

Oral modification of contracts

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In a recent seminal case, the Supreme Court held that a “no oral modification” clause was legally effective

In [Rock Advertising Ltd vs MWB Business Exchange Centres Ltd](#), the Supreme Court finally settled the question of whether a “no oral modification” clause, known as a NOM clause, could prevent an oral modification to a contract.

Rock Advertising had entered into a license with MWB to occupy offices in London for a fixed term of 12 months. Subsequently, Rock Advertising fell into arrears with the license fees and proposed a revised schedule of payments to MWB. There followed a telephone call between the parties in which Rock Advertising argued that MWB agreed to vary the terms of the contract, which MWB denied. Consequently, MWB locked Rock Advertising out of the premises for failure to pay the arrears. However, Rock Advertising counterclaimed damages for wrongful exclusion from the premises.

The case therefore turned on whether the variation agreement was effective in law.

Previously, the Court of Appeal had found that the oral agreement to vary the payments was valid and amounted to an agreement to dispense with the NOM clause. However, the Supreme Court disagreed, upholding the trial judge's decision that a NOM clause was effective.

The Supreme Court held that the law gave effect to contractual provisions requiring specified formalities to be observed for a variation and to do otherwise would be to override the parties' intentions.

The Supreme Court's decision therefore provides certainty to contracting parties as it clarifies the law in relation to NOM clauses. This is good news for the enforceability of NOM clauses and comes as a welcome decision as there are legitimate commercial reasons for using NOM clauses, such as:

- they can avoid disputes regarding whether a variation had been intended;
- they can prevent attempts to challenge written agreements by informal means;
- they provide formality in recording variations; and
- they make it easier for companies to police internal rules restricting the authority to agree them.

If parties wish to amend an agreement, it is important for them to follow the formal procedures set out in the contract to vary its terms. While establishing that NOM clauses are effective, this decision also recognises that they carry the risk that a party may act on the contract as varied orally. Therefore, it is essential that legal advice is sought before varying any contract whether orally or otherwise.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

