

## Cases of interest for Finance Litigators

Summer/Autumn 2017

### **Dowling v Promontoria (Arrow) Limited: Statutory demands and their vulnerability to set aside applications**

In the High Court case of Dowling v Promontoria (Arrow) Ltd, a statutory demand issued by a creditor claiming under a guarantee was set aside on the basis that there were triable arguments that the guarantee may not have been assigned to the creditor, or that the rights under the facility letter may not be within the purview of the guarantee, or that under the applicable law on limitation demand may not have been made within the limitation period.

*Judgment Date: 11 September 2017*

**Full Citation: Dowling v Promontoria (Arrow) Limited Ch D (Bankruptcy Ct) (Register Barber)**

### **Kotak v Kotak & Royal Bank of Scotland PLC (Third Party) and anor: Loans to partnerships**

The High Court held that where loan documents contained signing provisions for two partners, this did not amount to a pre-condition such that the lender must obtain the signature of both partners to confirm their agreement to the loan. Instead, the bank mandate entered into by the partnership (which stated that a single signatory is sufficient) and/or s. 5 of the Partnership Act 1890 (which stipulates that each partner has the power to bind the partnership) applied. On the facts of this case, this meant that the loan documents were validly entered into by the partnership and the partnership was so liable.

*Judgment Date: 18 July 2017*

**Full Citation: Dinesh Kotak v Jagdish Kotak & Royal Bank of Scotland PLC & Bowbridge Ltd [2017] EWHC 1821**

### **UBS AG v Kommunale Wasserwerke Leipzig GMBH: structured credit derivative products**

The case concerned the sale by UBS to KWL of complex structured credit derivative products called CDOs, which exposed the municipal authority to a liability to UBS of hundreds of millions of Euros during the global financial crisis. Ruling that KWL were able to set aside the derivative transactions, Mr Justice Males concluded that UBS bore the consequences of a bribe that KWL's corrupt advisors had paid to one of KWL's managing directors to enter into those transactions. Following one of the longest hearings in Appeal Court history before a panel consisting of Lord Justices Hamblen and Briggs (now Lord Briggs of Westbourne) and Lady Justice Gloster, those findings were upheld by the Court of Appeal.

*Judgment Date: 16 October 2017*

**Full Citation: UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH [2017] EWCA Civ 1567**

### **Taurus Petroleum Limited v State Oil Marketing Company of the Ministry of Oil, Republic of Iraq: Debts have a location!**

The Supreme Court overturned the Court of Appeal decision in Power Curber International Ltd v National Bank of Kuwait SAK [1981] 1 W.L.R. 1233. The Supreme Court noted that Power Curber had provided that "in the case of debts due under letters of credit the situs of the debt was the place of payment". Having regard to the general rule that the situs of debts is where they are recoverable, Lord Clarke found that "the lex situs of the letters of credit in this case was England".

*Judgment Date: 25 October 2017*

**Full Citation: Taurus Petroleum Limited v State Oil Marketing Company of the Ministry of Oil, Republic of Iraq [2017] UKSC 64**

### **CGL Group Limited and others v The Royal Bank of Scotland plc: An IRHP Case Update**

Dismissing three linked appeals, the Court of Appeal held that the defendant banks did not owe a duty to carry out reviews of the sales of IRHP products with reasonable skill and care. The reviews carried out by the banks had been carried out pursuant to an agreement with the FCA.

*Judgment Date: 24 July 2017*

**Full citation: (1) CGL Group Limited; (2) Jacqueline Bartels and Adrian Bartels; (3) WW Property Investments Limited v. (1) The Royal Bank of Scotland plc and National Westminster Bank plc; (2) Barclays Bank plc; (3) National Westminster Bank plc [2017] EWCA Civ 1073**

### **Bernard Chudley and others v Clydesdale Bank PLC [2017] EWHC 2177 (Comm): Vulnerability of banks to fraud perpetrated by their customers**

The Court considered whether the defendant bank was liable for a fraud perpetrated by its customer, Arck LLP. The Court dismissed the Claimants claims for breach of contract, negligent misrepresentation, breach of trust, dishonest assistance and mistaken payment.

*Judgment Date: 24 August 2017*

**Full citation: Bernard Chudley and others v Clydesdale Bank PLC [2017] EWHC 2177 (Comm)**

### **Maxted and another v Investec Bank Plc: Variations to secured obligations**

The High Court held that the extension of the term of a loan and allowing interest to roll up on a loan did not discharge the liability of guarantors to the loan. The variations were within the scope of the consent to variation clause contained in the guarantee.

*Judgment Date: 10 July 2017*

**Full Citation: Robert Maxted, John Lorimer v Investec Bank Plc [2017] EWHC 1997 (Ch)**

### **Berkeley Burke SIPP Administration LLP v Charlton: Is FOS the end of the road?**

The Commercial Court held that the Financial Ombudsman's decision was not capable of forming the basis of an appeal pursuant to s. 69 of the Arbitration Act 1996 as the decision was not considered to be an arbitration award.

*Judgment Date: 3 October 2017*

**Full Citation: Berkeley Burke SIPP Administration LLP v Charlton**

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