

COMMERCIAL DISPUTES WEEKLY – ISSUE 199

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The burden is on the owners to demonstrate that the parties' exchanges evince unequivocally an intention to be bound."

**Smit Salvage BV v
Luster Maritime SA, The
EVER GIVEN**

Maritime – Salvage

The Court of Appeal has upheld the conclusion of the lower court that no binding salvage contract had been concluded between the owners of the grounded vessel, the EVER GIVEN and Smit Salvage. The consequence was that Smit Salvage was entitled to make a claim for its salvage work in refloating the vessel and bringing it to a place of safety. The award could potentially be as much as the value of the salvaged ship, rather than limited to a contractually agreed sum. The parties had been in negotiations on a contract based on WRECKHIRE 2010 and although remuneration terms had been agreed, a number of other issues were not. Smit Salvage had made it clear that they were not happy to agree the contract without those terms being in place. As a result, the owners had not established that there had been an intention to be legally bound. It was not necessary for the parties to have used terms such as 'subject to contract' or 'subject details'.

Smit Salvage BV v Luster Maritime SA, The EVER GIVEN [2024] EWCA Civ 260, 19 March 2024

Aviation – Injunction

The Commercial Court has granted an injunction against an aircraft operator preventing them from using two aircraft and three engines where the leasing arrangements had ended. The lessor had terminated the leasing arrangements for non-payment of rent, but the operator had continued to use the aircraft, including for parts on other aircraft. The court held that there were significant sums owing from the operator which entitled the lessor to accelerate the full amounts. There was also evidence that the aircraft were being used inappropriately in a way that could lead to significant damage and damages would not be an adequate remedy. As a result, the court considered it appropriate to order that the operator stop using the aircraft and parts, pending a full hearing for an injunction requiring them to redeliver the aircraft.

TWC Aviation Capital Limited v SpiceJet Limited [2024] EWHC (Comm), 14 March 2024 (decision not publicly available)

Adjudication

In a dispute arising from a subcontract for the asbestos scaffolding package on the Battersea Power Station development, the Technology and Construction Court has upheld an adjudicator's true value decision on a payment notice. The decision involved consideration of the 'conclusive evidence' provision relating to the final payment notice and adjudication proceedings that are issued to prevent that conclusive evidence provision from taking effect. The subcontractor had failed to serve its referral in time for adjudication 11 and so that adjudication notice became a nullity and any related adjudication was bound to fail. However, the adjudication proceedings had nonetheless reached a conclusion as required by the contract, following service of an identical notice and an adjudicator's decision and had not been abandoned. The subcontractor had therefore challenged the final payment notice in time and it was subject to the adjudicator's decision.

Battersea Project Phase 2 Development Co Ltd v QFS Scaffolding Ltd [2024] EWHC 591 (TCC), 15 March 2024

Maritime – Charterparties

The Commercial Court held that when a head bareboat charter was terminated, the sub-bareboat charters also automatically terminated. The dispute related to two Ro-Ro ferries which were the subject of a series of back-to-back bareboat charters entered into by way of the financing of the acquisition of the vessels by the charterers from the owners (who also owned the yard where the vessels were built). A termination event occurred across all the charterparties when the charter guarantor ceased to hold 77.4% of shares in the subcharterer. The court rejected the defendants' assertion that owners' right to terminate was lost by effluxion of time or election. The charterers were ordered to redeliver the vessels to the owners. The court also rejected an application by the defendant charterers for relief from forfeiture as it would have required the court to impose new bareboat charters on the parties.

SY Roro 1 PTE Ltd and another v Onorato Armatori SRL and others [2024] EWHC 611 (Comm), 21 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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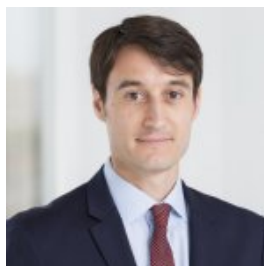
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