Can a contract insist on variations being made in writing?

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The Supreme Court has confirmed that a contract can validly prohibit variations being made to it orally.

Whilst clauses requiring that amendments to a contract be made in writing are commonplace, there has previously been some uncertainty as to how effectively they work in practice. The Supreme Court has now made clear that such clauses (often

referred to as ‘no oral modifications’ clauses) will be enforceable in order to give effect to the parties’ intentions at the time the contract was made.

The facts of the case themselves concern a commercial contract relating to a licence over property. Despite the contract containing a ‘no oral modifications’ clause, the licensee sought to argue that an oral agreement to revise the payment schedule had been effective. The Supreme Court unanimously held that the ‘no oral modifications’ clause in the contract could not be ignored, such that the agreed variation had not been effective. In including the clause in the contract, the parties had agreed that certain formalities would have to apply in order to modify the contract, and that agreement had a legitimate, commercial basis.

Whilst this case concerned the terms of a commercial contract, the principle in relation to ‘no oral modification’ clauses is likely also to apply to employment contracts. An employer who wants to control the form of the agreement with their employee can therefore do so in two ways: it can use an ‘entire agreement’ clause to override any oral agreements prior to the written contract being agreed, and can use the ‘no oral modifications’ clause to ensure that any variations once the contract has been finalised are effected in writing.

Rock Advertising Ltd v MWB Business Exchange Centres Ltd *[2018] UKSC 24*

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