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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...the general rule... where the main contract is expressly governed by English law... is that the parties are taken to have made a choice of English law as the law applicable to the arbitration agreement."
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> Unicredit Bank GmbH v Ruschemalliance LLC

Arbitration – Jurisdiction

A Russian company entered into a contract with two German companies for them to build processing facilities in Russia. The contract provided for staged payments and the contractors gave on demand performance bonds, some of which were provided by Unicredit. The bonds were governed by English law and disputes were to be dealt with by ICC arbitration in Paris. The contractors ceased work as a result of the EU sanctions imposed following the Russian invasion of Ukraine and the Russian employer terminated the contracts, requested return of the advance payments and made demands under the bonds. Disputes arose when Unicredit refused to make payment under the bonds and the Russian employer commenced proceedings in the Russian court. The English Court of Appeal granted a final anti-suit injunction against the Russian company, overturning the decision of Teare J. Following the general rule in *Enka v Chubb*, the arbitration agreement was governed by English law (and there was nothing in French law to provide that the law of the arbitration agreement should follow the law of the seat, which was Paris). So, the claim fell within a CPR jurisdictional gateway (CPR PD 6B, 3.1(6)(c)). The English court was the appropriate forum to bring the claim and was the only way to prevent the Russian court issuing an anti-arbitration agreement. The French court could not issue an anti-suit injunction and any damages awarded by the ICC arbitrators would not be enforceable in Russia. Unicredit Bank GmbH v Ruschemalliance LLC [2024] EWCA Civ 64, 2 February 2024

Maritime – Finance

Eurobank successfully obtained summary judgment against borrower shipowners and their guarantors after they breached a loan agreement by failing to make payments and maintain insurances that were terminated for non-payment of premium. These events of default allowed Eurobank to accelerate the loan and demand repayment of the outstanding sum, plus interest and expenses of about US$4.5m. Eurobank had arrested the vessels in Djibouti, when the vessels were already under arrest by various trade creditors. The Djibouti Port Authority arranged a private sale of the vessels without the bank's knowledge for US$3.2m. Eurobank received nothing from the sale. The court rejected the borrowers' defence to the claim, which argued that the bank was in breach of an equitable duty to act reasonably in the realisation of any mortgaged property and obtain a true market price for the vessels. The court held that the only step Eurobank took was to arrest the vessels. It had not been responsible for the sale that took place. Eurobank's sole duty in exercising a power of arrest was to do so in good faith for the purpose of obtaining repayment under the loan agreement secured by the mortgage. The evidence was consistent with this being the bank's purpose in arresting the vessel. Eurobank had not taken possession of the vessels and so no other duties arose.
Eurobank SA v Momentum Maritime SA and others [2024] EWHC 210 (Comm), 29 January 2024

Construction – Contract Interpretation

CLS contracted with the defendants to carry out works on a development including a library, shops and apartments. There was a dispute as to the terms of the contract and, specifically, the relevant limit of liability. The court considered the chain of correspondence and meetings and held that the relationship was governed by a letter of intent, not the JCT terms as alleged by the contractor. CLS's liability was therefore capped at £1.1m (the final work had been valued at £1.4m). Although there were questions of fact, the court considered that it had the relevant material to reach a decision under the Part 8 procedure. This would avoid any additional expense and delay and was in accordance with the overriding objective. The court rejected an argument that CLS was estopped from arguing that the JCT form did not apply or that there was a liability cap.
CLS Civil Engineering Ltd v WJG Evans and Sons [2024] EWHC 194 (TCC), 2 February 2024

Maritime – Charterparty

The parties entered into discussions for the four-year charter of an oil tanker. A dispute arose as to whether they had reached agreement. The owners asserted that no charterparty was agreed, Trafigura asserted that there was. There was lengthy correspondence both by email and WhatsApp and through brokers, including a recap, reference to previous terms and 'subjects' clauses. There was a phase of negotiations, then a period when owners failed to respond to Trafigura's messages, then a final set of messages in which Trafigura purported to accept an earlier offer made by owners. In reality, the owners no longer wanted to go ahead with the deal and had communicated this to Trafigura, but Trafigura argued that the charterparty had already become binding. The court held that the 'subjects' clause had not been triggered and the 'subjects' could not therefore be lifted. There was no binding contract until the subjects were lifted. The normal rules of contractual construction applied to the chain of correspondence and the court rejected an argument that certain messages should be disregarded or viewed to be of less significance simply because they were delivered by WhatsApp.
Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd, MV AQUAFREEDOM [2024] EWHC 255 (Comm), 8 February 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:

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