COMMERCIAL DISPUTES WEEKLY – ISSUE 200

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"This claim arises out of what might be described in layman's terms as the illegal parking of the Capesize bulk carrier 'WIN WIN'."

Delos Shipholding SA and others v Allianz Global Corporate and Specialty SE and others

200TH EDITION

Insurance – War Risks

The Commercial Court has concluded that a vessel detained for nearly a year by the Indonesian navy for anchoring just inside Indonesian waters was a constructive total loss under its war risks policy (American Institute Hull War Risks and Strikes Clauses dated 1 December 1977 and the Addendum thereto dated 1 April 1984). The area in which the ship anchored was a common waiting area for vessels and there had been no complaints or detentions by the Indonesian authorities previously. The master was prosecuted and negotiations revealed that an unofficial payment would be required to secure the vessel's release. The court rejected the various defences put forward by insurers. The loss was fortuitous because although the vessel had anchored in territorial waters without permission, detention was not an inevitable or ordinary consequence of such action. The detention was not sufficiently similar to an arrest under customs law for the exclusion to apply and the claimants were not in breach of their duty of sue and labour by instigating discussions with the navy to attempt to secure release of the vessel. Finally, there had been no material non-disclosure of criminal charges against a nominee director of the shipowning SPV. Those involved in the decision making and insurances had no knowledge of the charges to disclose and, in any event, the facts were not material to the risk. However, the claimants' claim for damages under section 13A, Insurance Act 2015 for late payment of the insurance proceeds failed.

Delos Shipholding SA and others v Allianz Global Corporate and Specialty SE and others, The WIN WIN [2024] EWHC 719 (Comm), 25 March 2024

Aviation – Termination

Aircraft operator Spicejet has been ordered to deliver up two aircraft and four engines that it leased from TWC. TWC terminated the leases for non-payment and requested redelivery. When they were not returned TWC obtained an interim injunction preventing Spicejet from using the engines and taking parts from the aircraft to use on other planes. Spicejet failed to comply with that order. On the return date, the Commercial Court made the order for delivery up. The judge acknowledged that the order would have a serious impact on SpiceJet's operations, but the balance of convenience was in favour of TWC, who would suffer harm if SpiceJet was allowed to continue using the aircraft and engines. He rejected undertakings offered by Spicejet. If matters were allowed to continue, there may be further damage to the aircraft and engines and a financial loss to TWC that SpiceJet was in no position to compensate. Further, such undertakings were valueless given Spicejet's wholesale breach of the injunction. However, the judge did allow eight weeks before the aircraft and engines could be removed from India so that if SpiceJet were able to respond appropriately, the position might be reversible.

TWC Aviation Capital Limited v Spicejet Limited [2024] EWHC 721 (Comm), 22 March 2024

Construction – Building Liability Orders

The Technology and Construction Court has held that a building liability order under section 130 of the Building Safety Act 2022 can be sought by one defendant against another defendant for contribution. The claim relates to a development at Love Lane in London with allegations that there are fire safety issues with the design and construction. The judge rejected an argument that the claim should be stayed until the main claim was resolved. Although the issues between the two claims may differ, they were likely to involve consideration of much of the same evidence. The two claims could therefore be cost-effectively case managed together.

The judgment was given *ex tempore* and is not publicly available yet but is discussed in this article.

Wilmott Dixon v Prater and others [2024] EWHC (TCC), 21 March 2024

Arbitration – Jurisdiction

The Commercial Court has concluded that an arbitration tribunal had no jurisdiction because there was no binding arbitration agreement. The dispute arose from a share purchase agreement ("SPA") pursuant to which the claimant agreed to sell certain shares to the defendant. The shares were transferred but the purchase price remained unpaid. The agreement was governed by English law and subject to LCIA arbitration. The sole arbitrator held that the SPA was not an authentic agreement, the defendant was not bound by the arbitration agreement and therefore the arbitrator had no jurisdiction over the dispute. The court considered the issue of jurisdiction afresh in response to the claimant's challenge under section 67 Arbitration Act 1996. It concluded that the arbitration agreement was not valid and binding because the claimant had not discharged its burden of proving on the balance of probabilities that there was a valid SPA. The relevant test was an objective one depending on what was communicated between the parties by words or conduct. The claimant had failed to prove his case.

Ganz v Petronz FZE [2024] EWHC 635 (Comm), 25 March 2024

Aviation – Jurisdiction

In a recent decision in the ongoing litigation between the lessors and insurers of aircraft trapped in Russia following the war in Ukraine and subsequent international sanctions, the English court has held that the claims can be dealt with in England. The Commercial Court has held there to be strong reasons to override Russian jurisdiction clauses and hear the claims brought by aircraft lessors against reinsurers in the English court.

For a more detailed discussion of the decision, please read our full article here.

Re Russian Aircraft Operator Policy Claims (Jurisdiction Applications), Zephyrus Capital Aviation Partners 1D Ltd v Fidelis Underwriting Ltd [2024] EWHC 734 (Comm), 28 March 2024

Landlord and Tenant

The Court of Appeal has interpreted the service charge provisions in long leases of properties on an estate comprising of 138 properties. A tenant objected to the flat rate management fee that had been charged for its four flats and which was substantially higher than that for other flats that were let to assured tenants. Information provided by the landlord indicated that the management fees were calculated by dividing part of its general corporate payroll costs and other overheads (such as office costs, rent/rates, telephone and IT costs) among the 3,058 properties in its national portfolio that it put in the same category as the flats. The court held that it was not appropriate to calculate the service charge in the lease by reference to properties not on the relevant estate. It also rejected the argument that the clause required an equal portion to be charged to each property, although that might be simpler. Determining a "proportionate part" of the management fees to be paid by individual properties may involve taking account of the nature of the individual services and the identity of the individual properties benefitting from those services.

Howe Properties (NE) Ltd v Accent Housing Ltd [2024] EWCA Civ 297, 27 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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