

COMMERCIAL DISPUTES WEEKLY – ISSUE 170

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"It is not for the bank to concern itself with the wisdom or risks of its customer's payment decisions."

Philipp v Barclays Bank UK PLC

Fraud – Quincecare duty

The claimant, Mrs Philipp and her husband lost £700,000 as the result of authorised push payment fraud and alleged that the defendant bank owed a duty not to carry out her payment instructions if they had reasonable grounds for believing that she was being defrauded – the Quincecare duty. The Supreme Court held that the bank did not owe such a duty, overturning the Court of Appeal and reinstating the first instance decision. The Quincecare duty did not apply where there was no agent involved and the customer themselves gave the payment instruction. There was no express term of the contract between Mrs Philipp and the bank to the effect that the bank would not carry out payments if it reasonably believed there was fraud.

Further, to imply such a term would be inconsistent with the ordinary obligations owed by a bank to its customer. The bank had telephoned Mrs Philipp prior to each transfer and confirmed her instructions and so it was impossible to say that the bank owed her a duty not to comply with her instructions. The bank was granted summary judgment.

Philipp v Barclays Bank UK PLC [2023] UKSC 25, 12 July 2023

Adjudications

Disputes arose in relation to delays and allegedly defective work in a JCT design and build contract to fit out a data hall. An adjudicator decided that the defective work was the employer's responsibility and awarded most of the extension of time that the contractor sought. The contractor sought a further extension of time for a later period arising from the defects. The second adjudicator felt bound by the conclusions of the first adjudicator but commented that otherwise he would have found for the employer. The judge then held that the second adjudicator was not bound by the first adjudication and upheld the second adjudicator's conclusion in favour of the employer. The Court of Appeal reinstated the second adjudicator's original decision. The court was not bound by such conclusions in relation to the binding nature of other adjudication decisions but should be slow to interfere with them. The issues in the two adjudications were the same, namely who was responsible for the ductwork, and the differing time periods made little difference on the facts, although this was unusual as delays usually arose from a number of different events.

Sudlows Ltd v Global Switch Estates 1 Ltd [2023] EWCA Civ 813, 12 July 2023

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Recognition

An ongoing dispute has been before the English court to determine who was the appropriate body to give instructions in relation to gold reserves held by the Bank of England on behalf of the Central Bank of Venezuela. The Supreme Court held that the UK courts were bound by the one voice principle to accept the recognition by the UK government of Mr Guaidó as the constitutional interim president of Venezuela. On remittal to the High Court, Cockerill J. held that certain decisions of the Supreme Tribunal of Justice of Venezuela should not be given effect to in the UK. An appeal against that decision was rejected on the basis that the judge's findings were of fact that she was fully entitled to reach. The Venezuelan court decisions declared that the appointment of the Guaidó board was null and void on the basis that Mr Guaidó was not President of Venezuela. At that time, the UK government recognised Mr Guaidó as President so the UK courts could not give effect to the Venezuelan decisions in this jurisdiction. The fact that the UK government no longer recognised Mr Guaidó had no retrospective impact.

Deutsche Bank AG (London Branch) v Central Bank of Venezuela [2023] EWCA Civ 742, 30 June 2023

Commodities

In a dispute between Addax and Petro Trade ("PT") arising out of contracts for the supply of gasoil, the court found in favour of the supplier Addax in respect of approx. US\$2.7m in unpaid invoices. The dispute centred on responsibility and payment for products left in nominated storage tanks in Monrovia, which PT alleged had been appropriated. The court held that under the agreed terms, risk for the products passed to PT once the products were unloaded beyond the flange valve connecting the delivery hose and the port hose. When Addax issued release notes PT became obliged to pay for the products stated in those release notes as set out in four invoices. The court further rejected the allegations that the cargo had been appropriated as the evidence before the court was that the gasoil remained in the tanks.

Addax Energy SA v Petro Trade Inc [2023] EWHC 1609 (Comm), 4 July 2023

Trade Finance

In a claim arising out of export financing and the securitisation of trade finance receivables, the court has considered the interpretation of certain contractual provisions in three securitisation transactions, and the consequences of that interpretation for the validity of steps taken under the transactions. The first defendant (the "Issuer") issued notes for four separate securitisation schemes. Three of the Schemes passed their redemption date without the relevant liabilities being fully discharged. These three Schemes then became the subject of a CPR Part 8 claim. The court held that the power of the 'Most Senior Class of Noteholders' to give directions following a 'Trigger Event' entitled it to direct the Issuer to exercise the power which it had to remove the agents and appoint successors.

Banca Generali SpA v Sovereign Credit Opportunities SA and another [2023] EWHC 1732, 11 July 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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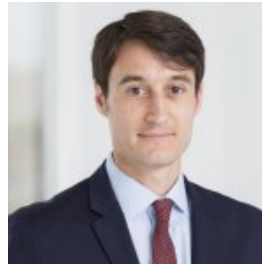


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