

COMMERCIAL DISPUTES WEEKLY – ISSUE 169

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The policy of the law should be to advance, rather than retard, the accrual of a cause of action."

URS Corp Ltd v BDW Trading Ltd

Construction – Design Liability

The Court of Appeal has upheld a lower court decision that a building designer owed a duty of care to the building developer, even though the design defect caused no immediate physical damage and was not discovered until after the developer sold the buildings. The duty of care was against the risk that the design of the buildings would contain structural defects that would have to be remedied. Where the inherent design defect did not cause physical damage, the cause of action for economic loss arose on practical completion. At that point, the defective and dangerous structural design had been irrevocably incorporated into the buildings and the developer had suffered actionable damage because the buildings were

structurally deficient. The fact that the developer no longer owned the buildings when the defect was discovered was immaterial. The developer would remain liable to the purchasers and may suffer loss that it could recover from the designer under the Defective Premises Act 1972.

[URS Corp Ltd v BDW Trading Ltd \[2023\] EWCA Civ 772, 3 July 2023](#)

Maritime – Charterparty

The MV GLOBE DANAE was chartered on a time charter trip to carry coke in bulk from India to Brazil. In Brazil the intended receivers rejected the cargo so the vessel sat idle in tropical waters for at least 42 days. Bottom fouling occurred but the vessel was delivered without hull cleaning. Owners cleaned the hull before delivering the vessel into its next fixture and then sought to claim the costs, including hire from charterers. The Commercial Court upheld the decision of the arbitral tribunal that charterers were liable for the time and expense of the cleaning at the charterparty hire rate at the first workable opportunity, based on clause 86 of the charterparty. The first opportunity could be after the vessel was redelivered. This accorded with the commercial purpose; the vessel needed underwater cleaning because of the charterers' orders that it remain idle and so they must therefore pay for the time and cost of remedying the consequent fouling.

[Smart Gain Shipping Co Ltd v Langlois Enterprises Ltd \[2023\] EWHC 1683 \(Comm\), 5 July 2023](#)

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Construction

In a part 8 claim challenging an adjudication claim, the court has considered the interpretation of a clause of the contract (based on the JCT Minor Works Building Contract 2016 edition) that provided for the employer to serve notice of termination after a continued default by the contractor for seven days (clause 6.4.2). The issue was when that seven-day period expired and whether it was to be calculated as clear days. The court held that in the light of the importance of ensuring that the contractor has a full seven days in which to address the issues specified in a warning notice, it would have agreed with the adjudicator and construed clause 6.4.2 as referring to a period of seven clear days, ending in this case at midnight on 8 September 2021. On that analysis, the claimant employer's termination was premature and invalid because it was served on the morning of 8 September, rather than 9 September.

[Bellis v Sky House Construction Ltd \[2023\] EWHC 1473 \(TCC\), 23 June 2023](#)

Disclosure

The claimant had been ordered under Practice Direction 57AD to provide information about the roles of certain individuals and their employer companies within the claimant group. The claimant applied for a variation of the order owing to concerns about German privacy law requirements in relation to sensitive personal information about the individuals. The court rejected the application. There was likely to be sufficiently relevant information for the dispute in the categories of documents ordered to be disclosed. This overrode any right to privacy and confidentiality of sensitive personal information and disclosure could not arguably give rise to a breach of data protection obligations under German law.

[Steenbok Newco 10 Sarl v Formal Holdings Ltd \[2023\] EWHC \(Comm\), 30 June 2023](#) (*extemporary decision not yet publicly available*)

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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