

COMMERCIAL DISPUTES WEEKLY – ISSUE 177

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"There is no support... for the proposition that jurisdiction, once founded at date of issue, can be 'lost'."

CA Indosuez
(Switzerland) SA v
Afriquia Gaz SA and
others

Brexit – Jurisdiction

A contract for the purchase of commercial butane was subject to the exclusive jurisdiction of the courts of England and Wales. The buyer incorrectly paid the purchase price into the seller's account at UBS rather than with the claimant bank who was assignee of the sum. UBS refused to return the money. The claimant commenced proceedings against the buyer, who then brought a Part 20 claim joining UBS to the proceedings. The Part 20 claim was issued just before the end of the EU exit implementation period but served after the end of the period. The court held that the Lugano Convention continued to apply to transitional claims and that the UK Civil Procedure Rules had not introduced a requirement of court permission for service of the transitional claim form in Switzerland. Further, as the English Court had jurisdiction when the Part 20 claim was issued, it was not lost when the main

proceedings were subsequently settled.

CA Indosuez (Switzerland) SA v Afriquia Gaz SA and others [2023] EWCA Civ 1072, 28 September 2023

Anti-Suit Injunction: Non-UK seated arbitration

Following on from *SQD v QYP* which was covered in CDW Edition 173 the English High Court has again dealt with an application for an anti-suit injunction ("ASI") to restrain proceedings in another jurisdiction where the contract provided that disputes should be dealt with by an arbitration with its seat in Paris. In *SQD*, Bright J. refused to grant the interim ASI on the basis that French procedural law governed the arbitration and given that French law does not grant ASIs, it was not appropriate for the English court to intervene.

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Most recently, Sir Nigel Teare (sitting as a High Court Judge) refused to grant a final ASI in relation to proceedings commenced in Russia in a dispute arising out of bonds governed by English law with a Paris-seated arbitration agreement. He concluded that the arbitration agreement was governed by French law as the law of the seat, following the guidance in *Enka v Chubb* [2020] UKSC 38 and evidence that French law would not regard the choice of English law as governing the arbitration. Although unnecessary in light of his conclusion on the governing law of the arbitration agreement, the judge held that England was not the appropriate forum for the ASI claim. The only connection with England was the governing law of the underlying agreement. The French court had supervisory jurisdiction over the arbitration and although it would not grant an ASI, that did not mean substantial justice could not be done.

The judge also referred to the fact that the Court of Appeal had allowed the appeal in *SQD v QYP* and granted an interim ASI. However, he considered that limited assistance could be derived from that decision because the defendant was not present and made no submissions.

G v R [2023] EWHC 2365 (Comm), 22 September 2023

Undue Influence

The Chancery Court has dismissed an appeal against an order for possession of a property. Ms Waller-Edwards and Mr Bishop granted a legal charge over the property to One Savings Bank (the “Bank”) as security for a loan. When the loan fell into arrears, the Bank obtained an order for possession of the property. At the time the charge was granted Mr Bishop was Ms Waller-Edwards’ partner and her assertion that the charge was procured by the undue influence of Mr Bishop was upheld by the first instance judge. However, both the first instance and Chancery judge concluded that the Bank was not put on inquiry in respect of the undue influence and so was not fixed with constructive notice for the purposes of section 199(1)(ii)(b) of the Law of Property Act 1925. The Bank was not aware (and was not imputed with knowledge) of the proposed usage of the loan for Mr Bishop’s divorce payment, was therefore not on notice of the undue influence and as a consequence there was no basis for setting the charge aside as between Ms Waller-Edwards and the Bank.

Waller-Edwards v One Savings Bank Plc [2023] EWHC 2386 (Ch), 27 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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