



Endeavours Obligations

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Introduction

The terms “all reasonable endeavours”, “reasonable endeavours” and “best endeavours” are regularly used in the drafting of commercial agreements and contracts. Despite this widespread use, the actual obligations imposed by each of these terms are unclear. Recent UK case law has provided further guidance on the obligations imposed by parties contracting to use “all reasonable endeavours”. This article will look at that recent case law and will also briefly highlight the obligations imposed by the terms “all reasonable endeavours”, “reasonable endeavours” and “best endeavours”.

All Reasonable Endeavours – Case Law

*CPC V QD*¹ involved a joint venture between the parties in order to develop a site in London. The parties entered into a sale and purchase agreement under which QD owed CPC various continuing obligations, including one to use “*all reasonable but commercially prudent endeavours*” to enable the achievement of various threshold events and payment dates (as defined in the sale and purchase agreement). For various reasons, QD withdrew the planning application to redevelop the site which resulted in a delay of one of the payment dates under the sale and purchase agreement. As such, the question arose as to whether this withdrawal constituted a breach of the obligations of QD to use “*all reasonable but commercially prudent endeavours*”.

Counsel for CPC relied on an earlier decision² where it was held that “*it may well be that an obligation to use all reasonable endeavours equates with using best endeavours*” when expressing the view that an obligation to use all reasonable endeavours equated with an obligation to use best endeavours so that a party must, if necessary, subordinate its own financial interests to obtain the desired result. Vos J however preferred to rely on the reasoning in the decision of *Yewbelle Limited v London Green Developments [2007] EWCA Civ 475* where it was held that the obligation to use “all reasonable endeavours” does not always require the obligor to sacrifice his commercial interests.

¹ *CPC Group Limited (“CPC”) v Qatari Diar Real Estate Investment Company (“QD”) [2010] EWHC 1535 (Ch)*

² *Rhodia International Holdings Ltd. v Huntsman International LLC [2007] 1 CLC 59*

In *CPC V QD* the interpretation of the phrase “all reasonable endeavours” was assisted by the use of the additional wording “but commercially prudent endeavours” in the sale and purchase agreement. The inclusion of these words was held to permit QD to consider its own commercial interests alongside those of CPC, and to require it to take all reasonable steps to procure the planning permission provided those steps were commercially prudent.

The decision in *CPC V QD* built on previous caselaw in which the obligation to use all reasonable endeavours has been described as “something more than reasonable endeavours but less than best endeavours”³. Clearly while it does not impose as onerous an obligation as best endeavours, an obligation of all reasonable endeavours requires the party in question to expend more than merely minimal efforts in an attempt to fulfil its responsibility. While this obligation to use “all reasonable endeavours” does not always require the sacrifice of commercial interests it does appear to be closely aligned with “best endeavours” in that it requires the obligor to “*go on using endeavours until the point is reached when all reasonable endeavours have been exhausted*” as per the decision in *Yewbelle*.

Reasonable Endeavours

The obligations imposed by the term reasonable endeavours are “appreciably less than those imposed by best endeavours”⁴ and can be satisfied by an honest try by the obliged party. An obligation to use reasonable endeavours probably only requires a party to take one reasonable course. Generally the term “reasonable endeavour” does not require the taking of an action if it would disadvantage the party under the obligation. However, it is important to note that if the contract specifies that certain steps must be taken in performance of the obligation, then these steps must be taken even if they involve the sacrificing of the party’s commercial interests.⁵ In order to ensure the enforceability of a reasonable endeavour clause parties should ensure that criteria are included in the contract clearly stating what the parties must do in order to meet their reasonable endeavours obligations⁶.

³ *UBH (Mechanical Services) Ltd. V Standard Life Assurance Co. The Times 13th November*

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⁶ *RAE Lambert Co UK Ltd. V Enron Europe Ltd [1997] CLC 329*

Best Endeavours

The very onerous obligation of “best endeavours” has been lessened somewhat over the years to allow for the concept of standards of reasonableness to be introduced into its meaning. What is now required is that a person must do “all that a reasonable person reasonably could do in the circumstances”⁷. In the instance of a company the required standard is that of a “reasonable and prudent board of directors, acting properly in the interest of their company and applying their minds to their contractual obligations”⁸. This obligation does not extend to a situation where a company should put itself at risk of financial ruin to fulfil its obligations. What amounts to best endeavours should be considered at the time of performance or breach of the undertaking and not at the time of the creation of the contract.

Conclusion

Although *CPC V QD* offers some clarification in relation to the area of endeavours, what seems to be the most practical approach in order to ensure the enforceability of a reasonable endeavours clause, is to ensure that parties include criteria in the contract which clearly state what the parties must do in order to meet their endeavours obligations.

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Author: Paul Moloney

⁷ *Pips (Leisure Production) Ltd. V Walton* (1980) 43 P&CT 415

⁸ *Terrell V Mabie Todd & Co. Ltd* (1952) 69 RPC 234

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax.: +353 1 667 0042

Boston

26th Floor,
225 Franklin Street,
Boston, MA 02110,
United States of America.
Tel: +1 617 217 2866
Fax: +1 617 217 2566

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Paul Moloney

e-mail: paul.moloney@dilloneustace.ie
Tel : +353 1 667 0022
Fax: + 353 1 667 0042

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DUBLIN CORK BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.
www.dilloneustace.ie

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