

COMMERCIAL DISPUTES WEEKLY – ISSUE 195

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"To waive the right to forfeit a lease means to give it up by choosing to do something incompatible with forfeiture."

Clemente v Mindmere Ltd

Landlord and Tenant

The Upper Tribunal (Lands Chambers) has concluded that a landlord did not waive its right to forfeit a lease when it commenced court proceedings for a money judgment against a tenant for unpaid service charges. The landlord had obtained a County Court judgment determining that the unpaid service charges were reasonable and should be paid, together with the landlord's costs of the proceedings pursuant to a covenant in the lease. Section 81 of the Housing Act 1996 provided that a landlord was not able to issue a section 146 Law of Property Act 1925 notice to instigate forfeiture of a lease for non-payment of service charge, until it has been determined by a court or tribunal that the relevant amount is payable. The usual course was to apply for a determination from the FTT or County Court. In deciding the issue, which had not arisen for decision before, the Tribunal held that an action for damages or a

money judgment was equally effective to obtain the determination required by section 81. Such a course of action was not a waiver of the right of forfeiture. The landlord's communication had not indicated a continuation of the lease and had made no demands for rent or service charges after the letter of claim.

Clemente v Mindmere Ltd [2024] UKUT 50 (LC), 20 February 2024

Appeal – Conditions

The Republic of Argentina ("Argentina") has been ordered to pay €310m into escrow as a condition of being given permission to appeal. Argentina is appealing against the grant of declarations as to the construction of Euro-denominated GDP-linked securities and an order that it pay the claimants €1.3bn plus interest. The court recognised that the imposition of conditions is unusual but concluded that there was a compelling reason to do so in this case. It considered that there was a very high risk that Argentina would find the funds for the appeal but would not pay the judgment if the appeal was unsuccessful and so the claimants would have to engage in a lengthy and difficult enforcement process. The court rejected Argentina's submission that there were strong reasons why the court should exercise its discretion not to order the conditions. Argentina had not provided persuasive evidence that it would actually divert funds from other government expenditure.

Palladian Partners LP and others v The Republic of Argentina [2024] EWCA Civ 139, 22 February 2024

Enforcement

The claimant sought to enforce a judgment against the defendants made in a Californian court. The application in the English court was an action on the judgment brought at common law and was not made under any treaty or statute providing for enforcement. It was common ground that the judgment met the common law requirements of being a) for a definite sum of money and b) final and conclusive. The issue in dispute was as to whether the claimant had satisfied the further requirement that the Californian court had jurisdiction over the defendant as determined by the English conflict of law rules of international jurisdiction. The court held that the claimant had not established as a matter of Californian law that the defendants had voluntarily submitted to the jurisdiction of the Californian court or made a general appearance. The Californian approach was consistent with the English approach on testing voluntary appearance. The defendants had maintained their position at the hearing that they did not recognise the Californian court's jurisdiction and so the application was dismissed.

Shovlin v Careless and others [2024] EWHC 324 (KB), 16 February 2024

Limitation – Contract Interpretation

The Commercial Court has considered the interpretation of clause 27(B) of the British International Freight Association Standard Terms and Conditions and concluded that it was not necessary for the claimant to have knowledge of the relevant event or occurrence before the time started running for limitation purposes. Clause 27(B) provided that the company would be discharged from liability if suit was not brought within nine months of the event or occurrence alleged to have given rise to the cause of action. The clause had to be read in the context of a series of terms dealing with liability and limitation. A previous clause had provided for a situation where the customer could not comply with a time limit, but had included no such carve out in clause 27(B). Time simply started to run from the date of the event and the clause referred to "*all liability whatsoever and howsoever arising*". This clause was widely drawn but clear. However, in the context of the defendant's negligence, it was arguable that the clause was not reasonable, so the court refused to grant summary judgment in the defendant's favour.

Tornado Wire Ltd v John Good Logistics Ltd [2024] EWHC 212 (KB), 2 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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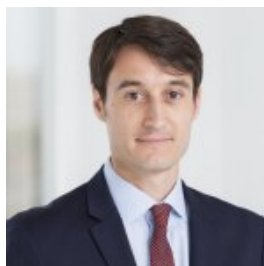
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