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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "The SIA is a complete code and now the sole source of the English law of state immunity."
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> General Dynamics United Kingdom Limited v The State of Libya

Arbitration – State Immunity

The Commercial Court has rejected an argument of state immunity to prevent a final charging order being made over a property owned by the state of Libya. The dispute arose out of a contract for General Dynamics to supply Libya with a communications system and General Dynamics obtained an arbitration award for £16m in its favour. An order was made for the award to be enforced in England and Wales as a judgment. Libya defended the application for a final charging order over its property by asserting immunity from execution by operation of section 13(2)(b) of the State Immunity Act 1978. The court held that Libya had waived that immunity in the contractual disputes provision which said that "*Both parties agree that the decision of the arbitration panel shall be final, binding and wholly enforceable".* It was the parties' intention to enable an arbitration award to be enforceable in the same way as such an award would be enforced in a commercial agreement between non-state actors.

General Dynamics United Kingdom Limited v The State of Libya [2024] EWHC 472 (Comm), 22 March 2024

Jurisdiction

The Chancery Court held that the English court was not the appropriate forum for a dispute as to monies due under loan agreements. The defendants were based in Malawi and licensed by the Reserve Bank of Malawi to operate a foreign exchange bureau. The claimant had been resident in Malawi until 2005 but still had funds in Malawi. Proceedings were ongoing in Malawi that materially overlapped with the English claim. The claimant offered to discontinue the Malawi proceedings if that would enable him to continue the English proceedings. The court held that the various factors pointed very powerfully towards Malawi being the forum with which the dispute had the most real and substantial connection. Any significance attaching to the location where the claimant allegedly suffered loss was dwarfed by the other countervailing factors, which point to the claim having the more real and substantial connection to Malawi, including the payments having been made in connection with an illicit banking arrangement made in Malawi in order to avoid financial controls there. There were no features of Malawi law and procedure which meant that the claimant would not obtain substantial justice there.

Mussa v Issa [2024] EWHC 763 (Ch), 4 April 2024

Adjudication

The Technology and Construction Court ("TCC") has decided that two adjudication decisions should be enforced and set off against each other. The dispute arose after termination of a construction management contract. The construction manager commenced adjudication for sums owing and alleged repudiatory breach and wrongful termination by the employer. The employer unsuccessfully counterclaimed for damages. The adjudicator awarded £170,000 in the manager's favour. The employer referred its damages claim to adjudication and a different adjudicator ordered that the manager pay the employer £190,000. The TCC held that the earlier adjudicator had made an error in assuming that because the termination issue fell in the manager's favour, that disposed of the counterclaim. The earlier adjudication had not decided the counterclaim's merits and so the later adjudicator had jurisdiction over the issue. Both awards should be enforced and set off against each other.

Wordsworth Construction Management Ltd v Inivos Ltd (t/a Health Spaces) [2024] EWHC 617 (TCC), 13 February 2024

Landlord and Tenant

The Upper Tribunal has been asked to consider further issues in this ongoing dispute as to the appropriate service charges to be paid by the tenants over the last few years. It overturned a decision of the First Tier Tribunal ("FTT") and held that the tenants were not to be taken to have admitted the final service charges from 2012 to 2016 simply by having made payment of interim charges for those years, in circumstances when the final charges have not yet been demanded. Further, the tenants were not estopped from challenging calculation of the final charges on an estate-wide (rather than block) basis. It was now for the FTT to decide the amount of final service charges to be paid.

G&A Gorrara Ltd v Kenilworth Court Block E RTM Co Ltd [2024] UKUT 81 (LC), 8 April 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:

Robert Fidoe	Ryland Ash
Charles Buss	Nikki Chu
Dev Desai	Sarah Ellington
Andrew Hutcheon	Alexis Martinez
Theresa Mohammed	Tim Murray
Mike Phillips	Rebecca Williams

KEY CONTACTS

JOANNE CHAMPKINS
KNOWLEDGE COUNSEL • LONDON

T: +44 203 036 9859

jchampkins@wfw.com

ROBERT FIDOE
PARTNER • LONDON

T: +44 20 7863 8919

rfidoe@wfw.com

REBECCA WILLIAMS
PARTNER • LONDON

T: +44 203 036 9805

rwilliams@wfw.com