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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...the Charterer's order required the master to exercise good navigation and seamanship when deciding where to anchor..."
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> Mercuria Energy Trading Pte v Raphael Cotoner Investments Limited, MT Afra Oak

Maritime – Arbitration

The vessel AFRA OAK ("Vessel") was detained by the Indonesian navy whilst in Indonesian territorial waters near Singapore. The Master and Vessel were arrested by the Indonesian navy and detained for a period of 8 months. The Master was convicted following criminal proceedings and the Vessel was then released. There were substantial claims and counterclaims between the owner and charterer that were referred to arbitration. The Tribunal found in favour of the owners and the charterers appealed pursuant to section 69 of the Arbitration Act 1996. The Tribunal held that charterer's order did not permit the Vessel to wait in Indonesian waters and it had therefore failed to follow charterer's orders. It had also concluded that because the Master had made an error of navigation which caused the Vessel to anchor in the wrong location, the owner was entitled to rely on section 4(2)(a) of the US Carriage of Goods by Sea Act 1936 (the same as Article IV rule 2(a) of the Hague Rules). This gave owners a defence to liability for the breach of charterer's orders due to the act, neglect or default of the Master. The court found that there had been no error of law by the Tribunal and dismissed the section 69 challenge.

Mercuria Energy Trading Pte v Raphael Cotoner Investments Limited, MT Afra Oak [2023] EWHC 2978 (Comm), 23 November 2023

Construction – Contract Interpretation

A plumber and an electrician worked on many building projects together. On one project, the main contractor went bust, subcontractors went unpaid and the two parties disputed where the loss should fall. The electrician was the sub-subcontractor of the plumber. There was no dispute that the work was done, on time and to the appropriate quality. The King's Bench Division upheld the decision in the County Court that the plumber was liable to the electrician for the sums outstanding. As a matter of interpretation of a quote provided, subsequent emails, the behaviour of the parties, including the fact that they had worked together for many years, the parties had reached a binding agreement that included fitting the MVHR units. A second contract was not void for uncertainty, even though it did not provide specifically for the number of houses to be fitted nor the precise upgrades to be installed. The court should strive to uphold commercial bargains and this is all the more important when the contract has already been performed.

DMH Electrical (UK) Ltd v MK City Group Ltd [2023] EWHC 2960 (KB), 21 November 2023

Apparent Bias

A judge held in debt recovery proceedings that the claimants had loaned money to the defendant, rather than making a political donation. The Court of Appeal of Trinidad and Tobago later concluded that there was an appearance of bias by the judge. The Privy Council rejected that conclusion. Extra-curricular comments by a judge on matters of legal concern did not ordinarily give rise to an appearance of bias unless they were in such trenchant or unqualified terms that indicated an inability to bring an open mind to the case. This was not the case here. There was no complaint about the judge's conduct at trial, he had not previously expressed any views on unregulated campaign finance and he simply reacted to the defendant's pleaded case. The subsequent speech echoed comments in the judgment. A fair-minded and informed observer would not apprehend a real possibility of bias.

Renraw Investments Ltd and others v Real Time Systems Ltd and others [2023] UKPC 39, 13 November 2023

Contract Interpretation – Loan Agreement

The parties entered into a convertible term loan facility agreement with WEA as the lender and Chocolate City as the borrower. Chocolate City sought to prepay the loan and served notice on WEA. WEA denied Chocolate City's entitlement to do that. The court acknowledged 'difficulties' with the drafting of the various documents but concluded that as a matter of the language used, Chocolate City did not have a right to prepay the loan. That interpretation conformed with the commercial purpose of the transaction which gave WEA an unfettered right to swap the outstanding debt for equity in Chocolate City if it was in its economic interests to do so. A right of prepayment would defeat that right. The court ordered summary judgment in WEA's favour.

Chocolate City Limited v WEA International Inc [2023] EWHC 2874, 16 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:

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