COMMERCIAL DISPUTES WEEKLY – ISSUE 183

21 NOVEMBER 2023 • ARTICLE

BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...the better interpretation of Regulation 7(4) is that it is concerned with an existing influence of a designated person over a relevant affair of the company..."
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> Litasco SA v Der Mond Oil and Gas Africa SA

Sanctions

Litasco commenced proceedings for payments owed by Der Mond arising out of a contract for the sale of crude oil. Der Mond's defence to non-payment included a force majeure clause, a trade sanctions compliance clause and UK sanctions regulations. It was alleged that Litasco was controlled by President Putin and therefore payment would contravene the sanctions regulations. The judge rejected the defence and awarded Litasco summary judgment. Neither Litasco nor its parent were sanctioned entities and there was no evidence that President Putin exercised de facto control over Litasco in the same way as he might over a Russian public body such as the Central Bank of Russia and its subsidiaries (although the court acknowledged that arguably President Putin could bring Litasco within his control should he decide to do so). Further, the sanctions regulations do not prevent the court from entering a money judgment in favour of a sanctioned party, the trade sanctions clause did not apply on the facts, and the difficulties with payment were not such as would bring this within the force majeure clause.

Litasco SA v Der Mond Oil and Gas Africa SA [2023] EWHC 2866 (Comm), 15 November 2023

Landlord and tenant

The freehold owner of a piece of land on which several blocks of flats stood intended to sell its interest in the land. It served notices to the tenants as required by section 5 of the Landlord and Tenant Act 1987, giving them first right of refusal. There was a dispute as to whether those notices were valid. The court held that the notices were valid. They had given details of the relevant building within which each tenant's flat was located. As the qualifying tenants only had a right of first refusal in relation to the estate or interest in the building of which their flat formed part, it was natural that the terms in the offer notice should relate to that building. It was also consistent with the natural meaning of the legislation. If the landlord was only required to give details of the principal terms for sale of the whole plot of land, that would be unhelpful to the tenants as they would not know what terms to accept.

FSV Freeholders Ltd v SGL 1 Ltd [2023] EWCA Civ 1318, 14 November 2023

Maritime – General average

The Commercial Court has interpreted the following words which appear in the standard Congenbill 1994 form: "…York-Antwerp Rules 1994, or any subsequent modification thereof…" It held that the applicable rules were the York-Antwerp Rules 2016, rejecting the claimant's argument that these were new rules rather than modifications of the 1994 rules. 'Modification' ordinarily means a change which does not alter the essential nature or character of the thing modified. The court considered that there was no difficulty as a matter of the ordinary use of language in describing the 2004 or 2016 rules as modifications of the 1994 rules. They were produced by the same body, directed to the same end and contained many of the same provisions, albeit with some changes. Such interpretation was also in line with the commercial purpose of ensuring that general average would be in step with major developments in shipborne commerce.

Star Axe I LLC v Royal and Sun Alliance Luxembourg SA and others, The Star Antares, [2023] EWHC 2784 (Comm), 10 November 2023

Good faith

The English court has rejected an argument that EE was in breach of its duty of good faith to Phones 4U in relation to their agreement under which Phones 4U would sell connections onto the EE network. EE informed Phones 4U one year in advance that it would not renew the contract on expiry and three days later Phones 4U went into administration. The good faith clause was clear and should not be read in any different or more general context because the agreement was not a relational contract. Although it was a longer-term contract which required a substantial amount of cooperation between the parties, the element of competition between the parties negated any suggestion that it was a relational contract.

Phones 4U Ltd (In Administration) v EE Ltd and others [2023] 2826 EWHC (Ch), 10 November 2023

Maritime

The claimant agreed to purchase a loss-making vessel from the defendant as the defendant was unable to repay substantial debt owed to the bank. The agreement also provided an option for the defendant to reacquire the vessel. The option was not exercised, the agreement was extended, and the vessel eventually sold. The claimant sought reimbursement from the defendant pursuant to a clause which provided that the defendant would guarantee any shortfall and losses that remained after the vessel was sold, alternatively damages. The defendant alleged that his liability to reimburse ended at the original expiry date of the agreement. The Court of Appeal found in favour of the claimant. As a matter of interpretation of the contract against the factual matrix that the defendant was in serious financial debt and the claimant had rescued him, the contract did not make the defendant's liability conditional on the claimant retaining sole beneficial interest in the vessel, nor was there any time limit on the defendant's liability to reimburse any of the claimant's losses following the sale of the vessel.

Frangou v Frangos [2023] EWCA Civ 1320, 10 November 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:

Robert Fidoe	Ryland Ash
Charles Buss	Nikki Chu
Dev Desai	Sarah Ellington

Andrew Hutcheon	Alexis Martinez
Theresa Mohammed	Tim Murray
Mike Phillips	Rebecca Williams

KEY CONTACTS

JOANNE CHAMPKINS
KNOWLEDGE COUNSEL • LONDON

T: +44 203 036 9859

jchampkins@wfw.com

ROBERT FIDOE
PARTNER • LONDON

T: +44 20 7863 8919

rfidoe@wfw.com

REBECCA WILLIAMS
PARTNER • LONDON

T: +44 203 036 9805

rwilliams@wfw.com

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