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> "It would be appropriate to leave the question of what 'work' in a 'live/work' development might mean for an appropriate case in which it matters."
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> AHGR Ltd v Kane-Laverack and another

Landlord and Tenant

The defendants were leaseholders of a flat in London in a 'live/work' unit. The freeholder brought proceedings against them for breach of covenant for using the flat only as a residential flat. The judge found that the leaseholders, a barrister and a doctor, carried out some work from home such as preparation of articles and speeches, as well as phone consultations. The Court of Appeal dismissed the appeal and held that as a matter of interpretation of the planning permission for this unit, live/work meant live and/or work. The lower court judge had indicated that even if the planning permission did require work to be done, it did not require a business to be operated from the premises. However, the Court of Appeal declined to reach a conclusion as to what would qualify as being work in this context and whether it was to be equated with 'business activities'.

AHGR Ltd v Kane-Laverack and another [2023] EWCA Civ 428, 21 April 2023

Arbitration

The claimant purchased slots from a container service operated by a consortium of shipping lines under a vessel sharing agreement ("MOU"). The claimant was also in discussions about joining the consortium. The claimant settled an incoming claim from cargo receivers and sought an indemnity from the defendant, purportedly under the arbitration clause in the MOU. The claimant was not a named party to the MOU, although it was a named party to a subsequent consortium agreement. The court held that the claimant had simply purchased slots on the service as a third party. There was no express or implied agreement that the terms of the MOU should apply to the slot purchase agreement. It was agreed that the claimant would join the consortium but at a later date. Agreement in principle to the claimant joining the consortium was a precondition to the claimant purchasing the slots but they were nonetheless separate agreements. A further argument based on estoppel also failed. The claimant could not therefore rely on the arbitration agreement in the MOU, the tribunal had no jurisdiction and the claimant's application under section 67 of the Arbitration Act 1996 ("AA 1996") to challenge the award failed.

Emirates Shipping Line DMCEST v Gold Star Line Ltd [2023] EWHC 880 (Comm), 25 April 2023

Force Majeure – Brexit and Covid-1

The claimant port operator and defendant sea ferry operator entered into an agreement for the defendant to use the port and services in exchange for a fee. The defendant failed to achieve the minimum volume guaranteed under the agreement and was liable for a shortfall payment. It argued that the force majeure clause was applicable as the shortfall occurred for Brexit and pandemic related reasons. It also argued that the claimant was in breach of an express contractual obligation of good faith by failing to approach discussions considering amendments to the minimum volume guarantee ("MVG") with an open mind. The claimant's application for summary judgment was successful. The court held that the defendant did not have a real prospect of success with its defence that the claimant had not reasonably considered proposed amendments to the MVG because it had not produced sufficient evidence in support. Likewise, the defendant did not produce sufficient evidence in support of its force majeure position.

PD Teesport Ltd v P&O North Sea Ferries Ltd [2023] EWHC 857 (Comm), 26 April 2023

Arbitration

The claimant, Cipla, made an application under section 68 AA 1996 challenging a partial arbitration award on the basis that the tribunal had failed to consider its duty under section 33 AA 1996 to act fairly and impartially and as a result there had been a serious irregularity affecting the award. Cipla alleged that there was a "fundamental incompatibility" between an earlier ruling and the Tribunal's subsequent approach which treated the Figure 1 question in the earlier ruling as being no longer in issue. It said that as a consequence the Tribunal had decided the arbitration on a point that was not raised as an issue or argued. The court held that Cipla was not entitled to and had not proceeded on the assumption that the Figure 1 question was no longer in issue. The onus was on Cipla to prove its case and it had not done so. Each party was given a reasonable opportunity to put its case and there was no breach by the tribunal of its duty to act fairly and impartially.

Cipla Limited v Salix Pharmaceuticals, Inc. [2023] EWHC 910 (Comm), 21 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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