



UK Supreme Court Upholds "No Oral Modification Clauses," Affirms Written Contract Variations Requirement

The recent decision of the UK Supreme Court in *Rock Advertising Limited v MWB Business Exchange Centres Limited* [2018] UKSC 24 highlights the need for strict observance of No Oral Modification clauses in agreements.

Ubiquitous across a variety of commercial agreements, No Oral Modification clauses require that variations to a contract adhere to certain formalities, including most typically that variations be in writing and signed by the parties. With few exceptions, there are no formality requirements for the validity of a simple commercial contract under English law. Against this backdrop, No Oral Modification clauses give rise to a conceptual challenge, pitting the parties' freedom to enter into binding agreements in any manner they deem appropriate against the need to give effect to binding contractual terms.

Writing for the Supreme Court in *Rock*, Lord Sumption noted that English case law was unsettled in this area. Looking to the Vienna Convention on Contractors for the International Sale of Goods (1980) (to which the United Kingdom is not a party) and the UNIDROIT Principles of International Commercial Contracts (2016), however, the Court rejected the argument that there was an inconsistency between a general rule allowing contracts to be made informally and a specific rule requiring that variations be made in writing. "Party autonomy operates up to the point when the contract is made," Lord Sumption observed, "but thereafter only to the extent that the contract allows."

To the extent there may be relief from the formal requirements of a No Oral Modification Clause, obiter in *Rock* indicates that the safeguard against injustice lies in principles of estoppel. Whilst estoppel defences were not before the Court, Lord Sumption cautioned that estoppel "cannot be so broad as to destroy the whole advantage of certainty" to which parties agree by adopting No Oral Modification clauses. No Oral Modification clauses and exceptions will continue to be fought over where parties have not strictly complied with terms of such clauses.

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