

## Reasonable Endeavours, Best Endeavours

***By Peter Sheridan***

When obligations in contracts are drafted, it is often recognised that a particular result cannot be guaranteed. The parties then may agree to impose an obligation to try to achieve the desired result. This is often expressed as an obligation to use reasonable endeavours, all reasonable endeavours, or best endeavours. It is therefore important to understand what these expressions mean, what the differences between them are and the extent to which they can expose a party to expense in complying with whatever obligation is imposed.

While the courts have attempted to give guidance on these questions, they have not found it an easy task. It is important to remember that generalisations in court judgments do not provide much assistance with this type of concept; much depends on the facts and circumstances of each particular case.

An obligation to use reasonable endeavours requires the party on whom the obligation is placed to make such attempts to achieve the desired result as are reasonable, judged objectively, in relation to the facts and circumstances of the particular case. In using reasonable endeavours, a party is not generally required to sacrifice its own commercial interests.

It has been suggested in the *Rhodia* case that an obligation to use reasonable endeavours to achieve the aim probably only requires a party to take one reasonable course, not all of them. However, that is doubtful; it will depend on what is reasonable in the circumstances. In some circumstances, where one course has failed the aim may quite readily be achieved by trying another course. It is also stated (somewhat inconsistently, in the *Rhodia* case) that the obligation to use reasonable endeavours requires you to go on using endeavours until the point is reached when all reasonable endeavours have been exhausted. This too is doubtful; again it depends on the circumstances.

It was also suggested in the *Rhodia* case that an obligation to use best endeavours probably requires a party to take all the reasonable courses he can. On this view, an obligation to use all reasonable endeavours equates with an obligation to use best endeavours. However, it is more likely that there is a difference in the quality of the obligation, with “best endeavours” indicating a more stringent standard than “reasonable endeavours”. It has not been stated by the courts that a “best endeavours” obligation does not require a party to sacrifice its own commercial interests. The extent to which a party must spend money to meet a best endeavours obligation will not, it is suggested, be unlimited. The risk that a party subject to a “best endeavours” obligation may have to forego its own commercial interests is one for contracting parties to bear in mind. The recent *CPC v Qatari Diar* case also indicates that while a “best endeavours” obligation may mean foregoing commercial interests, an “all reasonable endeavours” obligation would not. This suggests that the two concepts are not the same.

Even if the obligation is to use “all reasonable endeavours” or just “reasonable endeavours”, a party may still be required to sacrifice its own commercial interests, if in addition to the fairly vague endeavours obligation, specific obligations are also included. In the *Rhodia* case, a party had to use reasonable endeavours to obtain the consent of a third party to a novation, and in so doing was expressly obliged to provide a direct covenant if so required. That was accordingly a step that had to be taken, even if it was contrary to the party’s own commercial interests.

Equally, the principle that commercial interests are not to be sacrificed may be preserved by express provision. In the *CPC* case, there was an express term that required “all reasonable but commercially prudent endeavours”.

The following lessons may be learned from the case law. If you wish to impose a more rather than less stringent obligation to use endeavours on another party, seek to impose a best endeavours obligation, or, failing that, an “all reasonable” endeavours obligation. Seek to state in addition specific, but non-exhaustive steps that are to be taken to achieve the desired aim. Where the obligation is being placed on you, conversely, seek to have only a reasonable endeavours obligation, which is expressed to be consistent with having regard to your own commercial interests.

**Peter Sheridan**

psheridan@sheridangold.co.uk