COMMERCIAL DISPUTES WEEKLY – ISSUE 162

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...that submission is contrary to principle and would have the unfortunate policy consequence of undermining the law of limitation."
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> Jalla and another v Shell International Trading and Shipping Co Ltd and another

Limitation – Tort

The Supreme Court has considered the issue of limitation of time in a dispute that arose out of an oil leak from the Bonga oil field which allegedly impacted the Nigerian shoreline and had not been removed or cleaned up. The spill occurred in 2011 and the claimants sought to make amendments to their claim form and particulars of claim over six years after the spill. The Supreme Court rejected the claimants' argument that there was a continuing cause of action for the tort of private nuisance that accrued afresh for every day that the oil on the claimants' land was not removed or cleaned up. There was no repeated activity by the defendants, nor an ongoing state of affairs for which the defendants were responsible that was causing continued undue interference with the use and enjoyment of the claimants' land. The leak had been a one-off event and the cause of action accrued and was complete once the land was affected by the oil spill.

Jalla and another v Shell International Trading and Shipping Co Ltd and another [2023] UKSC 16, 10 May 2023

Aviation

The Commercial Court has found in favour of GASL in a dispute arising out of the repossession of a Boeing 737-800. GASL was successful in its claim that the aircraft failed to comply in a number of respects with the contractual redelivery conditions. It was awarded approx. US$ 8.5m for the cost of repairs. GASL had certified the amount of its claim under clause 8.7 of the lease agreement and said that this certification was conclusive and binding on Spicejet in the absence of manifest error. The court agreed that GASL was entitled to do this as the lease contained appropriate indemnity language and a lessor determination clause. There was no manifest error in the certification and GASL was entitled to judgment in the amount certified.

GASL Ireland Leasing A-1 Limited v Spicejet Limited [2023] EWHC 1107 (Comm), 10 May 2023

Lease – Contract formation

The parties agreed heads of terms for a 25-year lease of land on which Pretoria planned to build an anaerobic digestion plant. However, the parties failed to conclude the final agreement and Blankney entered into an arrangement with a third party. Pretoria asserted that they had already entered into a binding lease. The first instance judge and Court of Appeal disagreed. In a 25-year commercial lease of an unusual property, the date the lease commenced was one of the important terms that needed to be certain, failing which there was unlikely to be a binding agreement. That date could not be identified with any reasonable certainty. The heads of terms were also lacking in information about a number of other key features, which led to a conclusion that the parties had not intended to be contractually bound. Further, the existence of the lease was incompatible with the limited period of the lock-out agreement that the parties reached for exclusive negotiations, and the fact that Pretoria had applied for planning permission was an entirely plausible action for a party to undertake in reasonable expectation that an agreement would be reached in due course.

Pretoria Energy Company (Chittering) Limited v Blankney Estates Limited [2023] EWCA Civ 482, 9 May 2023

Sanctions

The Commercial Court gave judgment in March 2023 that UniCredit was not prevented by sanctions from making payment under letters of credit that had already been confirmed. In a further judgment dealing with consequential matters, the court held that it had not been reasonable for UniCredit to believe that it was prohibited from making payment under the letters of credit. It therefore could not rely on the defence under section 44 of the Sanctions and Anti Money-Laundering Act 2018 and as a result was liable for the costs of the proceedings and interest. The court reached this conclusion for several reasons including that it should have been clear that the obligation of Unicredit, a German entity, to pay Celestial, an Irish entity, was wholly independent of the receipt of funds from Sberbank and so was unaffected by Regulation 28 (of the Russia (Sanctions)(EU Exit) (Amendment)(No.3) Regulations). UniCredit is a major international bank and must therefore be familiar with the principle of autonomy in the field of international commerce. UniCredit seemed to be concerned to protect its cash flow by making sure that it did not have to pay out under its confirmation before it was put in funds by Sberbank.

Celestial Aviation Services Limited v Unicredit Bank AG, London Branch [2023] EWHC 1071 (Comm), 5 May 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