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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "It is not unknown in the insurance market, therefore, for an initially binding contract to be superseded by a later contract potentially containing different terms."
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> Tyson International Co Ltd v Partner Reinsurance Europe SE

Jurisdiction – Contract Interpretation

The Court of Appeal has upheld a lower court decision that English court proceedings should be stayed in favour of arbitration. The parties entered into two contracts of reinsurance a few days apart. The first provided for English law and jurisdiction (the Market Reform Contract), the second for New York law and arbitration (Market Uniform Reinsurance Agreement). Otherwise, the contracts were largely the same. When Tyson made a claim, the reinsurer purported to avoid the policy for understatement of the value of covered facilities. Tyson commenced proceedings in the UK Commercial Court. The reinsurer commenced arbitration in New York the next day. The Court of Appeal held that as an objective assessment, the parties had intended that the second contract supersede the first agreement. There was no suggestion that the second agreement was simply an administrative process and it was not a certificate summarising the cover. It contained an entire agreement clause which specified that all prior agreements were superseded. In previous years, the policy had contained an endorsement that the policy would be subject to the terms of the first agreement. The outcome was not contrary to business common sense and the stay of the English proceedings pursuant to section 9 Arbitration Act 1996 was upheld.

Tyson International Co Ltd v Partner Reinsurance Europe SE [2024] EWCA Civ 363, 15 April 2024

Enforcement – Transfer at Undervalue

The Commercial Court has ordered NIOC to transfer ownership of a London property to CGC in part payment of an outstanding debt. NIOC had been found to owe CGC approx. US$2.6 bn following a dispute under a long term gas sale and purchase contract and arbitration of that dispute. NIOC had not paid any of the amount outstanding. CGC sought to enforce that award against a property in central London that was owned by NIOC but had been transferred to a retirement fund for employees in the Iranian oil and gas industry (the "Fund"). The court held that NIOC did own the property and had transferred it at an undervalue to the Fund in an attempt to avoid enforcement of the award against the property (as per section 423 Insolvency Act 1986). The transfer had not been for money or anything which had a monetary value and NIOC/the Fund had not justified that undervalue by proving that NIOC was subject to a trust in favour of the Fund. The court had the power to make such order as it thinks fit for the purpose of restoring the position to what it would have been if the transaction had not been entered into and protecting the interest of persons who were victims of the transaction. The court concluded that the appropriate order was that the Fund transfer the property to CGC.

Crescent Gas Corporation Limited v National Iranian Oil Company and others [2024] EWHC 835 (Comm), 15 April 2024

Construction

The Technology and Construction Court has found that a structural engineer was liable for defective construction work where he took on a monitoring and reporting role on the project. The project was renovation work on a ground floor flat, with an extension and basement conversion. The claimant did not employ an architect. MGA and Mr Gustyn were engaged as structural engineer, to prepare plans for planning permission and as party wall surveyor. MGA did not issue an engagement letter specifying work scope or fees. The claimant was called away for several months and Mr Gustyn visited the site and communicated with the claimant as to progress. The project was not completed to specification and substantial remedial work was required. The court held that MGA had agreed to take on a wider service of monitoring and reporting on progress. Both the builders and Mr Gustyn were held to be in breach of duty for, respectively, not constructing to specification and not ensuring it was constructed to specification. They were therefore liable not only for the costs of the remedial work but the higher interest rates the claimant had to pay to borrow money to fund the remedial work.

Martell v Roszkowski and others [2024] EWHC 840 (TCC), 16 April 2024

Company – Transfer at Undervalue

The Chancery Court held that the transfer of a company from one holding company ("AJHL") to another ("THL") was a transfer at an undervalue and prejudiced a minority shareholder. The claimant had a 47.5% shareholding in AJHL but was given no shares in THL. The court held that because the company had been transferred for a value of £150,000 when it was actually worth £2.9m, this was a transfer at a substantial undervalue. The company transferred was AJHL's main asset and so the transfer reduced the value of the company by £2.75m. The transfer was clearly prejudicial to the claimant and resulted from the conduct of the company's affairs by the director who was also a shareholder (within section 994(1) Companies Act 2006). The claimant's protests against the transfer were ignored and he was excluded from any involvement in AJHL's affairs. The director was also in breach of fiduciary and statutory director's duties. The director and non-executive chairman of the company were found liable to the claimant and ordered to pay the claimant the value of his shareholding (by the court exercising its broad discretion under section 996 Companies Act 2006).

Simpson v Diamandis and others [2024] EWHC 850 (Ch), 15 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:

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