

## COMMERCIAL DISPUTES WEEKLY – ISSUE 197

12 MARCH 2024 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"Not only is there nothing in the 2002 Act which positively supports Assethold's argument, there are, as I have said, strong and clear indicators that point the other way."

Assethold Limited v  
Eveline Road RTM Co  
Ltd

#### Landlord and Tenant

The Court of Appeal has upheld an earlier judicial decision as to what constitutes a "self-contained part of the building" for the purposes of section 72 of the Commonhold and Leasehold Reform Act 2002. The building (No. 36) was originally two terraced houses that had been converted into four flats. It shared a party wall with No. 38. The issue arose from the fact that various sections of the building could be described as 'self-contained' – the terrace as a whole, each individual original terraced house and No. 36. The court rejected the freeholder's argument that a right to manage company could only serve its claim notice in respect of the smallest part of the premises that satisfied the definition in section 72. There were indications in the 2002 Act that parliament had considered that premises which satisfied the definition could also contain smaller premises which satisfied the definition. The right to manage company was able to serve its notice and acquire the right to manage No. 36.

*Assethold Limited v Eveline Road RTM Co Ltd [2024] EWCA Civ 187, 4 March 2024*

## Aviation – Insolvency

The Commercial Court has provided retrospective permission for a counterclaim in relation to an aircraft leasing arrangement against a company in administration. A 2016 lease of a Boeing 747-400 came to an end in 2022 following the imposition of a flight ban on Russian-owned or controlled aircraft. The contractual cause of that termination is a matter of dispute. CLA claims for return of the security deposit and damages. The lessor claims indemnities and damages for loss of rent and failure to redeliver the aircraft's documents. CLA issued a claim in May 2022, but particulars of claim were only served in July 2023. In the meantime, CLA went into administration. The defence and counterclaim were served in September 2023. The court held that permission of the court or administrator was required under paragraph 43 of Schedule B1 to the Insolvency Act 1986 to bring the counterclaim against CLA because the counterclaim was not solely to raise a defence by way of set off. It had not been obtained at the time but would be granted retrospectively. The permission was subject to conditions that the defendant would (1) not execute or enforce any money judgment obtained in the counterclaim without the court's permission or the administrator's consent; and (2) provide its best current estimate of the market rent obtainable for the aircraft in the condition that it was when returned (including as to its documentation).

*CargoLogicAir Ltd v WWTAI AirOpCo 1 Bermuda Ltd [2024] EWHC 508 (Comm), 7 March 2024*

## Commodities – GAFTA Contract 100

The Commercial Court has determined the date of default by the claimant who was the buyer under a contract for the sale of soybean and rapeseed meal. The claimant was found to have been in repudiatory breach of the contract by refusing to take delivery of the cargo and the defendant seller had accepted that breach. The contract was subject to GAFTA Contract 100, clause 23 of which set out provisions to calculate damages in the event of default by one party and required clarity on the date of default. The court held that the date of default in a GAFTA default clause was the date of breach, even when the breach was anticipatory. The court disagreed with the GAFTA Board of Appeal and held that the advance payment was repayable to the claimant. It would be beyond the ordinary meaning of the words to find that the advance payment was not recoverable even if the seller suffered no loss through the buyer's default.

*Ayhan Sezer Yag Ve Gida Endustrisi Ticaret Ltd Sirket v Agroinvest SA [2024] EWHC 479 (Comm), 5 March 2024*

## Real Estate

The Chancery Court has upheld the decision of a Master that upon the true construction of a covenant in a transfer of land, the respondents were not prevented from replacing their existing house pursuant to the grant of planning permission. The covenant provided that: "...the Transferor for himself and his successors in title to benefit [Barnwood] and to bind [the Lodge] hereby covenants with the Transferee that no additional buildings whatsoever shall at any time be erected on [the Lodge]". It came before the court as a Part 8 claim seeking relief under section 84(2) of the Law of Property Act 1925, which gives the court power to make a declaration as to the effect of restrictions on land. The judge said that it was a matter of the natural and ordinary meaning of the words bearing in mind the context of the grant of the covenant.

*Reeve v McDonagh and another [2024] EWHC 439 (Ch), 1 March 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:

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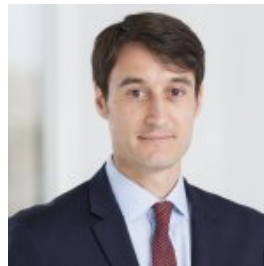
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