation to the February 2023 payment and had still failed to make that payment. The EoD would have arisen in any event, notwithstanding the validity of any claims in relation to the earlier payments. There was therefore no serious issue to be tried and no basis for an injunction.

Chelsea Midco 1 Limited v Harwood Chelsea Investment LP [2023] EWHC 843 (Ch), 14 April 2023

Adjudication

A dispute arose as to the sums owing to the subcontractor, BWE, for electrical work carried out for AMK at Lord's cricket ground. AMK produced a Final Account Statement ("FAS") on 6 May 2022 as per the contract. That was stated to be final and binding on BWE unless the parties agreed to modify it or BWE commenced an adjudication or court proceedings within 20 working days (clause 33.4). BWE notified its intention to refer the matter to adjudication on 19 May and on 26 May made the reference. The first adjudicator resigned on 15 June. BWE served a new notice and referral on 8 and 15 September. The court rejected AMK's application for a declaration that the FAS was final and binding on the basis that the adjudication had been brought out of time. The resignation of the first adjudicator did not bring the adjudication to an end, nor did it terminate BWE's right to challenge the FAS. BWE had their foot firmly in the door, as permitted by clause 33.4, by virtue of both the adjudication and the timeous, and still pending, litigation.

Atalian Servest AML Limited v BW (Electrical Contractors) Limited [2023] CSIH 18, 18 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:

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.