COMMERCIAL DISPUTES WEEKLY – ISSUE 198

19 MARCH 2024 • ARTICLE

BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "...the parties would have had to spell this result out much more clearly than they have in this contract to lead to a result which I would regards as commercially unlikely."
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> Saudi Arabian Airlines Corporation v Sprite Aviation No. 6 DAC

Aviation – Leasing

The Commercial Court has concluded that a clause in an aircraft lease that required the lessor to reimburse the lessee for costs incurred in maintaining the aircraft was not subject to a condition that the lessee provide invoices within a certain time period. The lessee was required to provide invoices and other evidence of the costs incurred before they were entitled to be reimbursed for those costs. But the time for doing that was not "of the essence" and so any delay in providing the invoices did not mean that the lessee had lost the right to reimbursement forever and did not give the lessor a right to terminate the contract for breach of a condition. In any event, even if breach of the clause did give rise to a right to terminate, the lessor had not terminated the contract. Having given its views on the preliminary issue, the court held that the matter must go to trial as expert evidence as to market practice was required.

Saudi Arabian Airlines Corporation v Sprite Aviation No. 6 DAC [2024] EWHC 371 (Comm), 13 March 2024

Arbitration

In a long running dispute between the Czech Republic and Diag in relation to a contract to supply blood plasma products, the Commercial Court has considered various challenges brought by the Czech Republic against an award made in favour of Diag by a tribunal pursuant to an investment treaty. Some of the Czech Republic's jurisdictional challenges could have been raised in the arbitration but were not and so were precluded from being raised now by sections 31 and 73 of the Arbitration Act 1996 ("AA"). Other challenges under section 67 AA to the alleged lack of jurisdiction had been raised in the arbitration and so were allowed to proceed. A further challenge under section 68 AA was also allowed to proceed as there had been a serious irregularity when the tribunal failed to address an issue raised by the Czech Republic as to whether damages could be awarded in relation to rights that Diag had assigned.

The Czech Republic v Diag Human SE and another [2024] EWHC 503 (Comm), 8 March 2024

Aviation – CAA approvals

The charterer of an aircraft has been refused summary judgment on a claim that the lease of an aircraft never came into effect. The charterer had paid the security deposit for the 'wet lease' (including crew, maintenance and insurance) but tried to terminate the lease for force majeure or frustration when flights were suspended due to the Covid-19 pandemic. It relied on a clause which provided that "Agreement will come into force when Turkish and Romanian Civil Aviation Authorities' approvals obtained, as well Malta Civil Aviation Authority." The approvals had not been obtained. The court held that there was insufficient evidence to reach a conclusion on the correct interpretation of the lease. The court could not conduct a mini trial on a summary judgment application and further evidence in relation to the civil aviation authority regulations was required. The matter had to go to trial.

Fibula Air Travel SRL v Just-Us Air SRL [2024] EWHC (KB), 12 March 2024 (decision not publicly available)

Landlord and Tenant

The Chancery Division was asked to consider a judge's conclusion that resulted in the tenant being entitled to a new lease of the property. The lease was held by a company which had one shareholder (Mr Moaven) who was also the sole director. The flat was above a coffee shop which was leased to another company of which Mr Moaven was also sole director. He lived in the flat with his family and ran his business from there. The court upheld the judge's conclusion that the respondent company occupied the flat for the purposes or partly for the purposes of its business at the date of expiry of the contractual term of the respondent's lease of that property (satisfying section 23(1) of the Landlord and Tenant Act 1954 ("LTA")). Further the landlord had failed to prove its ground of opposition in para (g) of s 30(1) LTA and as a result the respondent was entitled to a new lease of the property under the LTA provisions for the renewal of business tenancies.

Royal Borough of Kensington & Chelsea v Mellcraft Ltd [2024] EWHC 539 (Ch), 11 March 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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