

All Reasonable Endeavours

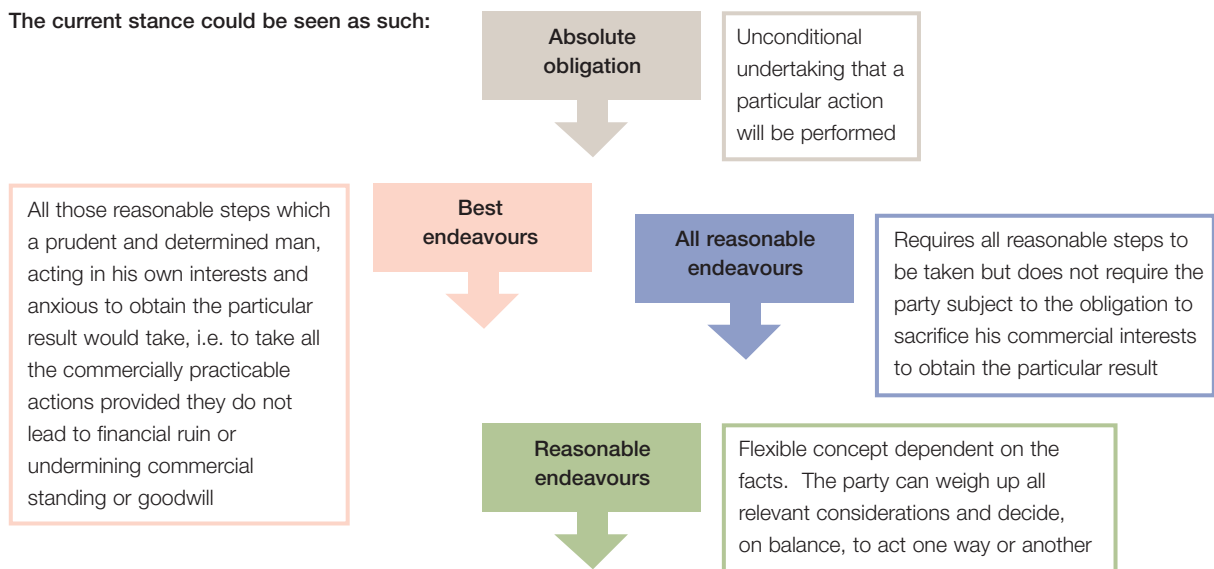
The meaning of an “endeavours” obligation has again been considered in the recent case of *CPC Group Limited v Qatari Diar Real Estate Investment Company* [2010] EWHC 1535 (Ch). Has it provided any clarity?

The cases of *Rhodia* (2007) and *Hiscox* (2008) had interpreted the phrase “all reasonable endeavours” as imposing the same level of obligation as “best endeavours”. The argument was that to use reasonable endeavours to achieve an aim only requires a party to take one reasonable course, not all of them, whereas an obligation to use best endeavours probably requires a party to take all the reasonable courses he can. In other words, it can be argued that “best” and “all reasonable” are the same in relation to the number of courses of action a party should take. However, in *CPC v Qatari Diar* the judge was not convinced that using all reasonable endeavours did equate to best endeavours. That was on the basis that it seemed to him that all reasonable endeavours would not always require the obligated party to sacrifice his commercial interest or subordinate his own financial interests in order to obtain the desired result. The judge did not

actually need to decide the point because it was clear in the case, from the wording of the contractual term, that the obligated party only had to act in a way that was “commercially prudent”. Nonetheless, it is difficult to understand what distinction the judge was trying to make – it has long been established that a best endeavours obligation does not mean that the obligated party has to totally disregard its own commercial interests. Whilst a best endeavours obligation is onerous and requires the obligated party to keep trying to achieve the required result for as long as there is a material prospect of success, it does not require taking steps that would lead to financial ruin.

Perhaps, the effect of the recent case has been to highlight the fact that both “best” and “all reasonable” require significant effort in pursuing reasonable courses of action and may require expenditure but there may be arguments an “all reasonable endeavours” clause carries a lesser monetary sacrifice. The difference between the two levels is subtle.

The current stance could be seen as such:



For more information on this update please contact:



Philip Davey
Partner
0117 902 2741
philip.davey@burbges-salmon.com



Martin Cuell
Senior Associate
0117 902 6673
martin.cuell@burbges-salmon.com

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Burbges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
Chancery Exchange, 10 Furnival Street, London EC4A 1AB
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266
www.burbges-salmon.com



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