



**St John's  
Buildings**

## **Commercial Law Case Update**

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A summary of six commercial law cases that have determined important issues that would be beneficial for commercial practitioners and clients to know.

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1. **Gavin Carter v Terri Ann Davies and others [2024] EWHC 1536 (Ch)**

**Breathing Space Moratorium**

The Claimant brought an appeal against the decision of the lower court refusing to annul a bankruptcy order that was made against him during a breathing space moratorium under the Debt Respite Scheme. The judge at first instance ruled that by using the word 'may' the regulation gave the court discretion as to whether proceedings should be stayed in the circumstances of the case. In the circumstances it was proven that the Claimant had enough money to pay off the debt; it was likely he did not provide full disclosure in his application for debt respite; and the court was unaware of the existence of the moratorium at the time of making the order. The high court dismissed the appeal. The high court found that the judge was correct to conclude that he retained a discretion and there was no separate appeal against the exercise of that discretion.

2. **Luan Pereira & Others v Jermaine Chambers & Others (June 2024, Central London County Court, unrep.)**

**Non-Party Cost Orders**

Four successful Defendants in their respective motor accident cases sought to recover their costs from the credit hire companies that supplied replacement vehicles to the Claimants after their accidents. The credit hire companies were not party to the claims, however, the Claimants each tried to recover the costs of their credit hire on rates that were substantially in excess of basic hire rates. The court found that it would be just in the circumstances to award the Defendants' costs against the credit hire companies. The court considered that the principal financial reward in prosecuting the case was to the benefit of the credit hire company and they should therefore bear the risks by way of costs in unsuccessful claims.

3. **Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd and others [2023] EWHC 2759 (Comm).**

**Fraudulent Misrepresentation**

Loreley brought a claim of fraudulent misrepresentation and deceit against Credit Suisse for inducing them to purchase \$100 million in residential mortgage-backed securities

which lost their value in the span of two years. The claim failed primarily because it was time-barred and incapable of being saved by the postponement provisions in the Limitation Act 1980. The Claimant alleged that the Defendant had represented to them that the securities were of good credit quality and that the Defendant had taken certain due diligence steps in relation to the notes. In examining the claim for misrepresentation, the court found that the Claimant did not establish to the requisite standard of proof that the representations alleged were made or that the representations were relied upon when the Claimant decided to make the purchase.

#### **4. Richard Frischmann v Vaxeal Holdings SA [2023] EWHC 2698**

##### **Legal vs Equitable Assignment**

The Claimant sought summary judgment against the Defendant for money owed plus interest under two loan agreements and a guarantee agreement that were assigned to him. The Defendant opposed the claim challenging the validity of the assignment on the basis that it did not meet the requirements of section 136 of the Law of Property Act 1925. The assignment was signed on behalf of the assignor rather than by the assignor himself. The court found that there was no valid legal assignment under the Act as the document was signed by the assignor's power of attorney, however, the court found that there was an equitable assignment as the intention of the assignment was clear. Summary judgment was therefore granted.

#### **5. Eternity Sky Investments Ltd v Xiaomin Zhang [2024] EWCA Civ 630**

##### **Arbitration and Consumer Rights**

The defendant facilitated a HK\$500 million bond issuance by way of a personal guarantee on behalf of a company in Hong Kong, Chong Sing Fin Tech Holdings Group Ltd. When Chong Sing failed to redeem the bonds, the Claimant obtained an arbitral award for payment of the debt under the personal guarantee. The Claimant then obtained an order to enforce the award in England. The Defendant failed in an application to set aside the order and appealed the decision on the basis that the terms of the personal guarantee were unfair terms under the Consumer Rights Act 2015. The Court held that the CRA did not apply as the Defendant was acting mainly for business

purposes when she entered into the agreement, and therefore, not as a consumer. The terms of the guarantee would therefore be binding on the Defendant.

**6. Farley (formerly CR) and others v Paymaster (1836) Ltd [2024] EWHC 383 (KB)**

**Data Protection Breaches**

The Claimants brought data protection claims against the Defendant for misuse of personal data under the UK GDPR and DPA 2018. The Defendant erroneously sent out over 400 pension benefit statements containing the personal details of current and former police officers to their previous addresses rather than their current addresses. The Defendant made an application to dismiss the claims for having no reasonable prospects of success. The court dismissed the claims for those who adduced no evidence of material or non-material damage, for example, if they received their envelopes unopened or the envelopes were returned to sender unopened. The court allowed the remaining 14 claims to proceed on the basis that there were real prospects of success.

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**August 2024**

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