



## Royal Court of Jersey reinforces guidance on contractual interpretation and formation

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*Sir Bob Murray CBE v Camerons Limited* [2020] JRC 179

### Summary

In the recent judgment of *Murray v Camerons Limited*<sup>1</sup>, the Royal Court of Jersey made some noteworthy comments on contractual formation and validity, having carefully considered Jersey, English and French jurisprudence. This is of relevance to commercial parties operating in Jersey, particularly in instances where their agreement is not captured in a single written document.

### Background

The Plaintiff had engaged the Defendant to build a house. They intended to contract by adopting a JCT standard form contract (being one of several market-standard forms of construction contracts). While a JCT Intermediate Contract was signed to enable the Defendant to carry out the initial work on the project, due to unhappiness over spiralling costs, the actual JCT standard form contract was never signed<sup>2</sup>. Accordingly, if and how the Defendants might charge for work done was in dispute. Thus the issue became whether and how the JCT standard terms, a Letter of Intent signed by the parties and/or their email exchanges might constitute an agreement<sup>3</sup>.

### Contractual interpretation

The Royal Court held that contractual interpretation relied on establishing the presumed objective intentions of the parties based on the words used, construed against its overall context

<sup>1</sup> *Sir Bob Murray CBE v Camerons Limited* [2020] JRC 179

<sup>2</sup> *Ibid.*, [6] to [9].

<sup>3</sup> *Ibid.*, [10] to [18].

or 'factual matrix'; ambiguity that cannot be resolved by referring to objective evidence should ordinarily be resolved in favour of commercial common sense<sup>4</sup>. Further, a document like a JCT standard form contract can be incorporated by reference if expressly referred to in the contractual documents, but the terms in the contractual documents are to be preferred to that of the standard form if they are inconsistent<sup>5</sup>. The Court then warned against holding that a contract had been agreed if the parties had merely been in negotiations<sup>6</sup>. Finally, the importance of considering both the words of the agreement themselves and the surrounding context, rather than thinking of them as being alternative considerations, was observed<sup>7</sup>. Accordingly, the Court concluded that it would first look to the precise phrasing of any clearly-documented agreement, considering the broader context as an aid to interpretation if necessary<sup>8</sup>. The Court commented that the implication of terms into contracts is settled law: terms will only be implied out of necessity<sup>9</sup>.

### Contractual formation

Jersey contract law has its roots in Norman customary law, rather than English common law, and therefore has much in common with the French civil law of obligations which existed before it was codified<sup>10</sup>.

<sup>4</sup> *Ibid.*, [149], citing *The Parish of St Helier v The Minister for Infrastructure* [2017] JCA 027, [12] to [13].

<sup>5</sup> *Ibid.*, [150] to [151], citing *Calligo Limited v Professional Building Systems CI Limited* [2017] 2 JLR 271, [131] and *Sabah Glour and Feed Mills v Comfez Limited* [1998] 2 Lloyds Reports 3.

<sup>6</sup> *Ibid.*, [152], citing *RTS Flexible Systems Limited v Molkerei Alois Muller GmbH & Company KG (UK Production)* [2010] UKSC 14, [47].

<sup>7</sup> *Ibid.*, [153], citing *Trico Limited v Anthony Buckingham* [2020] JCA 067, [56] to [57].

<sup>8</sup> *Ibid.*, [154].

<sup>9</sup> *Ibid.*, [203], citing *Grove and Briscoe v Briscoe* [2005] JLR 348, [15] to [17].

<sup>10</sup> *Snell v Beadle* [2001] 2 AC 304 (PC), [19].

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For a valid contract to be formed, there needs to be capacity (ability to contract), consent (willingness to contract), *objet and cause*; *objet* is the content of what the party undertakes, and *cause* is the reason why the party undertakes the obligation<sup>11</sup>. Further, it is implicit that an agreement must be sufficiently certain to be binding<sup>12</sup>.

Capacity and *cause* not being in issue, the Court first analysed consent. While it was clear that the parties thought they had come to some form of agreement, they had divergent understandings of the content of that agreement<sup>13</sup>. Having carefully surveyed the Jersey precedents, which themselves drew on various English and French authorities, the Court concluded that the meeting of minds for there to be valid consent in Jersey contract law must be assessed objectively (like in England); he observed that it was desirable to have certainty in commercial transactions and that a civilian or French approach did not have to be adopted invariably<sup>14</sup>. As for *objet*, the Court underlined the need for the promised performance to be certain, possible and lawful<sup>15</sup>. The Court also alternatively considered estoppel and unjust enrichment (*enrichissement sans cause*)<sup>16</sup>. However, the dispute ultimately did not turn on either of these<sup>17</sup>.

## Decision

Having carefully considered the law and facts, the Court concluded that the inconsistencies between the email exchanges and the Letter of Intent were not fatal; it was clear that both parties needed some basis upon which for the works to proceed despite their different positions, and consequently some sort of agreement was reached<sup>18</sup>. A contract had come into existence<sup>19</sup>. However, the very advanced discussions on entering a JCT standard form contract meant that it had been incorporated, by reference, into the parties' agreement<sup>20</sup>. Particularly, their subsequent conduct appeared to reflect a common understanding that they had contracted on that basis – and indeed the Letter of Intent was ultimately entirely superseded<sup>21</sup>. The applicable terms were based on the JCT standard form contract<sup>22</sup>. The Court concluded, therefore, that the Defendant was entitled to the contractual payments sought, the various delays to the project being attributable to the Plaintiff<sup>23</sup>.

## Implications

Even sophisticated commercial parties sometimes fail to reduce their entire agreement into writing. Here, the Plaintiff was an experienced businessman and the Defendant was an established construction company. Owing to time pressures, various stop-gap, partially documented arrangements were entered into to avoid having the project grind to a halt. While it would be best to ensure that higher value and/or complex commercial arrangements are clearly documented with the benefit of legal advice, it is noteworthy that the Court considered the particular facts of the case in great detail, particularly its overall context, in determining the existence and shape of the agreement between the parties. Evidently, the Royal Court is attuned to the realities of doing business and will take a rigorous but practical approach where needed.

<sup>11</sup> *Selby v Romerill* [1996] JLR 210, 218 to 219.

<sup>12</sup> *Sir Bob Murray CBE v Camerons Limited* [2020] JRC 179, [154], citing *Minister of Treasury and Resources v Harcourt Development Limited* [2014] (2) JLR 353, [17].

<sup>13</sup> *Ibid.*, [158].

<sup>14</sup> *Ibid.*, [189] to [192].

<sup>15</sup> *Ibid.*, [193] to [198], citing, inter alia, *Marett v O'Brien* [2008] JLR 384, [62].

<sup>16</sup> *Ibid.*, [199] to [205], citing *Flynn v Reid* [2012] (1) JLR 449.

<sup>17</sup> *Ibid.*, [220] to [223].

<sup>18</sup> *Ibid.*, [206] to [210].

<sup>19</sup> *Ibid.*, [224] to [225].

<sup>20</sup> *Ibid.*, [211] to [213].

<sup>21</sup> *Ibid.*, [214] to [218].

<sup>22</sup> *Ibid.*, [226].

<sup>23</sup> *Ibid.*, [219] and [227] to [230].



## FIND US

Carey Olsen Jersey LLP  
47 Esplanade  
St Helier  
Jersey JE1 0BD  
Channel Islands

T +44 (0)1534 888900

E [jerseyco@careyolsen.com](mailto:jerseyco@careyolsen.com)



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