

COMMERCIAL DISPUTES WEEKLY – ISSUE 186

12 DECEMBER 2023 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...even taking into account the strict approach of Mexican law, clause 27 of the FWA gives the ICC tribunal jurisdiction to determine a dispute as to the validity of the FWA."

PT Services Malta Limited v Tecnologia en Entretenimiento Caliplay, SAPI de CV and others

Jurisdiction – Anti-suit Injunctions

The parties entered into two agreements; a framework agreement ("FWA") governed by Mexican law and ICC arbitration in London, and a software licensing agreement ("SLS") governed by English law and English court jurisdiction. When a dispute arose about the level of PTSM's fee, it commenced proceedings under the SLS in the English court. Caliplay commenced proceedings in Mexico under the FWA. PTSM applied to the Mexican court for interim measures against Caliplay and was successful. It now sought anti-suit injunctions in the English courts in support of the arbitration it intended to commence under the FWA. The court granted an anti-suit injunction against Caliplay in relation to the SLS, concluding that this was what had been agreed and that reference to a related agreement providing for Mexican jurisdiction was of no impact. The court also granted an anti-suit injunction in relation to the FWA. Once appointed, the tribunal would be competent and the appropriate party to determine its own jurisdiction, including any questions of Mexican law as to the validity of the FWA and the arbitration agreement.

PT Services Malta Limited v Tecnologia en Entretenimiento Caliplay, SAPI de CV and others [2023] EWHC 3060 (Comm), 4 December 2023

Contract Interpretation – Priorities

Following the unusual circumstance of the administration of the Lehman Brothers group resulting in considerable recoveries in excess of the claims of the unsubordinated creditors, the court had to consider the question of priorities between the subordinated creditors in order to be able to make distributions. The particular issue here related to statutory interest. The court concluded that the statutory interest should be paid to a subordinated creditor with priority of principal before repayment of the principal to a subordinated creditor that ranked lower in the priority queue. It was counter-intuitive to disassociate the interest payment from the debt, in particular where the statutory interest served as compensation for the delayed payment of proven debts. The court reached this conclusion as a question of contractual interpretation, considering applicable case law and informed by the provisions of IR 14.23(7).

[The Joint Administrators of Lehman Brothers Holdings PLC \(In Administration\) v LB GP No.1 Ltd \(In Liquidation\) and others \[2023\] EWHC 3056 \(Ch\), 29 November 2023](#)

Land Registration

The claimants were victims of a fraud perpetrated on them in 2014 and 2015. They invested money in a property development scheme on the understanding that their investment would be secured by a legal charge but before the charge was registered the owner of the property in question contracted with others for them to purchase parts of it. When they realised that their investment was not protected, the claimants tried to enter a restriction to prevent the disposition of the property. The Upper Tribunal upheld the decision of the lower tribunal directing the Chief Land Registrar to enter a restriction on the registered titles of the two parcels of land (under section 42(1)(a), Land Registration Act 2002 it was necessary or desirable to prevent unlawfulness in relation to the disposition of the registered estates). The joint venture agreements included terms that the property owner would not dispose of the land before the claimants' legal charges had been registered. The grant of leases to the purchasers were dispositions in breach of those terms.

[Yarnold and others v Ziga and others \[2023\] UKUT 284 \(LC\), 1 December 2023](#)

Adjudication

Alterego, a supplier of stone and concrete cladding, has successfully obtained summary judgment to enforce an adjudication award against the main contractor, RFL. Alterego commenced the adjudication seeking payment for materials and work supplied. The disputes included whether a contract had been entered into between the parties and if so, on what terms the goods/materials had been supplied. The adjudicator ordered RFL to pay Alterego approx. £800,000. RFL's defences to the summary judgment application included allegations that the adjudicator did not have jurisdiction for various reasons and breached natural justice. In concluding that the adjudicator was correct the TCC held that the contract was not a "construction contract" as defined by s. 104 of the Housing Grants, Construction and Regeneration Act 1996 so statutory adjudication did not apply. But there was a concluded contract, the terms of which included adjudication provisions. It also considered the adequacy and therefore validity of the Notice of Adjudication, whether the adjudicator decided an issue not open to him and whether the adjudicator failed to apply the principles of natural justice.

[Illuminesia Limited \(t/a/ Alterego Facades\) v RFL Facades Limited \[2023\] EWHC 3122 \(TCC\), 6 December 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

WATSON FARLEY & WILLIAMS

Charles Buss

Nikki Chu

Dev Desai

Sarah Ellington

Andrew Hutcheon

Alexis Martinez

Theresa Mohammed

Tim Murray

Mike Phillips

Rebecca Williams

KEY CONTACTS

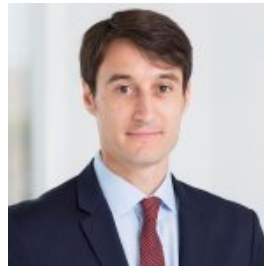


JOANNE CHAMPKINS

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

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.