

## COMMERCIAL DISPUTES WEEKLY – ISSUE 166

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"It is not suggested  
that Buchanan  
produces manifestly  
unjust results."**

JTI Polska Sp Zoo v  
Jakubowski

#### CMR Convention

A cargo of cigarettes that was being transported from Poland to England was stolen at a motorway service station in England. Carriage was governed by the Convention on the Contract for the International Carriage of Goods by Road 1956 ("CMR"). Excise duty was payable when the consignment was released for commercial consumption, which occurred when the goods were stolen. The cargo owners successfully claimed the excise duty from the hauliers under article 23.4, CMR which permits, where goods are lost, a claim for "carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods", in addition to the

value of the goods. The Supreme Court rejected the hauliers' argument that a narrow interpretation should be applied such that the claim for charges was limited to those that would have been incurred if the carriage had been performed without incident. Allowing that argument would involve overturning an earlier House of Lords decision in *James Buchanan & Co. Ltd v Babco Forwarding & Shipping (UK) Ltd* [1978] AC 141 and there was no justification for doing so.

[JTI Polska Sp Zoo v Jakubowski \[2023\] UKSC 19, 14 June 2023](#)

#### Landlord and Tenant

An order was made under section 19, Landlord and Tenant Act 1987 that D1, as registered proprietor, transfer the freehold interest in a property to C, a company nominated by the tenants of the property. D1 sought to prevent this by granting equitable leases to D2. D2 wished to register the leases or go into occupation so as to ensure that the tenants' freehold right was subject to the leases. The court continued injunctions that prevented D2 going into occupation or registering the leases as D1 and D2's attempts to invade the tenants' rights was unconscionable behaviour. The section 19 order constituted an interest in land and so under section 28 Land Registration Act 2002 the section 19 order had priority over the equitable leases as the first created equitable interest.

[Prescott Place Freeholder Ltd and others v Batin and another \[2023\] EWHC 1445 \(Ch\), 14 June 2023](#)

## Fraud – Challenging Judgment

Mr Tinkler appealed against a judgment rejecting his claim to have been invalidly ousted from the board of a company, only to have that appeal also rejected. The Court of Appeal was asked to consider how the court should approach a trial of a claim to set aside judgment allegedly obtained by fraud. It acknowledged that the judge had approached his task in a somewhat orthodox way but considered that the judge had dealt with the evidence appropriately. The judge was aware that he was dealing with a freestanding action for fraud, so the applicant had to establish the fraud, its materiality and that the judgment was obtained by fraud. The judge was not required to retry the issues but had considered and evaluated the new evidence and could consider old evidence if appropriate.

[Tinkler v Esken Ltd \[2023\] EWCA Civ 655, 9 June 2023](#)

## Contract Interpretation – Limitation of Liability

In a dispute arising out of a master services agreement for the provision of software services, the TCC has decided preliminary issues as to the interpretation of a limitation of liability clause. Drax had claims for misrepresentation, quality defects, delay and termination and sought separate losses for each, the amounts of which exceeded the contractual cap. The issue was whether there was one cap applying to all claims or separate caps that applied to each claim. As a matter of the language of the contract, the court considered that there was a single cap for all claims and commercial considerations and the approach in *Triple Point v PTT* [2021] UKSC 29 did not alter that conclusion. The court rejected the suggestion that ‘claim’ meant ‘cause of action’ or ‘liability’ and concluded that had there been multiple caps, they would have been those categories identified by Drax, namely misrepresentation, quality, delay and termination.

[Drax Energy Solutions Limited v Wipro Limited \[2023\] EWHC 1342 \(TCC\), 9 June 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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