

COMMERCIAL DISPUTES WEEKLY – ISSUE 185

5 DECEMBER 2023 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"There is no rationale for a construction of the Act which has the effect of prohibiting any adjudication whilst that notified sum remains unpaid, even where the subject matter of the adjudication has no relation to the notified sum."

Lidl Great Britain Limited v Closed Circuit Cooling Limited t/a 3CL

Adjudication

Disputes arose in relation to payments from Lidl under a contract for 3CL to carry out refrigeration work. Various adjudications were commenced. Lidl paid the sums that the first adjudicator held that it owed. Adjudications 2 and 3 found that 3CL owed Lidl sums for rectification costs and was not entitled to an extension of time. 3CL challenged enforcement of adjudications 2 and 3 on the basis that they were each made without jurisdiction and/or in breach of public policy because Lidl commenced these adjudications before it had complied with its immediate payment obligation under s.111 of the Housing Grants, Construction and Regeneration Act 1996 (as amended) in respect of a previous notified sum obligation (Lidl commenced the adjudications before it had paid the sum under no. 1). The UK Technology and Construction Court ("TCC") held that the obligation to pay the notified sum only applied to what was due in relation to the notified sum under the payment regime in question. Any prejudice from having to defend an adjudication whilst not receiving payment for the notified sum was ameliorated by the speedy enforcement procedure. Lidl was entitled to summary judgment for the majority of its claim in adjudication no. 2, but not adjudication no. 3 which was in substance seeking a true

valuation of an extension of time which covered the same time period as the first adjudication. The third adjudicator therefore had no jurisdiction.

Lidl Great Britain Limited v Closed Circuit Cooling Limited t/a 3CL [2023] EWHC 3051 (TCC), 29 November 2023

Non-Court-Based Dispute Resolution

Mr Churchill brought a claim against his local council for nuisance from Japanese knotweed on his property encroaching from council land. The council sought a stay because he had not made use of its corporate complaints procedure. At first instance the judge dismissed that stay application but held that Mr Churchill had acted contrary to the spirit of the pre-action protocol in failing to engage with the council's complaints procedure. The Court of Appeal held that a stay could be granted to allow parties to engage in non-court-based dispute resolution, as long as the stay did not impair the claimant's right to a judicial hearing. A stay must also be proportionate to the aim of settling the dispute fairly, quickly and at reasonable cost. However, in the circumstances, nothing would be gained from now granting a one month stay as sought by the council.

Churchill v Merthyr Tydfil CBC [2023] EWCA Civ 1416, 29 November 2023

Judicial review

Two commodities/financial products traders brought a claim for judicial review against the London Metal Exchange ("LME") for losses allegedly suffered when the LME suspended nickel trading and then cancelled all trades on 8 March 2022 owing to a spike in nickel prices. The use by traders of the exchange is governed by contractual terms that included provisions permitting the LME to suspend trading. However, the LME carries out regulatory functions as well and therefore the rules must be interpreted by reference to the overarching legislation, as well as this informing the judicial review of the decisions. The court rejected the claims that the decisions by the LME were unlawful and so the judicial review claims were dismissed. On the evidence, the conclusions reached were rational and within the margin of discretion of those in charge at the LME, in particular given the urgency and the limited time available. The LME was charged with ensuring an orderly market and considered that allowing the 8 March 2022 trades to stand would risk multiple defaults by members and potentially cause a systematic disturbance to the market. The court also highlighted that the LME is a specialist decision maker operating in a complex, technical area and this would impact the intensity of the court review of their decisions. Further, although the LME is not an elected body, it was significant that the claimants had agreed to subject themselves to the decision making of the LME by contracting on the terms provided in the LME rules.

The King on the application of Elliott Associates LP and others v The London Metal Exchange and another [2023] EWHC 2969 (Admin), 29 November 2023

Assignment

The UK TCC has considered various issues arising out of disputes in relation to contracts to construct a waste to energy power plant. One such issue was whether an assignment of the benefits of the contract was effective where there was a clause requiring prior permission of the other party to the contract. The court held that the clause was clear and therefore the assignment was ineffective as no prior consent had been given. The court also held that it made no difference that there had already been a previous assignment with consent and that this was a reassignment. The clause could not be construed as meaning that once there had been a permitted assignment, the assignee was free to assign without needing consent.

MW High Tech Projects UK Ltd v Outotec (USA) Inc and another [2023] EWHC 2885 (TCC), 17 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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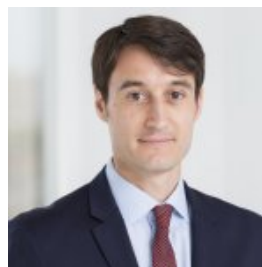
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