

COMMERCIAL COURT ISSUES WARNING TO LITIGANTS ON TACTICS IN LITIGATION

Summit Navigation Ltd & Anor v Generali Romania Asigurare Reasigurare SA Ardaf SA & Anor [2014] EWHC 398 (Comm)

Introduction

On 21 February 2014, the Commercial Court issued a judgment in *Summit Navigation Ltd & Anor v Generali Romania Asigurare Reasigurare SA Ardaf SA & Anor* [2014] EWHC 398 (Comm) in which Mr Justice Leggatt issued a warning to litigants who were considering using the decision in *Mitchell MP v News Group Newspapers Ltd* [2013] EWCA Civ 1537 as a tactical measure to tread carefully.

This decision should serve as a warning to litigants that the Commercial Court will firmly discourage the taking of futile and time wasting procedural points (as per Mr Justice Males in *Rattan v UBS AG, London Branch* [2014] EWHC 665 (Comm) (12 March 2014)).

The Mitchell Decision

The English courts have made it clear that a robust approach will be taken to compliance with the Civil Procedure Rules, and sanctions will be imposed on those who fail to do so.

On 27 November 2013, the Court of Appeal handed down its decision in *Mitchell MP v News Group Newspapers Ltd* [2013] EWCA Civ 1537 (“*Mitchell*”). In that case, the Claimant appealed against the decision of Master McCloud that he had failed to file his costs budget in time and thus he was to be treated as having filed a costs budget comprising only the applicable court fees, and her subsequent refusal to grant relief from that decision. The Court of Appeal dismissed both appeals, and held that the defaults by the claimant's solicitors in filing the costs budget in a timely manner were not minor or trivial and there was no good excuse for them. The Master of the Rolls, delivering the judgment of the Court of Appeal, emphasised that the Courts would take a robust approach to compliance with the rules, and the need to comply with rules, practice directions and orders was essential. In particular, the Court emphasised the need (a) for litigation to be conducted efficiently and at proportionate cost, and (b) for enforcing compliance with court rules, orders, and practice directions, were to be regarded as being of paramount importance and be given great weight.

Following the decision in *Mitchell*, concern was raised by practitioners that the result of the Court of Appeal’s judgment would lead to serious problems, and in particular, would result in increased satellite litigation based on minor failures to comply, increased lead times for trials and applications, and increased costs.

Background

In the present case, the claimants (who were the owners/managers of a vessel) had commenced a claim under a marine insurance policy against the defendant insurers in the Commercial Court. The value of the claim was US\$500,000.

The defendants sought to rely on the decision in *Mitchell* to turn to their tactical advantage a short delay by the claimants in providing security for costs which in itself had no material impact on the efficient conduct of the litigation, and argued that the consequence of the claimants' default should be that the action remains permanently stayed.

Decision

Mr Justice Leggatt granted the claimants' application for an order to lift the stay of the proceedings and dismissed the defendants' application for an order continuing the stay.

In his judgment, he noted that the default by the defendants was “*not material*” (or in the language of the Court of Appeal in *Mitchell*, “*trivial*”). It was not seriously contended that the default had any impact on the conduct of the litigation, nor on the wider public interest of ensuring that litigants can obtain justice efficiently and proportionately.

In contrast, the response of the defendants had “*a very serious impact on the litigation*”. In particular, Mr Justice Leggatt noted that, “*The whole timetable for the proceedings has been derailed, significant costs have been incurred and court time has been wasted to the detriment of other court users. In other words, the reliance placed on Mitchell in this case has had the very consequences which the new approach enunciated by the Court of Appeal in Mitchell is intended to avoid.*”

Mr Justice Leggatt criticised the behaviour of the defendants, and sought to discourage “*other litigants from making similar arguments to those made by the defendants in this case, with similar disruptive consequences*”.

8th April 2014