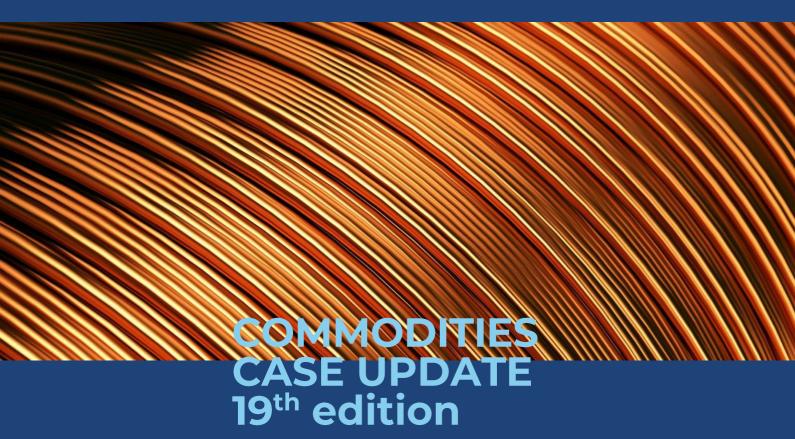
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SEPTEMBER 2025



HFW COMMODITIES CASE UPDATE SEPTEMBER 2025

We are delighted to present the nineteenth edition of the Commodities Case Update, with a summary of key recent cases relevant to the commodities sector.

With a market leading commodities team, we have over 100 lawyers who provide a full service internationally. The group is led by a team of over 25 partners, who are based in all our offices around the world, including in the major trading hubs of London, Paris, Geneva, Dubai, Singapore, Hong Kong and Sydney. If you would be interested in receiving a bespoke training session about the cases referred to in this update or any other cases of interest, please contact your usual contact at HFW or the authors of this update, Andrew Williams and Damian Honey. As well as being of general interest for those working in commodities, our intention is that for lawyers working in-house, a bespoke training session tailored to your specific needs will allow you to meet the change in CPD requirements introduced by the SRA. It will allow you to demonstrate that you have reflected on and identified your L&D needs and met these. Please do contact us if this would be of interest.



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Mornington 2000 LLP (t/a Sterilab Services) & Anor v The Secretary of State for Health and Social Care [2025] EWHC 540 (TCC)

Court: Technology and Construction Court (KBD)

Date: 11 March 2025

Summary

The Court declared that an audit report and associated documents commissioned during settlement negotiations were not protected by without prejudice privilege and ordered them to be disclosed. They did not fall within the public policy justification for the without prejudice rule and the parties had neither expressly nor impliedly agreed that they would be covered by without prejudice privilege.

Facts

In May 2021, the parties entered a dynamic purchasing system agreement for the supply of Covid-19 lateral flow testing devices (**Tests**) by the Claimants. The Defendant placed an order for 68.4 million Tests, but subsequently rejected them after commissioning a standard BSCI audit of the Chinese factory at which the Tests were produced that resulted in a 'failure' rating, alleging "breaches of labour law, health and safety and worker payment obligations". Prior to the Defendant's rejection of the Tests, the Claimants had commissioned another BSCI audit to evaluate the progress made at the factory site; however, the findings of this report were not accepted by the Defendant.

The parties had been engaged in open discussions concerning the need for a further audit to be conducted, including discussions as to the required scope of that audit. However, following a mediation in January 2022, without prejudice negotiations pertaining to possible solutions began, including the discussion of a further audit. In a series of emails marked "Without Prejudice", the parties discussed the scope, purpose and date of the proposed audit. During these without prejudice negotiations, the Defendant commissioned an audit report by Intertek (the **Report**).

The Defendant subsequently refused to disclose the Report, claiming that it had been "produced as part of the confidential and without prejudice process and any documents disclosed in that process, including the Intertek audit report, are covered by without prejudice privilege". The Claimants made an application for a declaration that the Report and associated documents were not protected by without prejudice privilege.

Findings

The Court ruled in the Claimants' favour, declaring that the Report and associated documents were not protected by without prejudice privilege and ordering that they must be disclosed.

The Court rejected the Defendant's contention that the Report fell within the public policy justification for the without prejudice rule. It noted that the underlying objective of the without prejudice rule is centred upon the maintenance of parties' ability to "speak freely" and determined that the Report was not automatically protected simply by virtue of the fact that it was discussed during without prejudice negotiations. The fact that the Report was nether a statement or offer made in the negotiations, nor a record of the discussions themselves, but rather an independent report commissioned from a third party was informative.

The Defendant accepted that the parties had not reached an express agreement that the Report would be covered by without prejudice privilege but contended that an implicit agreement arose to that effect when Intertek was granted access to the factory. This argument was also rejected by the Court, which found that there was no evidence of an implied agreement. The Court stressed the fact that the discussion of the Report during without prejudice negotiations did not automatically amount to an implicit agreement that it would itself be protected by without prejudice privilege.

HFW Comment

The intention behind the public policy justification for without prejudice privilege is to safeguard the ability of parties to "speak freely" during negotiations. The mere context of without prejudice negotiations does not automatically extend privilege to independently created documents. The best way to ensure that without prejudice privilege extends to material such as third-party reports is to expressly agree it between the parties.

Destin Trading Inc v Saipem SA [2025] EWHC 668 (Ch)

Court: Chancery Division
Date: 24 March 2025

Summary

The Court refused an application by Saipem SA (**Saipem**) for a stay of proceedings brought by Destin Trading Inc (**Destin Trading**) under section 9 of the Arbitration Act 1996 (**the 1996 Act**). It held that an exclusive jurisdiction clause in favour of the English courts contained in a settlement agreement between the parties overrode an earlier arbitration agreement.

Facts

In 2012, Destin Trading and Saipem signed three Frame Agreements for marine vessels and services for Saipem's offshore oil projects, incorporating Saipem's general terms and conditions (GTCs) which provided for disputes to be resolved by ICC arbitration in London (Former Arbitration Clause). A dispute over an alleged shortfall in payments made by Saipem to Destin arose, leading to a full and final Settlement Agreement in November 2013, which terminated the Frame Agreements and granted a mutual release of claims. Clause 10 of the Settlement Agreement provided for the Courts of England and Wales to have exclusive jurisdiction to settle "any dispute arising out of or in connection with the [Settlement Agreement]" (Latter Jurisdiction Clause). The Settlement Agreement also included an entire agreement clause ("...this [Settlement Agreement] constitutes the entire agreement between the Parties with respect to the subject matter of [the Settlement Agreement]"). Destin sought to rescind the Settlement Agreement due to Saipem's alleged fraudulent or negligent misrepresentation and demanded, among other things, payment of pre-settlement unpaid invoices. In response, Saipem claimed that the monetary claims stemmed from the Frame Agreements such that the Former Arbitration Clause should apply. Destin argued that the Latter Jurisdiction Clause encompassed its entire claim, superseding earlier arbitration agreements.

Findings

The Court confirmed the principle that a dispute resolution clause in a subsequent settlement agreement will generally supersede an earlier dispute resolution clause. It rejected Saipem's argument, holding that the Latter Jurisdiction Clause was "exclusive" and should be construed as excluding, rather than sitting alongside, any other dispute resolution agreement between the parties. Further, the entire agreement clause demonstrated that the parties had in mind that the Latter Jurisdiction Clause would include disputes as to the parties' rights under the prior contractual arrangements because such rights were the subject matter of the Settlement Agreement. The Latter Jurisdiction Clause also contemplated the "widest possible scope", covering "any dispute" arising out of and in connection with the Settlement Agreement, including the disputes concerning unpaid invoices pursuant to the Frame Agreements at the time of termination. Further, the Settlement Agreement terminated the Frame Agreements, making them null and void. This made it clear that the parties did not intend the arbitration agreement in the GTCs to survive.

The Court also rejected Saipem's proposed two-stage test for deciding whether matters before the court are to be referred to arbitration. However, even if the two-stage test were applied, the application would still fail at the first stage (identifying the substance of the dispute between the parties) because the nature of the monetary claims were, in substance, claims for damages for deceit arising out of misrepresentations inducing the Settlement Agreement. Therefore, the legal sources of the claims were the Settlement Agreement and the general law of deceit, not the prior agreements. As a result, the claims were not matters that must be referred to arbitration.

HFW Comment

This is a reminder to parties always to choose an appropriate form of dispute resolution by making express provision for it but also to be mindful of the effect of subsequent agreements on pre-existing contracts.

MSH Ltd v HCS Ltd [2025] EWHC 815 (Comm)

Court: Commercial Court

Date: 7 April 2025

Summary

The Commercial Court dismissed an application made under s.67 of the Arbitration Act 1996 that the defendant was an undisclosed principal entitled to bring a claim under the contract and the arbitration tribunal therefore had jurisdiction to hear and decide the defendant's claim.

Facts

MSH Ltd as sellers entered into a contract with CTW Ltd as named buyers for the sale and purchase of Colombian nut coke dated 28 September 2020 (the **Contract**). At Clause 11, the Contract identified HCS Ltd as the party providing the letter of credit necessary to purchase the goods.

A dispute arose and HCS Ltd subsequently commenced arbitration proceedings against MSH Ltd, claiming that it was a party to the Contract as an undisclosed principal for CTW Ltd. A majority award was issued on 5 April 2024 (the **Award**) in favour of HCS Ltd.

MSH Ltd brought an application under s.67 of the Arbitration Act 1996 challenging the Award for lack of substantive jurisdiction. It argued that HCS Ltd was not entitled to enforce the Contract as an undisclosed principal and therefore, the arbitral tribunal did not have jurisdiction to determine the dispute.

The Court was asked to consider whether HCS Ltd could show that CTW Ltd intended to enter into the Contract on HCS Ltd's behalf and had authority to do so at the relevant time. The Court was also asked to determine whether the terms of the Contract precluded HCS Ltd from enforcing the Contract as an undisclosed principal.

Findings

The Court found in favour of HCS Ltd. It had been a customer of CTW Ltd since 2018 and CTW Ltd's business strategy was to enter into contracts as the agent of HCS Ltd with HCS Ltd providing the necessary financing. Upon a review of the communications between the parties, the Court found that CTW Ltd intended to and was specifically authorised by HCS Ltd to act as its agent in entering into the Contract.

MSH Ltd submitted that the parties had impliedly excluded the undisclosed principal doctrine and relied on Clause 11, an entire agreement clause, a confidentiality clause and a clause limiting assignment in support of its submissions. The Court found that Clause 11, which identified HCS Ltd as the party providing the means of discharging CTW Ltd's key obligation under the Contract would make HCS Ltd a "more likely candidate for an undisclosed principal". Additionally, a clause limiting assignment and a boilerplate entire agreement clause were unlikely to lead to an implied exclusion of the undisclosed principal doctrine.

HFW Comment

This judgment provides a helpful summary of the undisclosed principal doctrine and should serve as a reminder to parties wishing to avoid dealing with undisclosed entities to expressly exclude the operation of the doctrine in their contracts.

Nigeria LNG Ltd v Taleveras Petroleum Trading DMCC [2025] EWCA Civ 457

Court: Court of Appeal

Date: 16 April 2025

Summary

The Court of Appeal gave guidance on the interpretation of arbitration awards in this judgment, holding that the decision in and the effect of the dispositive section of an award is not undermined by any reasoning contained elsewhere in the award.

Facts

In a final UNCITRAL arbitration award dated 30 January 2023 (the **Award**), the appellant, Nigeria LNG Ltd (**NLNG**) was held liable for failing to supply 19 FOB Cargoes of natural gas to the respondent, Taleveras Petroleum Trading DMCC (**Taleveras**), under the terms of a Master FOB Sales Agreement (**MSA**) and spot confirmation notice (**CN**). NLNG was ordered to pay damages to Taleveras for loss of profits and to indemnify Taleveras in respect of amounts it was found liable to pay in separate arbitrations relating to on-sale arrangements with Vitol SA (**Vitol**) and Glencore Energy UK Limited.

On 1 December 2023, the tribunal in the Vitol arbitration published its final award in favour of Vitol. Taleveras sent a copy of the Vitol award to NLNG, demanding payment of the sums awarded to Vitol. NLNG commenced proceedings in the Commercial Court, disputing its liability to indemnify Taleveras on the ground that it was a condition precedent of the indemnity that the tribunal in the Vitol arbitration should have endorsed its award with the applicability of the indemnity. This was based on paragraph 607 of the Award, contained in the "Analysis" section, which stated that "The tribunal further orders that ... any eventual enforcement of this indemnity be subject to the endorsement of those tribunals as to the applicability in the context of any award". Taleveras denied that this endorsement was necessary as the final section of the Award, headed "Award", did not impose this condition. The Commercial Court found in favour of Taleveras. NLNG then appealed.

Findings

The Court of Appeal dismissed the appeal, largely for the same reasons as the Commercial Court. The Court found that the dispositive section of the Award contained carefully drafted orders and was designed to serve the same purpose as a court order following a reasoned judgment. The section was titled "Award" and stated that "For the reasons set out above, the Tribunal hereby DECIDES AND AWARDS as follows ...". It was held that this was intended to be a self-contained and comprehensive statement of the tribunal's decision. The Court acknowledged that it was perhaps unfortunate that the Tribunal used the words "further orders" in paragraph 607 but held that this wording did not undermine the structure of the Award and the meaning and effect of the dispositive section. The final section did not cross-refer to this earlier reasoning or the indemnity and gave no suggestion that the reasoning sections of the Award should add to the dispositive section.

HFW Comment

This was one of many claims for non-delivery under LNG sale contracts that arose out of the gas price spike following the Russian invasion of Ukraine in February 2022. It is a reminder to buyers and sellers to carefully negotiate MSAs and CNs in order to clearly set out the parties' rights and obligations in the event of non-delivery. This decision illustrates the practical and commercial approach taken by English courts to interpreting arbitration awards. It also highlights the potential for disputes arising out of ambiguities and the importance of clearly structured awards.

MSC Mediterranean Shipping Company SA & Ors v Interglobal Technologies Ltd & Ors [2025] EWHC 1464 (Comm)

Court: Commercial Court

Date: 1 May 2025

Summary

The Commercial Court decided to continue an anti-suit injunction in order to restrain foreign proceedings commenced in breach of an exclusive jurisdiction clause in bills of lading. Additionally, the Court found that the Claimant had incorporated its standard terms into the bills of lading and the Defendant was bound by them as the consignee.

Facts

The dispute related to contracts for the carriage of containers by MSC (the **Claimant**) evidenced in four bills of lading (the **bills**) which contained information on the front and the Claimant's detailed terms and conditions on the reverse. Interglobal Technology Limited's (the **Defendant**) was the named consignee on the bills. Following delivery of the containers by the Claimant, the Defendant brought a claim against it in Nigeria for breach of contract under the bills and arrested an MSC vessel in Nigeria as security. The Claimant sought and obtained an interim anti-suit injunction (ASI) from the English courts at an exparte hearing, on the basis that each of the bills contained an exclusive jurisdiction clause in favour of the English courts.

The Claimant applied to continue the ASI and the Defendant sought to discharge it on several grounds:

- that it was not bound by the terms of the bills (including the exclusive jurisdiction clauses);
- that the jurisdiction clauses were "void" as a consequence of Section 20 of the Nigerian Admiralty Jurisdiction Act 1991;
- that the Claimant had submitted to the jurisdiction of the Nigerian Courts; and
- that the Claimant had failed to comply with its duty of full and frank disclosure at the ex parte hearing.

Findings

The Commercial Court held that the bills had validly incorporated the Claimant's terms and conditions. Citing the Carriage of Goods by Sea Act 1992 (COGSA 1992), the Court noted there was no requirement for the Defendant to receive notice of the terms of the original contract, and that in any case, the reference to the standard terms provided through MSC's website, printed on the bills of lading, would constitute 'reasonable notice' even if it were necessary. Furthermore, as the Defendant 'took delivery from the carrier of any of the goods to which the document relates' for the purposes of s.3(1)(a) of COGSA 1992, it was subject to the rights and liabilities of the consignee.

As to the Defendant's other arguments, based on the exclusive jurisdiction clause in the bills, English conflicts of law principles applied. The Claimant had not submitted to the jurisdiction of the Nigerian courts and the allegation that it had failed to comply with its duty of full and frank disclosure was vague and did not succeed. Having found that the Defendant was bound by (and in breach of) the exclusive jurisdiction clause, the Court continued the ASI.

HFW Comment

This is a reminder to consignees of the rights and liabilities to which they are subject as a result of the terms incorporated into a bill of lading, and of what constitutes sufficient notice of those terms. Further, it demonstrates the willingness of the English Court to provide anti-suit relief in instances where an exclusive jurisdiction clause has been breached.

Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd [2025] UKSC 18

Court: Supreme Court

Date: 7 May 2025

Summary

In a unanimous landmark judgment handed down in May 2025, the UK Supreme Court confirmed that liability for fraudulent trading under s.213 of the Insolvency Act 1986 is not simply confined to those involved in the management or control of the fraudulent company (such as directors and shadow directors) but extends to any third party who knowingly participates in or facilitates fraudulent business.

Facts

The facts involve a complex VAT fraud scheme known as "missing trader intra-community fraud" (MTIC Fraud), on the trading of EU carbon credits. Several companies including Bilta (UK) Ltd, Weston Trading UK Ltd, Nathaneal Eurl Ltd, Vehement Solutions Ltd, and Inline Trading Ltd (Claimant Companies) were used to obscure transactions between defaulting traders and final buyers. The defaulting trader imported VAT-free carbon credits, sold them on through the Claimant Companies with VAT added but without paying the VAT to HMRC. The Claimant Companies were subsequently left to go insolvent, leaving large outstanding tax liabilities.

Each of the Claimant Companies entered liquidation between November 2009 and June 2015 and their liquidators issued a claim against Tradition Financial Services Ltd (**Tradition**) for: (i) dishonest assistance of the companies' directors in breach of their fiduciary duties; and (ii) knowingly participating in the fraudulent trading under s.213 Insolvency Act 1986 (**s.213**). The liquidators claimed that Tradition knowingly participated in the fraud through introductions of the Claimant Companies and the arrangement of spot-deals. Though Tradition did not own the credits or control the Claimant Companies, it offered services to effect quick transactions between buyers and sellers with limited or no KYC checks.

Tradition contended that s.213 only applies to persons with managerial or controlling roles within the company which had perpetrated the fraud (e.g. directors and shadow directors), such that s.213 did not apply in this case as Tradition had merely acted as a broker. The Claimants, however, argued that s.213 applies to anyone, so long as they knowingly assisted or contributed to the carrying on by the company of any business which has been carried on with the intent to defraud creditors. The entire issue, therefore, fell on the interpretation of s.213.

Findings

The Supreme Court disregarded the narrow interpretation of s.213 put forward by Tradition and instead cast the net to include third parties beyond those directly exercising management of the company. It was held that any party found to have knowingly participated in the fraudulent business of a company could face personal liability under s.213 in the event of the company's insolvency. This interpretation firmly places brokers, trading platforms, intermediaries and other third parties within the scope of liability.

In reaching its conclusion, the Supreme Court upheld established principles of statutory interpretation in assessing s.213. It noted that unlike neighbouring provisions (e.g. ss.212–217), which explicitly refer to directors or managers, s.213 refers broadly to "any persons", indicating Parliament did not intend to limit its scope to those in control of the company.

The Court found no legislative history contradicting this plain reading and cited *In re Gerald Cooper Chemicals Ltd [1978] Ch 262* to reinforce that those knowingly involved in fraudulent business cannot escape liability. However, it clarified that active participation is required and that mere omissions by way of failure to advise or passive association with the fraudulent business would not be sufficient to attract liability under s.213.

HFW Comment

The Supreme Court's ruling is a welcome one for creditors and victims of financial fraud. Where a party knows of fraud and participates in it, they cannot absolve themselves from liability simply by asserting that they were an outsider. So long as they knowingly participated in the fraud, they will potentially be subject to liability and may have to make a personal contribution to the company's assets in the event of the company becoming insolvent. The decision is not only relevant to liquidators (who are the only parties entitled to bring applications under s.213) but also to creditors, who can take some comfort from the Supreme Court's willingness to confirm the wider ambit of those who might be held liable for fraudulent trading.

Logix Aero Ireland Limited v Siam Aero Repair Company Limited [2025] EWHC 1283

Court: Commercial Court

Date: 23 May 2025

Summary

A sale and purchase agreement was the subject of a cyberfraud in which a third party impersonated both buyer and seller, diverting payment to its own account. The buyer made a claim alleging the sale and purchase agreement was binding on the parties and claiming the fraudster had acted on apparent authority. Additionally, the buyer claimed loss and damages for breach of a confidentiality clause contained within a letter of intent agreed between the parties. The High Court struck out the claim on the grounds that it had no realistic prospect of success and awarded damages on an indemnity basis, finding that the claim skirted around allegations of fraud committed by the seller.

Facts

Logix Aero Ireland Ltd (**Logix**) entered negotiations with Siam Aero Repair Co Ltd (**Siam Aero**) for the purchase, repair, sale, and lease of two aircraft engines. These negotiations were formalised through Letters of Intent (**LOIs**), pending execution of formal Sale and Purchase Agreements (**SPAs**). The LOIs included a confidentiality clause, agreeing that commercially sensitive information must be kept on a confidential basis and could not be disclosed to any third party. Negotiations were conducted almost entirely via email.

At an unknown point, a fraudster accessed the email correspondence, intercepting, altering, and relaying messages between the parties. Both Logix and Siam Aero believed they were communicating directly with each other, unaware of the fraudster's involvement. Forensic IT reports from both parties found no evidence of either party's IT systems having been hacked or compromised. The SPAs were formalised and signed, with Logix paying the contract price to a bank account it believed to be Siam Aero's. The fraud was only discovered when Siam Aero contacted Logix, to inform them the payment had not been paid.

Logix obtained interim relief and then brought a claim against Siam Aero, seeking a declaration that the SPAs were binding, damages for breach of the confidentiality clause and/or delivery of the engines. It alleged that Siam Aero had breached the LOI confidentiality clause by disclosing draft and signed SPAs, invoices, and ownership details to the fraudster. Alternatively, it argued that the Siam Aero granted the fraudster apparent authority, making the SPAs binding.

Siam Aero applied to strike out the claim, arguing it had no real prospect of success and constituted an abuse of process aimed at preserving interim relief. It contended the disclosed information was not commercially sensitive and had already been shared in prior communications. Siam Aero also denied granting apparent authority, asserting that no relationship could exist between it and an unknown fraudster. Additionally, it sought indemnity costs, claiming Logix's fraud allegations lacked evidential basis.

Findings

The Court granted Siam Aero's application to strike out Logix's claim, finding it was bound to fail on the issue of causation. The financial loss suffered by Logix resulted from the actions of a fraudster. Fundamentally, the fraud required the participation of both parties, not just Siam Aero's, nor was there any intentional or negligent wrongdoing on Siam Aero's part. The SPAs were not binding; as neither party was aware of the fraudster's existence, there could be no representation, express or implied, by Siam Aero that could give rise to a legal relationship or bind Siam Aero to the fraudster's actions. The Court concluded that no apparent authority had been created as both parties believed they were communicating with the other. The Court did not give a determination on the interpretation of the confidentiality clause, stating both parties' interpretations were plausible, however, as the claim was struck out on the basis of causation it was unnecessary to consider. Finally, the Court awarded costs on an indemnity basis. It criticised Logix's original pleadings as ambiguous and inappropriate, particularly because they implied fraudulent conduct without a proper evidential basis.

HFW Comment

Cyber fraud is a growing threat in the commodities sector and we are seeing an increase in related disputes. This judgment demonstrates that English Courts will apply existing legal principles when determining liability. The award of indemnity costs is a salutary reminder that allegations of fraud must be pleaded with precision and supported by clear evidence.

Palmali Shipping SA v Litasco SA [2025] EWHC 1149 (Comm)

Court: Commercial Court

Date: 23 May 2025

Summary

This dispute focused on the existence and validity of a contract of affreightment, whether the contract constituted a binding agreement on essential terms and whether conflicts of interest affected its enforceability.

Facts

Palmali Shipping SA (**PSSA**), a shipping company registered in St Kitts and Nevis and operating via Turkey, brought two claims against Litasco SA (**LSA**), a Swiss subsidiary company of Lukoil. The first claim was brought in 2017 for an alleged breach of a contract of affreightment (**CoA**). The CoA was allegedly entered into in 2005 and provided for an exclusive right to transport LSA oil products, initially over a 10-year period. This was later purportedly extended to 15 years. PSSA claimed that LSA breached its obligations to supply (a) cargoes of not less than 400,000 MT per month for the duration of the CoA and (b) all cargoes carried on behalf of LSA up to a total of 700,000 MT per month, between the dates of inception of the CoA and its expiry (following the alleged extension) on 18 January 2020. The second claim was brought in 2018 for allegedly unpaid sums totalling \$4,100,000 claimed by PSSA to be due under various charterparties and bills of lading entered into by the parties between 2011 and 2015.

LSA denied that the CoA had been validly entered into on its behalf. It claimed that its CEO, Mr Golovushkin, did not have the authority to sign the CoA, as he had an undisclosed conflict of interest at the time of signing due to a financial relationship between his daughter, Ms Elena Golovushkina and the Palmali Group (PSSA's company group). Ms Golovushkina held shares in companies related to 5 vessels which were used to carry cargoes under the CoA. LSA was incorporated in Switzerland and under Swiss law, Mr Golovushkin would not have had the authority to sign and bind the company should there be a conflict of interest between himself and LSA. LSA argued that Mr Golovushkin signed the CoA because he had been corrupted by Mr Mansimov, PSSA's President at the time, in a manner that gave rise to a conflict of interest between Mr Golovushkin and LSA. As such he had no authority to enter into the CoA and in consequence the CoA was void as a matter of Swiss law.

LSA brought a counterclaim for (a) sums claimed under a loan agreement dated 10 December 2013; (b) an overpayment of freight; and (c) a payment by LSA relating to one of the vessels.

Findings

The Court ruled in LSA's favour, dismissing PSSA's claim and allowing LSA's counterclaim for unpaid debts and unjust enrichment. The Court found that the CoA was void from the outset under Swiss law, which governed LSA's corporate authority as (i) Mr Golovushkin had a serious conflict of interest due to his daughter having financial interests in a Palmali Group company; (ii) PSSA was aware of this conflict of interest by way of knowledge of Mr Mansimov and the CoA as known to PSSA was not in its best interest; and (iii) the conflict had not been disclosed or approved by LSA's board of directors.

The Court declared that even if English law governed the relationship between the parties, the CoA would still not be binding or enforceable as it did not define essential terms, such as a defined freight rate.

HFW Comment

The Commercial Court's decision highlights the need to ensure that individuals have authority to sign binding agreements during contract negotiations, to expressly agree essential terms and to use clear drafting, so as to avoid challenges of validity and enforceability.

CAFI v GTCS Trading [2025] EWHC 1350 (Comm)

Court: Commercial Court

Date: 3 June 2025

Summary

In what is believed to be the first Commercial Court decision to allow an appeal against an arbitration award under all three of Sections 67, 68 and 69 of the Arbitration Act 1996, the Commercial Court has found that (i) where a party agrees to vary or extinguish rights under an earlier contract via the terms of another contract, a tribunal formed under the earlier contract has jurisdiction to determine the meaning and effect of the terms of that later contract; (ii) where a tribunal finds that it does not have jurisdiction to determine an issue which is vital to the question of the respondent's liability, and that vital issue has not yet been determined in a competent forum, the tribunal cannot then proceed to make an award of damages against the respondent; and (iii) the terms of an agreed written contract will be key to determining the parties' agreement, and it does not matter whether its terms have been clearly negotiated in prior discussions between the parties.

Facts

The dispute arose from two contracts between Commodity & Freight Integrators DMCC (**CAFI**) as buyer, and GTCS Trading DMCC (**GTCS**) as seller. The original contract (the **First Contract**) was for the purchase and delivery of a cargo of Russian milling wheat at a price of US\$465 per tonne. It contained a GAFTA arbitration clause. CAFI experienced difficulty making payment due to sanctions and agreed a further contract with GTCS (the **Second Contract**) which included a discounted rate of US\$440 per tonne, alongside a termination clause (the **Termination Clause**) declaring the First Contract void. The cargo was successfully delivered and paid for as per the terms of the Second Contract.

GTCS commenced GAFTA arbitration proceedings against CAFI under the First Contract, seeking damages for repudiatory breach. The first-tier tribunal found that although CAFI could not rely on a clause excusing performance for reasons of sanctions, GTCS had waived its right to claim damages by the Termination Clause in the Second Contract. On appeal to a GAFTA Appeal Board, GTCS argued that the first-tier tribunal had no jurisdiction to consider the termination clause of the Second Contract. The Appeal Board agreed and awarded GTCS the difference in price between the two contracts. CAFI appealed to the Commercial Court under s 67, 68 and 69 of the Arbitration Act 1996.

Findings

The Court allowed the appeal on all grounds:

The arbitration clause in the First Contract was broad enough to cover disputes about whether a later agreement (here, the Second Contract) affected rights under the First Contract. The Court noted that the arbitration clause covered any dispute "arising out of or under the First Contract". This applied whether or not the dispute might also fall within the scope of the arbitration clause in the Second Contract. When the Appeal Board found (wrongly) that it lacked jurisdiction to interpret the Second Contract, it committed a serious procedural irregularity by nevertheless finding CAFI liable for damages without the effect of the Termination Clause having been decided. The Appeal Board had also made an obvious error of law by deciding on liability where the issue as to whether the terms of the Second Contract extinguished that liability had not yet been resolved. Lastly, the Court noted that it would have been wrong on a point of law for the Appeal Board to have required evidence of 'free negotiation' and 'clear discussion' regarding the drafting of the termination clause in order for it to have been relied upon.

HFW Comment

Traders will welcome this judgment which clarifies issues of arbitration jurisdiction and negotiation of terms. It affirms that in cases where parties enter into sequential contracts which vary the terms of the underlying contract, the involved parties should not need to start multiple arbitration proceedings. The tribunal formed under the arbitration clause of the main contract may consider the contract in light of later contracts, subject to the breadth of the arbitration clause under which it is appointed. Further, parties should not need to evidence 'free negotiation' or 'clear discussion' in order to rely upon the terms of a final written and agreed contract.

HFW (Damian Honey and Joshua Prest) acted for the successful party, CAFI, in these proceedings.

Shri Bajrang Power and Ispat Limited v Steel Corp Limited [2025] SGHC 107

Court: Singapore High Court

Date: 6 June 2025

Summary

This Singapore judgment clarifies that the concept of an "available market" under section 51(3) of the Sale of Goods Act 1979 (2020 Revised Edition) (**SGA**) must be considered from the buyer's perspective, taking into account commercial realities rather than just the theoretical availability of goods. The judgment also highlights that the doctrine of mitigation will take precedence over the way damages are calculated under section 51(3) SGA in circumstances where the calculation under section 51(3) leads to overcompensation.

Facts

On 17 July 2023, Shri Bajrang Power and Ispat Limited (the **Claimant**) and Steel Corp Limited (the **Defendant**) entered into a sale and purchase agreement, governed by English law, for the supply of steel making pig iron (**pig iron**) to be delivered to India from Turkey. The dispute arose from the Defendant's failure to ship the goods by the agreed date. Six days after the breach, the Claimant informed the Defendant that the shipment date had passed. The Defendant attributed the delays to "uncontrollable circumstances which unfolded in the Black Sea region". On 14 September 2023, the Defendant offered to supply the pig iron at an increased price. However, a week later, it declared performance impossible due to a force majeure event. Eventually, both parties agreed to terminate the agreement. The Claimant then sourced steel scrap from the Indian market as a substitute for the pig iron and initiated legal proceedings. The Defendant failed to file a defence or notice of contest, resulting in a default judgment. The Court was subsequently required to determine an appropriate award for damages.

Findings

In calculating the damages, the Court focused on determining what constitutes an "available market" under section 51(3) SGA. The Claimant argued that India represented an available market due to its need for a continuous supply of pig iron and its established sourcing practices there. The Defendant contended that lower-priced pig iron was available overseas. The Court agreed with the Claimant, referencing *The 'Asia Star' 2 SLR 1154*, which reaffirmed that the duty to mitigate does not compel a party to act against commercial reasonableness or to search globally for alternative goods. Instead, an available market under section 51(3) SGA must be assessed from the buyer's perspective, considering the commercial realities they face, not just the theoretical availability of goods. The Court found the Claimant's decision to purchase steel scrap from India to be a commercially prompt and reasonable response to the breach, as sourcing pig iron overseas would have been impractical.

Furthermore, referring to *Bunge v Nidera UKSC 43*, the Court confirmed that the relevant market price for assessing damages is generally determined by the principles of mitigation. Calculating damages based on the difference between the market price of pig iron in India and the contract price, as section 51(3) prescribes, would overcompensate the Claimant. This is because, after terminating the agreement, the Claimant made a commercially reasonable decision to buy steel scrap as a suitable substitute. Although the price of steel scrap was higher than the pig iron under the agreement, it was cheaper than the market price of pig iron in India.

The Claimant argued that damages should reflect the loss of profit from reselling the pig iron based on the difference between the market price and contract price. However, since the Claimant did not provide evidence of a reselling business, the Court disagreed. It noted that since the Claimant purchased steel scrap at a lower price than the market price for pig iron in India, mitigation should be the basis for calculating damages rather than the theoretical market difference.

HFW Comment

The measure of damages regularly gives rise to disputes. This Singapore Court's decision on the interpretation of section 51.3 SGA offers helpful guidance on what constitutes an available market, which will offer reassurance to buyers that commercial realities will be taken into account rather than theoretical availability. And when calculating damages, the application of the principles of mitigation will ensure that a claimant is not overcompensated.

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KSY Juice Blends Limited v Citrosuco GMBH [2025] EWCA Civ 760

Court: Court of Appeal

Date: 19 June 2025

Summary

This case involved a dispute over the price of a product. At first instance, the Commercial Court held that it was not appropriate to imply a term regarding the price. The Court of Appeal overruled this decision, finding that a term could be implied into the contract, in the absence of agreement, that the price for the additional product should be the reasonable or market price.

Facts

Having contracted together twice previously, in 2018 the claimant seller (**KSY**) agreed to sell the defendant buyer (**Citrosuco**) orange pulp wash, or "Wesos" for delivery in 2019, 2020 and 2021 under a written contract (the **2018 Contract**). The contract provided for a fixed price for 400 metric tonnes (**MT**) of Wesos annually and an additional 800MT per year at an "open price to be fixed".

A dispute arose over the 800MT portion. Citrosucro failed to take delivery of the full contractual quantities and KSY terminated the 2018 Contract and claimed against Citrosucro on the basis of repudiatory breach. Citrosuco argued that the 800MT portion of the contract was unenforceable as a mere 'agreement to agree'. The trial judge accepted this argument and dismissed most of KSY's claim.

KSY appealed, contending that a reasonable or market price should apply under section 8(2) of the Sale of Goods Act 1979, or by way of an implied term.

Findings

On appeal, Citrosuco argued that in absence of party agreement, the court could not impose a price on them as the contract stated that the parties would agree the price for the disputed product themselves.

The Court of Appeal found that whilst the parties had intended to fix the disputed price by agreement, the contract (in particular clause 5) did not set out *how* the price was to be fixed – thus leaving it open to interpretation. The parties' intentions did not preclude the implication that in the absence of an agreement being reached, the price would be reasonable or market price. Therefore, the Court established that, where parties have failed to reach an agreement on price, the price of the goods should indeed be determined based on reasonable or market price. It concluded that this term could be implied for the following reasons:

- 1. The parties intended to reach a binding agreement, and to "deal in 1,200MT of Wesos per year for three years".
- 2. Reasonable or market price of Wesos could be identified by reference to the frozen concentrated orange juice (**FCOJ**) market (with Wesos being priced at around 70% of the price of FCOJ).
- 3. The Court of Appeal was able to address the concerns raised by Citrosucro:
 - a. Prices had to be fixed by December each year to ensure that parties could adequately prepare for the transfer before 1 January this was not an issue as the quantity of Wesos being supplied was already preagreed, and there was sufficient lead time for the parties to reach agreement on price.
 - b. The court could provide "dispute resolution machinery" in the absence of such a clause.
 - c. The court at first instance considered that the absence of an express clause permitted the parties to pursue their own individual commercial ends. However, the Court of Appeal determined that the fact that the parties left the price open to negotiation does not mean that they are free to pursue their own commercial ends in negotiations.
 - d. The court at first instance also considered that there were difficulties with assuming market price of Wesos was about 70% of the market price of FCOJ as the price of Wesos would also be impacted by supply/ demand, remaining shelf-life, and the working history of the parties. The Court of Appeal dismissed these arguments as irrelevant on the facts of the case.

HFW Comment

The Court of Appeal's decision highlights that the English courts are willing to imply reasonable terms to ensure that a commercial agreement is upheld, especially where the parties have previous dealings with each other.

Citrosucro has sought permission to appeal this decision to the Supreme Court.

Rasmala Trade Finance Fund v Trafigura Pte Limited [2025] EWHC 1569 (Ch)

Court: High Court

Date: 23 June 2025

Summary

The Claimant brought a claim seeking restitution of payments that it had made to the Defendant between August 2017 and March 2018 on the basis that, due to a fraud perpetrated by a third party, the payments were made by mistake. The claim failed as the Defendant successfully established a defence of change of position.

Facts

Rasmala Trade Finance Fund (**Rasmala** or the **Claimant**) is a trade financier specialising in providing short-term structured financing to companies trading physical assets. Farlin Energy & Commodities FZE (**Farlin**) was a coal trader and an established customer of Trafigura Pte Ltd (**Trafigura** or the **Defendant**). Between August 2017 and March 2018, Rasmala provided financing to Farlin for five coal trading contracts for the purchase of coal by Farlin from Trafigura. In respect of these contracts, Rasmala made five payments (the **Payments**) to Trafigura totalling \$21,596,630. It has since transpired that Farlin forged or doctored the contracts.

Trafigura applied the Payments to the discharge of Farlin's debts to Trafigura on other contracts in order to ensure that Farlin remained within the credit limit set for it by Trafigura, thereby enabling Trafigura to continue trading with Farlin. Farlin provided Trafigura with tri-partite agreements (**TPAs**) between Rasmala, Trafigura and Farlin agreeing to the intended application of the Payments. However, Rasmala's signatures to those TPAs were forged by Farlin and Rasmala was unaware of the TPAs. It brought a claim against Trafigura for restitution of the Payments on the grounds of mistake.

The Court was tasked with deciding whether there had been an unjust enrichment of Trafigura and, if so, whether there had been a bona fide change of position by Trafigura caused by the Payments which would make it inequitable for Trafigura to repay all or part of the Payments it received.

Findings

The Court found that allegations made by Rasmala of fraud and dishonesty on the part of Trafigura's employees were hopeless and warned against making such allegations without credible evidence to support them and a genuine belief in their truth.

By the time of trial, Rasmala had largely withdrawn these allegations and pursued the claim against Trafigura on the basis of unjust enrichment. The Court noted that Rasmala had to prove (a) that Trafigura had been enriched; (b) the enrichment had been at Rasmala's expense and that (c) the enrichment was unjust. The Court found that Trafigura had benefitted from the Payments and that Rasmala had suffered a reciprocal loss of the value of the Payments. The Court also found that, as the Payments had been made by Rasmala as the intended principal rather than as an agent of Farlin, Trafigura's enrichment from the Payments was at Rasmala's expense. It followed the decision of Barclays Bank Ltd v WJ Simms, Son & Cooke (Southern) Ltd [1980] QB 677 and held that the enrichment was unjust because Rasmala had made the Payments due to a mistaken belief as to the true facts (i.e. it mistakenly believed that the sums were due under the contracts presented to them by Farlin).

However, Trafigura raised the defence of a change of position and submitted that it would be inequitable to require them to make restitution. The Court found that Trafigura had changed its position upon receiving the Payments and continued trading with Farlin, which it would not have done but for the Payments. Additionally, the Court held that Trafigura had acted in good faith and without knowledge or suspicion that the TPAs were invalid or the Payments were repayable. Lastly, the Court decided that it would be inequitable to require Trafigura to make any repayment of the Payments as, due to the Payments, Trafigura had continued trading with Farlin which had worsened its financial position and had lost its opportunity to recover its debts from Farlin before the first of the Payments.

HFW Comment

This decision helpfully summarises the requirements for a successful claim of unjust enrichment and the applicable legal principles to a defence of change of position. Additionally, it is another reminder that an allegation of fraud requires a very high standard of proof to succeed and that the courts will take a dim view of parties making such allegations without credible supporting evidence.

Trafigura PTE Ltd & Anor v Gupta & Ors [2025] EWHC 1609 (Comm)

Court: Commercial Court

Date: 25 June 2025

Summary

The Commercial Court refused a late-stage application by defendants to amend their defence in complex fraud proceedings concerning nickel trades. The proposed amendments – alleging knowledge and complicity within the claimants' senior management – were rejected for being late, vague and likely prejudicial to the claimants' trial preparations.

Facts

The claim was brought by Trafigura PTE Ltd and Trafigura India Pvt Ltd (together, the **Claimants**) against Prateek Gupta (**Prateek**) and seven associated companies (together, the **Defendants**) in relation to a series of nickel trades. Trafigura brought proceedings in February 2023, alleging that they were induced into transactions by fraudulent misrepresentations that they were purchasing high-grade nickel, when in fact they received substantially less valuable material. A worldwide freezing order was obtained early in the litigation and a six-week trial has been listed for November 2025.

In January 2025, the Defendants sought to amend their Defence to include additional allegations that various senior individuals within the Claimants' organisation were aware of, and complicit in, what was described as "the Arrangement". Although many of the proposed amendments were either consented to or agreed on the basis that they would not re-open disclosure, three core allegations - described as the "Knowledge Amendments" - remained in dispute. These amendments focused on alleged internal awareness within the Claimants but failed to identify specific individuals or departments. The Claimants opposed the application on grounds of lateness, vagueness and the procedural burden of further disclosure.

Findings

The Court refused permission to introduce the disputed amendments. While recognising that the proposed amendments potentially added weight to the defence, the Court held that the amendments had been brought too late without a convincing explanation for the delay. The sole justification advanced – lack of funding – was not persuasive, particularly given earlier findings that funding sources were available to the defendants. Critically, allowing the amendments would have required Trafigura to re-run extensive disclosure across additional custodians and reconsider its witness evidence, all during the final stages of trial preparation. The judge highlighted the burden that this would impose and the risk to the trial date. The proposed amendments were also criticised for being vague and insufficiently particularised, especially in the context of a serious allegation of fraud. The Court conducted the required balancing exercise and concluded that the prejudice to Trafigura, the disruption to proceedings and the general inefficiency of reopening disclosure at this stage outweighed any injustice to the defendants in refusing permission. Accordingly, the amendments were disallowed.

HFW Comment

This decision demonstrates the high threshold for very late amendments, particularly where they relate to fraud and may have a disruptive procedural impact. Parties seeking to introduce new lines of defence close to trial must not only show that the amendments are arguable but must also provide a good reason for the delay and demonstrate that the changes can be absorbed without undermining existing case management. The case is a further reminder that general and undeveloped fraud allegations, especially where they lack specificity as to individuals or conduct, are unlikely to receive a sympathetic hearing from the courts.

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