COMMERCIAL DISPUTES WEEKLY – ISSUE 192

6 FEBRUARY 2024 • ARTICLE

BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...if McGill complies with that order, in my judgment no question of breach of the Regulations will arise."
>
> AerCap Ireland Limited v AIG Europe SA

Aviation – Disclosure

AerCap has brought claims against its insurers in relation to over 100 of its aircraft that were not returned by Russian lessees after the invasion of Ukraine. It also brought claims under the operator policies put in place by its lessees, the Russian airline operators, on the basis that it is an additional insured or due to the operation of a 'cut-through clause' in the operator reinsurance policies. AerCap sought disclosure from the brokers of those operator policies of various documents relating to coverage under those policies. The UK Commercial Court rejected the brokers' concerns that such disclosure was in breach of sanctions. Provision of the documents pursuant to a court order was not 'provision of financial services' or 'provision of brokering services'. It was simply obedience of a court order. Further, the documents were not being provided in fulfilment of an obligation owed by Russian insurers. They were potentially relevant to an action in the English court and the broker was in possession of those documents, although was not a party to the proceedings. The court therefore considered that even in the absence of a court order, the brokers would not breach sanctions regulations by providing the documents.

AerCap Ireland Limited v AIG Europe SA [2024] EWHC 144 (Comm), 29 January 2024

Contract Interpretation

The dispute arose out of non-payment by the defendants for goods supplied to them by the claimant, Costcutter. The relevant trading agreements contained a clause which put a limit on "the total liability of either party … in respect of all acts, omissions, events and occurrences whether arising out of any tortious act, breach of contract or statutory duty or otherwise". The court rejected the defendants' argument that this limited their liability for the price of the goods. As a matter of construction, the clause clearly only applied where there had been a tortious act, breach of contract or statutory duty. The limit applied to the secondary obligation to pay damages, not the primary obligation to pay for the goods.

Costcutter Supermarkets Group Limited v Vaish [2024] EWHC 152 (KB), 29 January 2024

Commodities

The Commercial Court has reached a conclusion on ownership of a parcel of High Sulphur Vacuum Gasoil (VGO) from the Antipinsky Refinery on board a floating storage facility that was the subject of a long running dispute. VTB Commodities obtained an injunction for delivery of the cargo to it. Petraco applied to intervene in the action on the basis that it was entitled to delivery of the cargo. The court held that but for the court injunction, Petraco would have become owner of the cargo and taken delivery on the basis of a contractual entitlement. It was therefore entitled to enforce an undertaking made by VTB Commodities to receive the value of the dispute cargo, together with the profit it would have made but for the injunction. VTB Commodities' claim against Petraco for the tort of abuse of rights was unsuccessful.

Re ABFA Commodities Trading Ltd (formerly VTB Commodities Trading Ltd) v Petraco Oil Company, [2024] EWHC 147 (Comm), 30 January 2024

Jurisdiction – Letters of Credit

Banque Cantonale Vaudoise ("BCV"), a Swiss bank, issued two standby letters of credit which Macquarie sought to enforce. BCV resisted payment and made a claim for relief in Switzerland. Those proceedings were then stayed pending a criminal investigation relating to the transaction. Macquarie sought to have the dispute decided in the English courts and was successful in persuading the English Commercial Court that it was the appropriate forum. The governing law of the letters of credit was English law and the English court was best placed to give effect to that. It was apparent that the ongoing Swiss proceedings would prevent the letters being enforced, which was contrary to Macquarie's rights under the letters of credit to obtain payment on demand as they were 'akin to cash'. The history of the Swiss civil proceedings, and their anticipated future course, strongly suggested that the continuation of proceedings in that jurisdiction would not give effect to the parties' choice of English law in that way. This outweighed any links with Switzerland.

Macquarie Bank Limited v Banque Cantonale Vaudoise [2024] EWHC 114 (Comm), 26 January 2024

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