

6. K v A [2019] EWHC 1118 (Comm)

Facts

The seller (A) claimed against the buyer (K) for a payment shortfall under a contract for the sale of sunflower meal. A had emailed an invoice (including its bank details for payment) to K via an agent but this was intercepted by a hacker, which changed the bank details to those for another account at the same bank. K sent payment to the fraudulently notified bank account. The funds were retrieved but a shortfall arose because payment into and out of the incorrect account involved currency conversions.

Claims in High Court appeal

On appeal from the arbitral decision of the GAFTA Board of Appeal, K argued that its contractual obligation to "pay the price in net cash to A's bank" was only to pay A's bank, which it had done. It also challenged the decision on grounds of "serious irregularity". The Board had decided that A had given K good notice of the correct bank details by its email to the agent, based on a standard form GAFTA term incorporated in the contract. This point had, however, not been raised by A in the proceedings so K had not had the opportunity to respond to it.

High Court decision

The High Court upheld the decision of the Board that K's obligation was to pay A's bank for the account of A. It held that the clause clearly contemplated that A would notify its bank details to K and that K would instruct its transfer to be made using them. It would otherwise be commercially impossible to give A the electronic equivalent of "net cash" (i.e. credit to A's bank account) given how modern banking transactions operate. The High Court accepted K's challenge for irregularity, finding that hearing K's arguments on whether notice to an agent was good notice could have affected the Board's decision. This point was sent back for consideration by a first instance tribunal.