

## 'Entire Agreement' Clauses Revisited

Globe Motors, Inc & Ors v TRW Lucas Varity Electric Steering Limited & Anor  
[2016] EWCA Civ 396+

It is common for commercial contracts to contain a clause stating that the written contract shall represent the entire agreement between the parties and that no variation will be valid unless made it writing or even by deed. Such clauses have always sat uneasily with English lawyers caught between competing principles of giving efficacy to the written terms on the one hand and allowing the parties' contractual freedom on the other. Any first year law student will tell you what are the requirements for a contract to be binding - that it should be in writing is not one of them. Apart from situations where statute requires a written document (eg on the transfer of land), a written contract is little more than a manifestation of what the parties have agreed; it is effectively an evidential tool.

If the parties to a contract orally agree to vary its terms notwithstanding a prohibition on such variation, is the variation binding or can one of the parties later rely on the entire agreement clause? This question has long been battled to and fro in the courts.

In the *Globe Motors* case, it was a term that the written agreement was "... *the only agreement between the Parties ... [and] ...can only be amended by a written document ...*". There then followed what was effectively an oral variation of the contract by Globe and TRW Lucas to include a third party and a dispute arose as to whether that variation was binding.

The Court of Appeal was unanimous in finding that the oral variation was valid despite the clause prohibiting such variation. The court's role was to discover the mutual intention of the parties and establish what they had agreed. As there was no legal requirement for a contract to be in writing, the court found that the parties were free to agree whatever terms they wished in whatever form. The oral variation was effectively a mutual waiver of the provisions of the entire agreement clause.

The judges in this appeal carefully weighed up the conflicting arguments and came down squarely and unanimously on the side of not fettering the parties' contractual freedom notwithstanding that they had previously agreed a clause purporting so to do. In our view this is, commercially and legally, the '*right*' decision and allows parties to commercial contracts the freedom to act by mutual consent. As Moore-Bick LJ said:

*"I do not think that they can effectively tie their hands so as to remove from themselves the power to vary the contract informally, if only because they can agree to dispense with the restriction itself. Nor do I think this need be a matter of concern, given that nothing can be done without the agreement of both parties; and if the parties are in agreement, there is no reason why that agreement should not be effective."*

If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.



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