

COMMERCIAL DISPUTES WEEKLY – ISSUE 164

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"This is, in my judgment, the necessary bull's-eye."

FIMBank PLC v KCH Shipping Co Ltd

Maritime – Time bar

The UK Court of Appeal has confirmed that the one year time bar under Article III Rule 6 of the Hague-Visby Rules does apply to claims for the misdelivery of cargo, even where that misdelivery occurred after the cargo was discharged from the ship. Here, a cargo of coal had been discharged into stockpiles at the port against letters of indemnity from the charterers and collected from the stockpiles by local receivers. The financing bank was unpaid and unable to exercise its security as holder of the bills of lading. It brought a claim in arbitration against the carrier two years after discharge of the cargo. The Court of Appeal considered the *travaux préparatoires* of

the Hague-Visby Rules before reaching its conclusion that the bank's claim was time-barred. It was clear that the purpose of the drafters of the Visby revisions was to extend the application of the time bar to claims for non-delivery or misdelivery after discharge.

FIMBank PLC v KCH Shipping Co Ltd [2023] EWCA Civ 569, 24 May 2023

For a more detailed discussion of the case, please see our article [here](#).

Property – Adverse possession

The registered proprietor of a house sought possession against the current occupiers. The occupiers asserted in response that they were seeking adverse possession of the house and were entitled to be registered as proprietors. They later obtained permission to amend their defence to include an additional plea that they had been in possession since 2009 as licensees. The proprietor successfully appealed the grant of permission on the basis that the defence and counterclaim pleaded diametrically opposed legal positions. The UK Court of Appeal rejected the occupiers' appeal and dismissed their assertion that it was not always the case under the Land Registration Act 2002 that adverse possession was inconsistent with the person in possession being a licensee. Although the 2002 Act made far-reaching changes to the law on adverse possession in relation to limitation, it made no change to the existing and well understood meaning of adverse possession. Therefore, a person occupying property under a licence could not be in adverse possession.

Healey v Fraine [2023] EWCA Civ 549, 19 May 2023

Arbitration – Enforcement

In a dispute arising out of the Energy Charter Treaty (“ECT”), the claimants obtained an arbitration award against the Kingdom of Spain (“Spain”), following proceedings conducted under the ICSID Convention. Enforcement of the award was therefore under the Arbitration (International Investment Disputes) Act 1966, rather than the Arbitration Act 1996 and the New York Convention. Spain resisted enforcement of the award on the basis firstly of sovereign immunity, including arguments based on the fact that the arbitration was outside the CJEU’s jurisdiction. The court held that the arbitration agreements in the ECT and ICSID Convention were sufficient agreements in writing to submit a dispute to arbitration for the purposes of s. 9(1) of the State Immunity Act 1978 such that Spain was not immune from proceedings in the UK courts relating to the arbitration. The court also rejected a suggestion that the award was not valid; the tribunal was validly constituted and had exclusive jurisdiction to determine these matters. Further, there was no material non-disclosure by the claimants in applying for recognition of the award and Spain’s challenge on this ground also failed.

Infrastructure Services Luxembourg S.A.R.L. and another v Kingdom of Spain [2023] EWHC 1226 (Comm), 24 May 2023

Arbitration

Following the breakdown of a joint venture agreement between Port of Djibouti SA (“PDSA”) and DP World (“DPW”), the Republic of Djibouti took ownership of PDSA’s shares in the joint venture company. The arbitration agreement in the joint venture applied to disputes between shareholders, so PDSA challenged the arbitrator’s right to determine certain claims in an arbitration brought against it by DPW. The court held that the arbitrator did have jurisdiction to hear the claims. The arbitration agreement had come into existence and so it was a question of interpreting its scope. The natural reading was that the parties had agreed to refer to arbitration all disputes relating to their relationships as shareholders, such as whether they ceased to be shareholders. Rational business entities are unlikely to have intended that the question of whether the matter was validly subject to arbitration would depend on the ultimate conclusion of that question of whether they remained shareholders. Further, PDSA had been given the opportunity to clarify which claims it had jurisdictional objections to and had not included the claim as to whether it remained a shareholder in its objections.

Port de Djibouti SA v DP World Djibouti FZCO [2023] EWHC 1189 (Comm), 22 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

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