

COMMERCIAL DISPUTES WEEKLY – ISSUE 171

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"That a tribunal makes a non-computational error is not a recognised serious irregularity."

Philipp v Barclays Bank UK PLC

Arbitration Challenge

The parties entered into a long-term contract (the “MSA”) for the supply of telecommunication services by LMH to EGK. A dispute arose in relation to renewal of the MSA. The ICC tribunal rejected EGK’s case that the MSA had not expired but held that LMH had failed to conduct good faith negotiations for renewal or extension, as required by the MSA. LMH was liable to pay EGK the sum of €10,270,400 plus interest. LMH challenged this award under section 68 Arbitration Act 1996 on the basis of irregularities leading to substantial injustice, including allegations that the tribunal had failed to deal with whether the breach of the MSA caused EGK any loss, give any reasons for its award and to consider key evidence. LMH failed to overcome

the high threshold for establishing a successful section 68 challenge. The court said that objectively viewed, there was nothing about the course of the arbitration or award which was in any way surprising or outside the contemplation of reasonable parties who have agreed to arbitrate their disputes and although there was one grievance which may have had some substance, it did not fall within any of the limited categories of serious irregularity recognised by section 68.

LMH v EGK [2023] EWHC 1832 (Comm), 19 July 2023

Arbitration – Enforcement

Payward was a cryptocurrency trading exchange and Mr Chechetkin a UK based customer who allegedly lost more than £600,000 on the exchange. Payward obtained a JAMS arbitration award in California and sought to enforce it in the English court. The English court refused to enforce the award on the grounds that to do so would be contrary to public policy (within the meaning in section 103(3) Arbitration Act 1996). Mr Chechetkin was a consumer, the Consumer Rights Act 2015 and Financial Services and Markets Act 2000 applied and required that the relevant issues be governed by English law. Both statutes formed part of UK public policy. The fact that the contract provided for disputes to be referred to arbitration did not make the contract unfair, rather the fact that it may stifle Mr Chechetkin’s claim under the UK legislation did.

Payward, Inc. and others v Chechetkin [2023] EWHC 1780 (Comm), 14 July 2023

Alternative Dispute Resolution

The claimants brought claims for breach of contract for the defendant's failure to provide in person teaching due to strike action and Covid-19 restrictions. They also applied for a group litigation order ("GLO"). The court granted the defendant's application that the proceedings be stayed to allow full engagement in the scheme to resolve student complaints without the need for court proceedings that had been established by the Office of the Independent Adjudicator. The GLO application was adjourned as a result. The court indicated that the parties should adopt a more consensual approach than employed to date and use their time productively.

Hamon and others v University College London [2023] EWHC 1812 (KB), 17 July 2023

Aviation – Net lease clause

In a dispute arising out of an operating lease of an aircraft in which Saudi Arabian Airlines ("Saudia") was lessee and Sprite the lessor, Sprite claimed outstanding rent and a debt of US\$200,000 that Saudia agreed to pay in lieu of performance of the redelivery condition obligations. Saudia acknowledged Sprite's entitlement to those sums but claimed to be able to set them off against a larger claim for sums spent on aircraft maintenance. The court held that both legal and equitable rights of set off were excluded by clause 5.12 of the aircraft lease, which provided that "*The Lease is a net lease. Lessee's obligation to pay Rent and to perform all of its other obligations is absolute and unconditional. Lessee shall not regard its obligations as ended, suspended or altered in any way because of any defence, set-off, counterclaim, recoupment or other right of any kind or of any other circumstance*". However, the \$200,000 debt was under a separate agreement and there was no indication that the right of set off had been excluded.

Saudi Arabian Airlines Corporation v Sprite Aviation No. 6 Designated Activity Company [2023] EWHC 1758 (Comm), 16 June 2023

Sanctions

A Russian Formula One racing driver had his racing team and sponsorship contracts terminated as a result of his father being sanctioned under the EU and UK sanctions regimes. He was also subsequently made subject to sanctions and his assets were frozen. He unsuccessfully sought modification or variation of his designation to enable him to enter the UK to negotiate racing for a Formula One team. It would significantly undermine the purpose of the UK's sanctions regime to a significant degree and be contrary to the public interest to grant relief. It would have a detrimental impact on the public perception of the robustness of the regime and undermine its deterrent effect.

Mazepin v Secretary of State for Foreign, Commonwealth and Development Affairs [2023] EWHC 1777 (Admin), 8 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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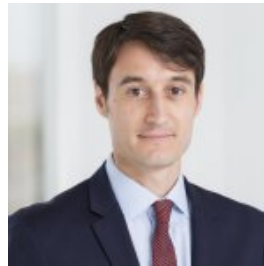
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