

COMMERCIAL DISPUTES WEEKLY – ISSUE 196

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"In my judgment, the master of Kiran Australia had no wish to play slow motion maritime dodgems with Belpareil."

Denver Maritime Ltd v Belpareil AS

Maritime – Collision

The Admiralty Court has assessed liability for a collision between the m.v. BELPAREIL and m.v. KIRAN AUSTRALIA at 70:30 on the basis that both parties were at fault but that the BELPAREIL was more than twice as blameworthy as the KIRAN AUSTRALIA. The two vessels were at anchorage after discharging cargo. The BELPAREIL dragged its anchor and was unable to provide sufficient evidence to rebut the presumption that this was the result of negligence. It also experienced main engine difficulties and should have broadcast a clear warning of the risks to nearby vessels when anchor dragging and engine troubles were appreciated. There was a lengthy period during which both vessels tried and failed to avoid the collision. Had BELPAREIL issued a timely warning the KIRAN AUSTRALIA could have acted on its Master's first instinct to weigh anchor and get clear. By the time the warning was issued there was

insufficient time to do this. BELPAREIL was also at fault for not calling earlier for tug assistance and failing to drop a second anchor. Although KIRAN AUSTRALIA was always in the grip of a perilous situation created by the other vessel's negligence, it should not have allowed itself to fall astern and starboard and should instead have increased engine speed. All the causative faults played a part in the occurrence of the collision and so it was appropriate to apportion liability 70:30.

Denver Maritime Ltd v Belpareil AS [2024] EWHC 362 (Admlty), 26 February 2024

Jurisdiction – Sovereign Immunity

The Court of Appeal upheld a decision of the Commercial Court that a Part 20 Claim Form served on the current president of Mozambique was not effectively served in October 2021, but only in April 2023. This meant that the application to challenge jurisdiction on 5 May 2023 was made in time. It further upheld the decision that the president had immunity from the jurisdiction of the English courts whilst he is head of state of Mozambique, pursuant to section 20 of the State Immunity Act 1978. The dispute involved claims that three sovereign guarantees entered by the Republic of Mozambique were procured by fraud and bribery. The defendants sought to join the president to the proceedings claiming contribution or indemnity and for damages in the tort of deceit. The claims against him were concerned with his alleged activity outside this jurisdiction, primarily before he became president and, in any event, not in his public capacity. The ineffective service involved documents being left with police officers at the security checkpoint at the Presidential Palace and with an official at the security desk at the Office of the President. The process server sought to serve the president personally at both addresses but was not permitted access to him. Good service occurred in April 2023 through the Mozambique courts.

[Prinvest Shipbuilding SAL \(Holding\) and others v Nyusi \[2024\] EWCA Civ 184, 29 February 2024](#)

Arbitration – Enforcement

The Commercial Court has set aside an order giving leave to enforce a Kuwaiti arbitration award as a judgment under section 66 Arbitration Act 1996. The order was made without notice and then purportedly served on the defendants. When they failed to challenge it, the claimants froze funds and sought to enforce the order as judgment creditor. The defendants then sought to set aside registration of the award on the basis that it had not been served on them and that the arbitration agreement and award did not exist. The court granted this application as the evidence indicated that the award and the related Kuwaiti judgment were fabrications. In particular, significant sections of the award had clearly been taken from an earlier judgment by Mr Justice Picken, the award and judgment did not comply with basic requirements of Kuwaiti law and none of the alleged documents from the arbitration had been produced.

[Contax Partners Inc BVI v Kuwait Finance House \(KFH-Kuwait\) \[2024\] EWHC 436 \(Comm\), 29 February 2024](#)

Duty of Good Faith

The Chancery Court has considered the terms of an obligation in a shareholders' agreement between the company and the investors to "*work together in good faith towards an Exit no later than 31 December*" and to "*give good faith consideration to any opportunities for an Exit*". No such exit was achieved and the company remains unsold. The petitioner alleged that the company, through the chairman of the board of directors Mr Costa, did not work in good faith and was in breach of the agreement. The action brought was a petition under section 994 of the Companies Act 2006 that the conduct had resulted in unfair prejudice to the petitioner. The court held that there had been a breach of the agreement. The conduct of the sale was entrusted exclusively to Mr Costa and he did not conduct the process in accordance with the obligations of the company. The court ordered the company to buy out the petitioner's shares.

[Saxon Woods Investments Ltd v Costa \[2024\] EWHC 387 \(Ch\), 22 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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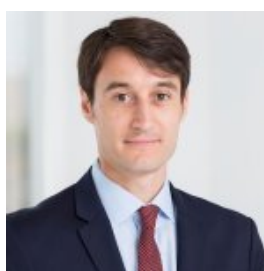
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