COMMERCIAL DISPUTES WEEKLY – ISSUE 165

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...every shared ownership tenant in Block A is a 'qualifying tenant' for the purposes of the 2002 Act."
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> Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd

Landlord and Tenant – Right to Manage

The dispute related to which tenants should have received notice of invitation to participate in the management of their properties. Only qualifying tenants should receive notice, as set out in the Commonhold and Leasehold Reform Act 2002 ("2002 Act"). A qualifying tenant was one who was "tenant of the flat under a long lease". Some of the tenants had leases exceeding 21 years but under shared ownership. The Court of Appeal said that tenants with long shared ownership leases who had not increased their ownership share to 100% would still have an obvious interest in how the premises are managed, all the more so since they will typically pay full service charges. That being so, Parliament was likely to have intended them to be able to participate in management issues. The Court of Appeal agreed with the first instance judge that a tenant with a shared ownership lease for a term exceeding 21 years had a long lease as required by the 2002 Act regardless of whether the tenant had a 100% interest.

Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd [2023] EWCA Civ 616, 30 May 2023

Landlord and Tenant – Injunction

In September 2014, a sublease was granted to a respondent nursery school ("MDNS") subject to a condition that a deed of variation of use be obtained otherwise the sublease would automatically terminate on 14 December 2014. No deed was produced, but MDNS entered into possession and paid rent until Spring 2022. The lessor, Avondale, demanded vacant possession and then purported to forfeit the lease by peaceable re-entry. A judge granted an interim injunction preventing Avondale from excluding MDNS from the property and preserving the status quo. The Court of Appeal dismissed Avondale's challenge to that injunction. There was a triable issue as to whether a periodic tenancy came into existence and therefore whether MDNS was protected by Part II of the Landlord and Tenant Act 1954. Further, there were serious issues with Avondale's assertion of estoppel by convention. This was a case which required fuller investigation of the facts, damages would not be an adequate remedy for MDNS but would for Avondale and so the balance of convenience favoured MDNS as did maintenance of the status quo. The injunction was upheld.

Avondale Park Ltd v Miss Delaney's Nursery Schools Ltd [2023] EWCA Civ 641, 7 June 2023

Commodities – Delay

A vessel carrying a cargo of crude oil was late to the load port and loading was delayed. This meant that the voyage charterer had to pay a higher price for the oil. The charterer agreed to the shipowner's demurrage claim but brought a counterclaim for an indemnity for the excess cost of the oil. The court held that the shipowner was in breach of warranty that the vessel was free from encumbrances (the vessel was late because it had been arrested in relation to a claim against the bareboat charterer). The court also held that the charterer's loss was not too remote and within the shipowner's contemplation. A reasonable carrier of crude oil would have been aware that delay would result in issues resulting from market price fluctuations. In assessing the quantum of the charterer's damages, no account was taken of internal hedging arrangements as these did not create legally recognised binding contracts and reflected profits from other unconnected trades.

Rhine Shipping DMCC v Vitol SA [2023] EWHC 1265 (Comm), 26 May 2023

Insurance – Covid-19

The claimant's business interruption policy contained a number of different limits and sub-limits of liability and stated that "all limits apply any one Occurrence". The issue was whether this meant "any one Occurrence" unless otherwise stated, rather than to any one incident or person or premises? The words "Limit of Liability" and "Sub-limits" were not defined in the Policy. "Occurrence" was defined as meaning "any one loss or series of losses arising out of and directly resulting from one source or original cause". The court dealt with this as a preliminary issue and decided in favour of the insurers. In its ordinary meaning, "Limits of Liability" would include all the limits of liability set in the Schedule, including those described as "Sub-limits". Two items were applied on a per person or per premises basis and so a departure from the default position needed to be specified. There was no such specification for notifiable disease or prevention of access.

PizzaExpress Group Ltd v Liberty Mutual Insurance Europe SE [2023] EWHC 1269 (Comm), 26 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:

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