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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "The RF chose to dispute jurisdiction...It has...had a determination, and cannot seek to have another one before a different court."
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> Hulley Enterprises Limited and others v The Russian Federation

Estoppel – Arbitration

The English Commercial Court has dismissed an application by the Russian Federation to challenge enforcement of arbitral awards against it of around US$50bn which had been obtained by the former majority shareholders in OAO Yukos Oil Company. The awards held that the Russian Federation was in breach of its obligations under Article 13(1) of the Energy Charter Treaty. They were challenged on the basis that the Tribunal did not have jurisdiction over the claims. Since the seat of the arbitration was the Netherlands, the Dutch court had already ruled on the challenge and concluded that the Tribunal had jurisdiction to deal with the claims. The English Commercial Court held that the matter had already been dealt with by the Dutch court and so there was issue estoppel. Despite the lack of clear authority, there was no reason why there could not be an issue estoppel arising out of a foreign judgment against a state, just as there can be against an ordinary company or individual, assuming the other relevant hurdles could be cleared. The jurisdiction application was dismissed.

Hulley Enterprises Limited and others v The Russian Federation [2023] EWHC 2704 (Comm), 1 November 2023

Adjudication

The English Technology and Construction Court ("TCC") has been asked to decide whether a contract to investigate and remedy interference with household digital TV reception (DTT) caused by high-speed mobile broadband services was a construction contract. The TCC held that it was not a construction contract as defined by section 104 of the Construction Act 1996 and therefore the parties did not have a statutory right to refer the payment disputes to adjudication. The appointed adjudicator decided that he had jurisdiction, but the TCC disagreed and ordered an expedited trial of the claims. The judge accepted that "electronic communications apparatus" in section 105(1)(b) could include work on a digital television network, including the alteration, repair or maintenance of a television aerial, but the key question was whether the structures or other apparatus on which the works were undertaken "form, or were to form, part of the land". Much of the work was on televisions and aerials that do not form part of the land, even when securely attached to buildings. The work was not construction work.

Crystal Electronics Ltd v Digital Mobile Spectrum Ltd [2023] EWHC 2656 (TCC), 27 October 2023

Jurisdiction

The parties entered in five investment agreements with the defendants as investors in Echosense. When disputes arose as a result of the failure of the investments, the court was asked to interpret the law and jurisdiction provisions. The particular issue was whether the jurisdiction agreement covered claims in tort, including fraud, and misrepresentation claims that arose from circumstances leading up to the agreements and not themselves arising out of the agreements to which that clause related. The court held that the tort claims were not included as a matter of intention or language in the jurisdiction clause, even when reading it in a broad, purposive and commercial manner. As a general rule, jurisdiction clauses are essentially forward-looking and this precludes, without the use of clear language, conduct prior to the creation of the agreement.

Echosense Jersey Limited v Schleelein and others [2023] EWHC 2700 (Comm), 1 November 2023

Contract interpretation

IBM was sub-contracted to provide IT services that included managing the client's existing IT system until it was replaced with a new system. The terms of the sub-contract to support the old system were extended until 30 August 2023 based on the express contractual assumption that the new system would be operational by then. The new system was never put in place and Capita asserted that IBM was obliged to continue managing the old system. The court found in favour of IBM that they were not obliged to continue managing the old system if the new system was not put in place by 30 August 2023. The court reached this conclusion by considering the language and context of the agreement, including provisions that set out what would happen if there was no replacement system. Arguments alleging the uncommercial consequences of certain interpretations were not sufficiently compelling to persuade the court to deviate from the language of the agreement.

Capita Business Services Ltd v IBM United Kingdom Ltd and another [2023] EWHC 2623 (Comm), 20 October 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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