Neutral Citation Number: [2024] EWCA Civ 622

Case No: CA-2023-000727

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
CHRISTOPHER HANCOCK KC
(SITTING AS A JUDGE OF THE HIGH COURT)
[2023] EWHC 322 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 June 2024

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE PHILLIPS
and
LADY JUSTICE ANDREWS

- -

Between:

(1) VIRGIN AVIATION TM LIMITED **(2) VIRGIN ENTERPRISES LIMITED**	**Claimants/ Respondents**
- and -	
ALASKA AIRLINES INC **(formerly VIRGIN AMERICA INC)**	**Defendant/ Appellant**

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Daniel Toledano KC and Joshua Crow (instructed by **Slaughter and May**) for the **Claimants/Respondents ("Virgin")**
Tom Weisselberg KC and Edward Ho (instructed by **Jones Day**) for the **Defendant/Appellant ("Alaska")**

Hearing date: 6 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday 11 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Lord Justice Phillips:

1. This appeal gives rise to a straightforward issue of contractual interpretation. A trademark licencing agreement dated 19 November 2014 ("the Licence") provided that, notwithstanding any other provision of the Licence, Alaska (the licensee), might elect to perform the licensed activities without payment of royalties to Virgin (the licensor), so long as Alaska did not use the licensed trade marks whilst so doing. The issue is whether that provision overrides Alaska's obligation under the Licence to pay a specified "Minimum Royalty" for each financial year of the Licence.

2. On 24 March 2023 Christopher Hancock KC, sitting as a deputy High Court judge ("the Judge"), for reasons set out in a reserved judgment handed down on 16 February 2023, made an order declaring that Alaska must pay Virgin at least the Minimum Royalty each financial year, even where Alaska derives no Gross Sales from the use of the trademarks. Alaska appeals that decision with permission granted by Males LJ.

3. For the reasons set out below, I consider that the judge's interpretation of the Licence was correct and would dismiss the appeal. If I am right in that conclusion, it is unnecessary to decide two further issues, mentioned briefly below, which would arise only if the Judge was wrong on the primary question.

The background

<u>(i) The essential facts</u>

4. On 20 July 2018 Virgin America Inc ("Virgin America"), an operator of an airline incorporated in the USA (but partly owned by companies in the Virgin group), merged with Alaska, also an American operator of what had been a competitor airline. Virgin America ceased to exist on that date and all its rights and obligations were assumed by Alaska.

5. Alaska thereby became party to the Licence, an agreement pursuant to which Virgin had granted Virgin America the exclusive use of certain Virgin names and trade marks ("the Names" and "the Marks", together "the Virgin Brand") for use by Virgin America in its airline operation. In exchange for those rights, Virgin America was to make royalty payments, with a Minimum Royalty initially set at US$7,978,200 but increasing in line with a price index during the 25 year term of the Licence.

6. By 30 May 2019 Alaska had completed the process of "de-branding", ceasing altogether to use the Virgin Brand in its airline operation. From 16 July 2019 Alaska made no further payments to Virgin, claiming that clause 3.7 (set out below) of the Licence justified that position, notwithstanding that the Licence had a further 20 years left to run.

<u>(ii) The terms of the Licence</u>

7. The Judge summarised the relevant terms of the Licence at [76] as follows:

> (1) Clause 3.1 begins with the words: "*In consideration of the payment of Airline Royalties to [Virgin] by [Alaska], [Virgin] grants to [Alaska]*

the right ... to use the Marks only in connection with and in the ordinary course of carrying on the Licensed Activities".

(2) The term "*Licensed Activities*" means, "*…the activities described in Schedule 1…*".

(3) [Clause] 3.6 provides:

"*Subject to Clause 3.7, [Alaska] undertakes that, for as long as it provides the Licensed Activities it shall continue to do so using the Names and shall use all reasonable efforts to promote its conduct of the Licensed Activities under the Names.*"

(4) Clause 3.7 provides:

"*Notwithstanding any other provision of this Licence nothing in this Licence shall prohibit [Alaska] at any time during the Term from electing to perform the Licensed Activities or any other activities, including, but not limited to, operating flights, code sharing arrangements with any other airlines or entities, or operating flights between any points regardless of where such flights originate or terminate, without the payment of royalties, so long as [Alaska] does not use the Names or Marks while undertaking such activities. […]*"

(5) Clause 8.1 provides as follows:

"*In consideration of the Airline Rights granted pursuant to Clause 3, [Alaska] agrees to pay [Virgin]: (a) with effect from the Effective Date and until December 31, 2015, a quarterly royalty which shall be 0.5% of Gross Sales in respect of each Quarter or part of a Quarter; (b) with effect from January 1, 2016 and until the Trigger Date, a quarterly royalty which shall be 0.7% of Gross Sales in respect of each Quarter or part of a Quarter; and (c) with effect from the Trigger Date and for the remainder of the Term, a quarterly royalty which shall be 0.5% of Gross Sales in respect of each Quarter or part of a Quarter In each case, subject to the requirement that [Alaska] will in each financial year during the Term pay at least the annual Minimum Royalty in accordance with Clause 8.6.*"

(6) Clause 8.6 states:

"*For the avoidance of doubt, [Alaska's] obligation in respect of payment of royalties due to [Virgin] in each financial year of [Alaska] is to pay the greater of (a) a royalty based on a percentage of [Alaska's] Gross Sales in the relevant period, at the rates set out in Clauses 8.1 and 8.3 above, and (b) the Minimum Royalty payment applicable for that period…*"

(7) Minimum Royalty is a defined term, and is defined as follows:

"***Minimum Royalty***: *means in respect of each financial year of the Licensee, the amount of US$7,978,200 (or a pro rata part of such*

> *amount in the case of a partial fiscal year); such amount to be adjusted annually on the Year 1 End Date and any anniversary thereof to increase (but not decrease) by the same percentage as the percentage change in USCPI over the relevant period..*"

8. It is important to note that clause 3.1 also granted Alaska the right, subject to clause 3.7, to carry on the Licensed Activities only under the Names, including Virgin America and Virgin America Airways.

9. Further, clause 3.7 of the Licence continued with an important proviso in the following terms:

> "Provided, however, that in the event [Alaska] ceases to use the Names or Marks in a material manner, which shall include but not be limited to where [Alaska] derives more than twenty percent of its operating revenues within the territories[1] without using the Names of Marks then [Virgin] will have the right to terminate the Licence after 45 days prior written notice and failure to cure by [Alaska]…"

10. Pursuant to clause 11.1, the Initial Term of the Licence was 25 years from 14 November 2014, the date of an Initial Public Offering of Virgin America shares. Thereafter the Licence was to be extended for further periods of 10 years unless terminated by either party giving not less than 3 months' written prior notice.

11. It should also be noted (as it featured heavily in Alaska's arguments) that the recitals to the Licence record that companies in the Virgin group had entered into previous trade mark licence agreements with Virgin Atlantic in 2005 and 2007 (with a revision in 2013), and that "this Licence amends and restates the Existing Licence in respect of the rights granted to [Alaska] by [Virgin].." Relevant aspects of those earlier licence agreements are referred to below.

(iii) The history leading to the Licence

12. Although both parties' primary position (at least on the appeal) was that the Licence could be interpreted simply by reading the words of the document, a considerable amount of documentary, oral and even expert evidence was adduced at the trial. That evidence related to events surrounding the formation and terms of earlier versions of the Licence and the involvement of the US Department of Transportation ("the DOT") in considering and approving the terms of those versions and, indeed, of the Licence. Certification by the DOT was a pre-condition of operating a domestic airline in the US. The judge considered that evidence in detail in paragraphs [3] to [50] of his judgment.

13. In my judgment, the pertinent aspect of that background can be summarised as follows:

    (1) A concern of the DOT, dating back to 2005 and the original trade mark licence agreement ("the 2005 TMLA"), was that Virgin America, as the operator of a US airline, should be a "Citizen of the United States", free to operate entirely independently of Virgin, a "foreign citizen". The requirement in the 2005 TMLA (imposed by the inclusion of clause 3.6 above) that Virgin America

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[1] USA (including Puerto Rico), Canada, Mexico, the Caribbean islands and Bermuda.

should use the Names and the Marks in operating its airline was seen as keeping Virgin America "almost completely under the influence" of Virgin and therefore not a US citizen for these purposes.

(2) On 9 April 2007, following a provisional decision by the DOT to that effect and subsequent correspondence, Virgin and Virgin America executed a revised licence ("the 2007 TMLA")[2], introducing clause 3.7 in the same terms as now contained in the Licence. As Virgin America was now allowed to operate without using the Names and the Marks without royalty obligation in relation to such activities, the DOT made final orders on 18 May and 17 August 2007 certifying that Virgin America was a Citizen of the US.

(3) In early 2014 Virgin America determined to make an initial public offering of its shares on the NASDAQ ("the IPO"). The effect of the proposed IPO would be significantly to decrease the ability of the Virgin group to stop Virgin America being acquired by or merged with another airline (by removing a series of veto rights, halving the Virgin group's board representation and decreasing its holding of voting stock), and therefore to increase the likelihood that Virgin America would cease to use the Virgin Brand.

(4) The IPO required changes to the 2007 TMLA, which was due to expire in 2022. In particular, it was agreed that the Licence would be for 25 years from the date of the IPO (14 November 2014) and that the Minimum Royalty would be introduced, based on 80% of Virgin America's 2013 revenues.

(5) The proposed terms of the Licence were sent to the DOT for approval. On 20 October 2014 the DOT issued a letter concluding that Virgin America would remain a US Citizen following the IPO, stating, in relation to the Licence as follows:

> "The amended TMLA would also require Virgin America to pay the Virgin Group a minimum royalty payment if Virgin America's royalty payment from licensing fees would otherwise be less than that minimum payment…You also note that the amended TMLA will continue to permit Virgin America the ability to operate independently of the "Virgin" names and marks without obligation to pay royalties."

The judgment

14. In his lengthy and detailed judgment, the Judge considered the background to the Licence, including the witness evidence and expert evidence. At [160(3)] he concluded that it was clear that the DOT, after considering the Licence, understood that it provided for a Minimum Royalty. On the basis that the correspondence with the DOT therefore did not "really assist" in relation to the proper construction of the Licence, the Judge

[2] The first claimant was not a party to either the 2005 TMLA or the 2007 TMLA, as the relevant rights were then held by a different company in the Virgin group, named VALTM3. The first claimant had acquired those rights by the time the Licence was executed on 19 November 2014.

stated that "I must simply construe [the Licence] by reference to the words used by the parties".

15. The Judge's reasoning as to the proper interpretation of the Licence was contained in the following sub-paragraphs of [161]:

> "(1) In my judgment, the start point must be the words of the [Licence], and in particular Clause 8. I have set out the relevant clauses above. I have concluded that these words are clear. The Minimum Royalty is a defined term, and is a set sum payable for every year of the contractual term, regardless of the level of usage of the Virgin Brand. That is clear from the definition of the term, and from the clauses setting out how that sum is to be calculated. Just as that minimum sum falls to be paid if some royalties (not a defined term) are earned in a year but fall short of the Minimum Royalty, so, if no royalties are earned, it remains the case that the minimum sum has to be paid.
>
> (2) I do not think that the fact that the minimum sum is expressed as a "Minimum Royalty" means that it must be derived from royalties in fact earned. Alaska itself contended that for Virgin to be correct, the Minimum Royalty would have to be a flat fee rather than a royalty. In my judgment, that is exactly what the Minimum Royalty is. It is a flat fee payable for the right to use the Virgin Brand, whether or not that right is taken up…".

16. The Judge did not deal expressly with clause 3.7 of the Licence and its alleged inconsistency with clause 8 in reaching his conclusion, but it is implicit in his reasoning that he considered that the phrase "without the payment of royalties" did not absolve Alaska of the obligation to pay the Minimum Royalty.

17. The Judge drew support from the factual matrix, and rejected Alaska's contentions in that regard, in the further sub-paragraphs of [161] as follows:

> "(3) In my judgment, this conclusion is supported by what I regard as the most important aspect of the factual matrix, namely the degree of uncertainty introduced by the other changes to the 2007 TMLA in 2014 and the risks undertaken by Virgin as a result of these changes. It is clear that, viewed from the perspective of Virgin America, the extension to the right to use the Virgin Brand was a valuable one. It is also clear that Virgin was losing a substantial number of rights of control and that there was, as a result, an enhanced risk of a de-brand. In these circumstances, I think that it is a reasonable commercial conclusion to reach that Virgin would wish to assure themselves of a guaranteed minimum income going forward.
>
> (4) Conversely, I do not regard the factual background matters put forward by Alaska as of any great force, and indeed it is not clear what principle of construction is being relied on in this regard.
>
> (a) The nub of the argument advanced appears to be that, in view of the difficulties that had been experienced in relation to the payment

of royalties in 2007, the parties would not have agreed any provision for ongoing royalties where the Virgin Brand was not used in 2014, and hence that, even if the agreement might have been construed in such a way, it should not be so construed, since this would mean that Virgin America and Virgin were to be treated as having agreed a provision that they knew might imperil the DOT approving the arrangement. As I understood the argument, it was that Virgin's construction was thereby rendered commercially unreasonable.

(b) I have already set out my factual findings as to what the DOT was in fact told in 2014. The factual position in 2014 was of course different from that which appertained in 2007. I have concluded that the full terms of the proposed TMLA were put before the DOT in 2014. In my judgment, the question of construction that remains for me is what, against the background of those facts, the proper construction of the [Licence] is. That is a matter of the consideration of the words used by the parties."

18. The Judge added the following further points at [162]:

> "(1) First, I agree with Virgin that the question must be approached from the perspective of Virgin and Virgin America as at the date of the agreement, and not from the perspective of Alaska.
>
> (2) Secondly, viewed against this background, it was clearly the case that Virgin America wished to continue to have the right to use the Virgin Brand, and was prepared to pay for this.
>
> (3) Thirdly, it was in Virgin America's interests (and in those of its bankers) to have a long term relationship with Virgin.
>
> (4) Fourthly, it was also relevant to note that Virgin would wish to have some form of comfort to ensure that it was remunerated for giving this approval.
>
> (5) Fifthly, I accept that Virgin's ability to re-use the Virgin Brand in the US was limited, whereas Virgin America's right was established.
>
> (6) Sixthly, I do not accept that there was any question of Virgin America acting in breach of its statutory obligations. As I have said, the approval of the DOT was necessary. The full terms of the [Licence] were put before the DOT, who approved that document. Their letter does, it is true, make reference to the right not to use the Virgin Brand; but it also makes reference to the fact that a Minimum Royalty is to be paid."

19. Virgin had also argued that, even if Alaska was right on the primary issue of interpretation, (i) Virgin was entitled to the Minimum Royalty for the whole of the last financial year in which Alaska used the Names and the Marks, not only the part of that year in which they were used; and (ii) Alaska was in breach of its obligation under clause 3.6 to make some use of the Names and Marks, and was therefore liable to Virgin

for damages in the amount of the Minimum Royalty. The Judge noted at [163] that it was not strictly necessary for him to deal with those issues, but he nevertheless determined both in favour of Virgin. Alaska challenged both of those findings on this appeal, but as indicted above, those challenges do not require determination if I am right that the Judge should be upheld on the primary issue of interpretation.

The proper interpretation

20. It was common ground that the process of contractual interpretation is a unitary exercise involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences: see Lord Clarke JSC in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900 at [21] and Lord Hodge in *Wood v Capita* [2017] AC 1173 at [11]. Lord Hodge went on to say in that paragraph that:

> "…once one has read the language in dispute and the relevant part of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."

21. Alaska, in particular, emphasised the dictum of Lord Wilberforce in *Prenn v Simmonds* [1971] 1 WLR 1381 at 1385H, referred to in both *Arnold v Britton* [2015] AC 1619 and *Wood v Capita*, holding that while evidence of the parties' intentions or their negotiations was inadmissible, "…evidence of the factual background known to the parties at or before the date of the contract, including evidence of the 'genesis' and objectively the 'aim' of the transaction" was admissible.

22. In that context, Alaska contended that its interpretation of the Licence, that the Minimum Royalty was not payable if Alaska made no use at all of the Names or Marks, was supported by the language of clause 3.7, the admissible factual matrix and considerations of commercial sense.

23. As for the language, Alaska emphasised that clause 3.7 expressly provides that it is entitled to operate without using the Virgin Brand and to do so without paying royalties in respect of such operation. The suggestion that Alaska should nonetheless have to pay a sum by way of a Minimum Royalty despite none being payable for actual usage, is inconsistent with Alaska's express entitlement. Such inconsistency is readily resolved in favour of Alaska's entitlement to operate free of royalties by virtue of not just one but two phrases giving primacy to that entitlement, namely: "Notwithstanding any other provision of this Licence..." and "…nothing in this Licence shall prohibit". It follows, submitted Alaska, that as a simple matter of the language used, where Alaska does not use the Name or Marks at all, the Minimum Royalty is not payable. Alaska recognised that its reading rendered clause 3.6 surplusage, because on its case it was entitled to cease using the Virgin Brand completely, in direct conflict with that clause. But Alaska submitted that was not a powerful objection given the clear opening words of clause 3.7, inserted in the 2007 TMLA with the express purpose of qualifying the effect of clause 3.6 which had troubled the DOT.

24. That reading of the Licence is supported, Alaska argued, by the factual matrix formed by the regulatory background, well known and understood by the parties to the Licence. That resulted in the inclusion of clause 3.7 in the 2007 TMLA, itself referenced in the recital to the Licence. The DOT required that Virgin America should be entitled to operate free of the control of the Virgin group, including being able to operate without using the Virgin brand on a royalty-free basis. That requirement would be undermined, Alaska contended, if, in operating without using the Virgin brand, it had to pay the equivalent of 80% of the royalties (as of 2013) which would have been payable if it had used the brand.

25. As for commercial considerations, Alaska pointed to the fact that the possibility of a de-brand was firmly in mind when the Licence was executed, such that it would not have made commercial sense for Virgin America (now Alaska) to agree to pay a substantial sum to Virgin for rights it might not use for a significant part of the term of the Licence. On the other side of the equation, Virgin's position in the event of a de-brand (or material decrease in the use of the Virgin Brand) was recognised and protected by its option to terminate the Licence in that event, enabling it to re-license the Virgin Brand to a third party.

26. In my judgment there is no merit in any of the above contentions: the language of the Licence, the factual matrix and commercial considerations all point firmly to Virgin being entitled to at least the Minimum Royalty in exchange for the rights Alaska holds for the remainder of the term of the Licence.

27. It is appropriate to start with and accord particular weight to the language of the Licence given that it is a professionally drawn contract between commercial parties. That is all the more so in circumstances where the parties knew and intended (i) that its terms would be reviewed and had to satisfy a regulator and (ii) a third party might well acquire or merge with Virgin America and assume its rights and obligations under the Licence.

28. In my judgment Alaska's approach to the wording of the Licence was misconceived, taking clause 3.7 as a starting point and seeking to rely upon its introductory words as rendering clause 3.6 surplusage and clauses 8.1 and 8.6 (providing for payment of the Minimum Royalty) inapplicable. The correct approach, at least in the first instance, is to seek to read all provisions of the Licence together, so as to understand the overall meaning and effect of the contract. Words giving primacy to one provision must of course be given effect where appropriate, but only to the extent that there would be an inconsistency or conflict between that provision and another.

29. Read in context, clause 3.7 entitles Alaska to conduct some (or indeed most) of its operations without using the Virgin Brand (derogating from the general requirement to use and promote the Virgin Brand in clause 3.6) and not to pay royalties on those operations. The *quid pro quo* is that Virgin has the option to terminate the Licence in the event that usage of the Virgin Brand and therefore royalties drop materially, using a 20% drop as a benchmark. It is clear (and Alaska does not assert the contrary) that the Minimum Royalty would continue to be paid even if usage of the Virgin Brand dropped to a minimal level.

30. What clause 3.7 does not provide is that Alaska can cease all usage of the Virgin Brand (thereby removing any meaning from clause 3.6) and at the same time avoid paying the Minimum Royalty or indeed any sum at all in respect of the rights it would continue to

hold, if not use. Clause 3.7 can and should be understood consistently with the rest of the Licence, reading it as obliging Alaska to continue at least some usage of the Virgin Brand, or at any rate to pay the Minimum Royalty for its right to do so. Whilst deploying the word "royalty" in the definition, it is clear that the Minimum Royalty is not in fact a sum calculated by reference to actual usage (or a "royalty" at all) but a minimum payment Alaska must pay to Virgin for the Airline Rights granted under clause 3 of the Licence. The wording of clause 8.6 makes it plain that Alaska must pay the greater of the Minimum Royalty and the amount of actual royalties: that is entirely consistent with and encompasses the fact that actual royalties may not be payable at all due to the effect of clause 3.7.

31. The factual matrix, to the extent it is helpful at all, in my view supports rather than undermines the above reading. Clause 3.7 was introduced in the 2007 TMLA to permit Virgin America to operate without using the Virgin Brand and without paying royalties to that extent. At that point there was no Minimum Royalty provision, but one was introduced (and noted and approved by the DOT) in 2014 for inclusion in the Licence. Its inclusion at that point can only be read as providing protection for Virgin in circumstances where it was giving up its corporate control over Virgin America and in the context that it was therefore exposed to the risk of a complete de-brand. The parties plainly did not super-impose a minimum payment obligation in that context with the intention that it would be defeated by a complete de-brand, leaving Virgin with no recompense for licensing its rights.

32. The commercial considerations also strongly favour Virgin's interpretation. There is a strong presumption that commercial parties do not intend to provide something for nothing, but Alaska's contention is that it should be entitled to hold (and effectively "sterilise") valuable intellectual property rights for up to 25 years, and yet pay nothing. If nothing else, it is plainly of value to Alaska that the well-known Virgin Brand should not be used by one of its competitors in the US airline marketplace. It is not appropriate to consider the adequacy or otherwise of that consideration, but it is plain that some payment would be expected and indeed required.

33. Alaska's response is that Virgin is protected against the commercially absurd situation of receiving nothing for its rights by the inclusion in clause 3.7 of an option to terminate, enabling it to exploit its rights elsewhere. The immediate answer is that it was common ground that it would by no means be easy for Virgin to re-license the rights to a third party airline (and indeed actual attempts to do so have not succeeded). But more fundamentally, if Alaska's interpretation were right, Virgin would have no choice but to terminate upon de-branding, effectively inverting the option by providing Alaska with the right to end the Licence at any time with no penalty, despite its 25 year term and the recent addition of the new concept of a minimum annual payment. The Licence did not, of course, give Alaska an express option to terminate at any time, and it is difficult to see why Virgin would have agreed to enter the 25 year Licence on that basis or how Virgin America could have insisted on such a right. Further, if Alaska's interpretation were right, it is unclear how Virgin could sensibly decide whether to exercise its option during a partial de-branding, not knowing whether at some unknown point Alaska might completely de-brand and cease to be obliged to pay anything. It makes far more commercial sense for the exercise of the option to be considered against the backdrop of the Minimum Royalty (matching the 80% threshold in the option) being payable in any event.

34. Yet further, as Mr Toledano KC pointed out on behalf of Virgin, Alaska's interpretation entails that there would be a huge and unjustifiable difference between the use of a single Name or Mark in any part of Alaska's operation (perhaps by mistake), which would trigger the Minimum Royalty payment of nearly US$8m, and a complete de-brand, where nothing would be payable. There is no commercial or rationale justification for such an arbitrary distinction with huge financial consequences, which cannot have been intended by the parties.

35. Whilst upholding the Judge's decision, I would express some cautious concern that the trial of a straightforward issue of contractual interpretation took five Commercial Court days and involved such extensive evidence. Perhaps due to that process, the Judge delivered a 59 page judgment, which only identified the issues in paragraph 51 and the relevant contractual terms in paragraph 78. In the end the Judge's analysis of the contract terms occupied just two sub-paragraphs in which he did not refer to the central provision, clause 3.7 of the Licence. I am sure that the case looked different at first instance, but would suggest that, in future, both judges and parties take care, in commercial cases, to focus intently on the contract and the detailed analysis of its terms.

Lady Justice Andrews

36. I agree.

Sir Geoffrey Vos, Master of the Rolls

37. I also agree.