

High Court Ruling in the *Altera v. Premier Oil* Case: Implications for Commercial Contracts

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Commercial Litigation

The High Court of Justice, Business and Property Courts of England & Wales, Queen's Bench Division (the **Commercial Court**) has ruled on the status of "illustrations" and "worked examples" in the context of general contractual interpretation.

Case reference: [*Altera Voyageur Production Ltd v Premier Oil E&P UK Ltd \[2020\] EWHC 1891 \(Comm\) \(17 July 2020\)*](#) (Richard Salter QC, sitting as a deputy judge in the Commercial Court).

This case re-affirmed the commercial and practical approach taken by the English courts in relation to "illustrations" and "worked examples" in English case law and extended certain existing principles beyond financial contracts.

This case revolved around a conflict between the operative provisions set out in the body of a bareboat charter agreement (which involved the hire of a floating production, storage and offloading vessel) and two worked examples set out in an appendix to that agreement.

Richard Salter QC, sitting as a deputy judge, was asked to resolve, as a matter of construction, the question whether the operative provisions in the body of the agreement took precedence over the two worked examples in an appendix, in circumstances where the relevant worked examples included two steps which were not expressly set out in the preceding operative provisions.

This is an important ruling, and the following should be noted:

- Recognition that "illustrations" and "worked examples" are integral parts of a commercial contract.
- Endorsement of the decision of Blair J in *Starbev GP Ltd v Interbrew Central European Holdings BV [2014] EWHC 1311 (Comm)* (**Starbev GP**) which included the following dicta in the context of financial contracts:
 - "There is in my view no reason why illustrations or examples should be construed differently than any other term in a contract ...";

- "...in the context of lengthy contracts in financial transactions with much boiler plate, that illustrations or examples deserve particular attention as something to which the parties particularly turned their minds"; and
- "ultimately, it depends on the terms of the illustration read in context".
- Recognition that these principles apply equally to other lengthy and detailed commercial contracts and not just financial contracts.
- Recognition that it is often only when narratives and formulae are worked through that their true effect can properly be seen.
- Acceptance that even though there was "apparent commercial illogicality" in terms of applying the additional step set out in the worked examples, this was not, based on the facts of the case, enough to persuade the deputy judge that it was "clear" that the inclusion of the additional step in the worked examples meant that something had gone wrong with the language in the appendix. Indeed, in his judgment, the operation of the worked examples could not, even in these circumstances, be characterised as "arbitrary and irrational" or as an "obvious nonsense".
- That in circumstances where there is more than one "worked example", consistency among the examples (in this case the inclusion of the missing step), strongly suggested that this was a deliberate choice by the person who drafted those examples.
- That it is inherently more probable that the parties' true bargain is that to be found in the worked examples. Narrative explanations and formulae may disguise (or, at least, not make clear) their consequences when applied to various factual situations. The whole point of the worked examples is to demonstrate with clarity the consequences of the formulae.

It should be noted that the deputy judge did comment on the poor quality of some of the drafting in the body of the main agreement and this clearly impacted on his decision.

For completeness, it should also be noted that the construction provisions in the body of the main agreement included wording to the effect that "unless otherwise expressly provided, in the event of any conflict between...an appendix and the main body of the Charter Documents, the latter shall prevail". The deputy judge (considering, among other things, the judgment of Hamblen LJ in *Alexander v West Bromwich Mortgage Co* [2016] EWCA (Civ) 496 at [32] to [38], quoting and applying the judgments of Bingham and Dillon LJJ in *Pagnan SpA v Tradax Ocean Transportation SA* [1987] 3 All ER 565) held that this was not relevant and that it was clear that the formula set out in the worked examples allowed for the finer details of the calculation to be set out.

This case appears to be only the second time that the English courts have addressed the correct approach to interpreting an "illustration" or "worked example" within an English law governed contract, the other being *Starbev GP* cited above.

Important takeaways from this case are:

- a recommendation that English law legal drafters use illustrations and worked examples where complex formulae are required in all classes of contract;
- a recommendation that legal drafters use more than one illustration or worked example in circumstances where it is appropriate to include such an illustration or worked example; and
- a recommendation that boilerplate construction clauses are carefully drafted to ensure they do not contribute to any confusion concerning the precedence of illustrations or worked examples.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Commercial Litigation Practice:

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