

## COURT OF APPEAL FAVOURS COMMERCIAL INTERPRETATION OF CONTRACT RATHER THAN CLEAR CONTRACTUAL TERM

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### **REVEILLE INDEPENDENT LLC V ANOTECH INTERNATIONAL (UK) LIMITED**

This case involves Gordon Ramsay and MasterChef USA – not for issues of defamation or harassment – but for the circumstances in which a clear contractual term can be waived by the actions of the parties.

The Court of Appeal took a welcome pragmatic and commercial view and stated that contractual terms can be waived and such a waiver will not prevent a contract from being formed if this is what the parties in reality intended.

What it means is that parties cannot seek to avoid their obligations by seeking to rely on express contractual wording if this conflicts with their prior actions.

#### **Facts**

MasterChef USA is produced by Reveille which entered into negotiations with Anotech for the promotion of Anotech's cookware products – including on three episodes of MasterChef USA.

Reveille provided Anotech with a standard form document containing the basic terms of the proposed agreement. The intention was for this document to be agreed before a “*long form*” agreement was executed later.

The text above the signature box stated that the document “*shall not be binding on Reveille until executed by both Licensee (i.e. Anotech) and Reveille*”. Reveille also made clear to Anotech that the contract could not be binding unless the standard form document was signed.

Anotech did sign the document but with some handwritten amendments – which meant that it became a counter-offer. However, although Reveille never “accepted” the counter-offer by signing the document, Reveille still promoted the Anotech products, including on MasterChef USA.

Despite this, Anotech never made any payments as required by the document.

The issue was, therefore, whether a binding contract had ever been formed even though Reveille had never signed the document.

#### **Judgment**

The Court of Appeal were less concerned with a strict contractual test and, instead, focused on a practical and objective approach to conclude that a valid contract had been formed.

The guiding principle was that where “*the reasonable expectations of honest sensible businessmen*” would take the view that there was a contract in existence then this was usually a strong basis for finding that a contract had, in fact, been formed.

In this case, the Court of Appeal considered that the parties had treated the contract as having been formed given that, for example, Anotech's products had been promoted on MasterChef USA.

The Court took the view that the waiver by conduct of the requirement for both parties to sign the standard form document had not prejudiced either party. In addition, on the facts, there was no uncertainty over whether a contract had been formed because Anotech had received its expected benefits from Reveille's performance of the contract and this significantly outweighed the negative effects of any potential uncertainty.

#### **CONTACT DETAILS**

If you would like further information or specific advice please contact:

##### **SIMON NURNEY**

PARTNER  
LITIGATION  
DD +44 (0)20 7849 2405  
simon.nurney@macfarlanes.com

##### **ROSS BROWN**

SENIOR SOLICITOR  
LITIGATION  
DD +44 (0)20 7849 2278  
ross.brown@macfarlanes.com

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**MACFARLANES LLP**

**20 CURSITOR STREET LONDON EC4A 1LT**

T +44 (0)20 7831 9222 F +44 (0)20 7831 9607 DX 138 Chancery Lane [www.macfarlanes.com](http://www.macfarlanes.com)

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