

## COMMERCIAL DISPUTES WEEKLY – ISSUE 175

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"The only discretion... is for the parties to agree the length of the time period between the due date for payment and the final date for payment."**

**Lidl Great Britain Ltd v Closed Circuit Cooling Ltd**

#### Construction

The Technology and Construction Court ("TCC") has clarified that construction contracts which fix the final date for payment otherwise than by reference to a period of time following the due date do not comply with the Housing Grants, Construction and Regeneration Act 1996 ("1996 Act"). The dispute arose out of a contract for industrial refrigeration and air-conditioning work, which provided that the final date for payment would fall *"either 21 days following the due date or receipt of the Contractor's valid VAT invoice, whichever is the later"*. Confirming the *obiter dicta* comments in a 2020 decision, the TCC held that because the contract fixed the final date for payment by reference to an event (issuance of an invoice), rather than as a set period of time following the due date, it was not enforceable. As a result, the Scheme for Construction Contracts was implied to the required extent, overriding the agreed mechanism for determining the final date for payment. This

meant that Lidl was required to make the payment to 3CL.

*Lidl Great Britain Ltd v Closed Circuit Cooling Ltd (t/a 3CL)* [2023] EWHC 2243 (TCC), 11 September 2023

#### Adjudication

The claimant carried out civil engineering and construction work for the Council. An adjudication award was made in its favour and it sought summary judgment from the court to enforce that decision. The Council disagreed with the adjudicator's conclusion and planned to refer the issue to a true value adjudication. It sought a stay of execution of the first adjudication on the basis that the claimant was insolvent and the parent company's guarantee was inadequate to protect the Council's position. The court refused the stay. Adjudication decisions were intended to be enforced summarily and the claimant should not be kept out of its money. Although the claimant's financial position was weak, the parent company guarantee was adequate. The court rejected the defendant's argument that the guarantee was inadequate because the parent company participated in a group cash pooling arrangement rather than holding large amounts of cash. The ultimate parent company had a very substantial positive cash position and there was no evidence that it would not support the interim parent company.

*Alun Griffiths (Contractors) Limited v Carmarthenshire County Council* [2023] EWHC 2269 (TCC), 13 September 2023

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## Jurisdiction

Proceedings between the parties commenced during the Brexit transition period, when EU rules on jurisdiction still applied in the UK. After the transition period ended, the claimants applied to amend their particulars of claim and join an additional claimant. The court held that the provisions of the Recast Brussels Regulation would apply to the amended claim involving the additional claimant as a result of Article 67(1)(a) of the UK-EU withdrawal agreement. The continued applicability of the Recast Brussels Regulation related to proceedings commenced before the end of the transition period, not individual claims. Therefore, claims against existing defendants brought by an additional claimant were included.

*Bourlakova and others v Bourlakov and others* [2023] EWHC 2233 (Ch), 8 September 2023

## Witness Evidence

Mr Vik was found to be in contempt of court, but the custodial sentence was suspended on terms that he provide documentation and attend court to be examined by the claimant. Mr Vik applied to attend the hearing to give evidence remotely by video link from Connecticut. The court rejected the application, finding that Mr Vik had established no good reason why he should be allowed to give evidence remotely. There was no evidence that he was unable to attend and no real risk or fear of him being arrested once in the jurisdiction. Further, Mr Vik giving evidence by video link would not likely be beneficial for the efficient, fair and economic disposal of the matters, not least in circumstances where Mr Vik had previously given dishonest evidence. The court's ability to be in control of Mr Vik's evidence and the likelihood of the truth and accuracy of his evidence being properly tested would be greatest if Mr Vik attended in person.

*Deutsche Bank AG v Sebastian Holdings, Inc and another* [2023] EWHC 2234 (Comm), 1 September 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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