

# COMMERCIAL CONTRACTS

a briefing note from  
**IBB** solicitors

**I've had enough of this contract;**  
get me out of it!



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You enter into a profitable commercial relationship with another party. All is going swimmingly until one party decides it wants to bring the relationship to an end. Allegations of breach of contract fly and the court is left to decide who was entitled to terminate the contract and on what grounds.

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**This was the position in the recent case between *Mr H TV Limited and ITV2* which involved a Production Agreement relating to reality television shows involving celebrities Peter Andre and Kerry Katona.**

## **The dispute**

In short, ITV2 purported to terminate the Production Agreement, arguing that Mr H was in fundamental breach of contract. In response, Mr H claimed that the purported termination of the Production Agreement by ITV2 was wrongful and amounted to a breach of contract by ITV2. Mr H claimed damages consisting of lost profits (anticipated licence fees for the remainder of the contract term) estimated at £6m-£7m. ITV2 counter-claimed. Who was in the right? There were considerable financial implications of being wrong for the unsuccessful party.

## **The outcome**

ITV2 was found to have wrongfully terminated the Production Agreement. The Judge declined to accept that ITV2 was entitled to conclude that Mr H's actions evidenced an intention to abandon the Production Agreement, thereby allowing ITV2 to terminate. On the contrary, the purported termination amounted to a fundamental breach of contract which entitled Mr H to terminate the contract and claim damages. Substantial damages were awarded to Mr H in respect of the anticipated loss of profit.

## **What does it mean for you?**

- It is advisable to take legal advice before entering into a commercial relationship to ensure that the terms of the contract accurately record what has been agreed between the parties – particularly the obligations and risk;
- It is also important to consider and provide for the circumstances in which each party may be entitled to bring the arrangement to an end;
- Take advice before seeking to exercise any right of termination or if threatened with termination;
- It is important to make sure that there is sufficient evidence to support any termination pursuant to the terms of the contract and/or common law rights, to avoid committing a wrongful termination.

## **Post script**

It is likely that ITV2 will be liable for both parties' litigation costs in addition to being ordered to pay substantial damages. The case lasted for 10 days and resulted in a 75-page judgment. Looking back, it is likely to be an expensive lesson for ITV2. The parties attempted mediation but this was unsuccessful. Had it proved to be a success, it is likely that a substantial financial saving could have been achieved at an early stage.

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*IBB's specialist commercial lawyers can advise you on the preparation and termination of all types of commercial contracts. We can provide expert advice and representation in connection with mediation and other forms of ADR. A number of our senior lawyers are qualified commercial mediators.*

If you would like to discuss any aspect of this briefing further, please contact:

**Paul Kite, Partner, Commercial Dispute Resolution on [paul.kite@ibblaw.co.uk](mailto:paul.kite@ibblaw.co.uk) / 01895 207954**

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