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HOUSE OF LORDS JUDGMENT ON CHARTBROOK LIMITED V PERSIMMON HOMES LIMITED

By Andrew Westlake and Daniel Futter.

The recent House of Lords ruling in *Chartbrook v Persimmon* is one of the most important decisions on the interpretation of contracts in the past decade. This was a case where, in Lord Hoffman's words, "*the drafting was careless but no one noticed.*" It is unfortunately a fact of life in the insurance market that occasionally the drafting of a policy will go awry. Although the dispute concerned a property development contract, the difficulties encountered in interpreting unclear wordings are a familiar problem for insurers and brokers and the principles which can be distilled from the decision apply equally to contracts of insurance.

The key point from the case is that Lord Hoffman gave an authoritative statement on how much freedom a judge has to rewrite a contract in circumstances where the words on the page of the contract make literal sense but the result is a commercial nonsense.

Where the parties have sought to formalise their agreement, the Courts are usually slow to intervene. In a previous case, the Court of Appeal had held that where a literal interpretation led to an absurd result or one otherwise clearly contrary to the intention of the parties, the Court should adopt an alternative, more reasonable construction but

only if it could do so "*without doing violence to the language used.*"

However, in *Chartbrook*, Lord Hoffman clearly did not feel unduly concerned about doing violence to the language of the contract in such circumstances. He emphatically said that in cases where it is clear that something has "*gone wrong with the language*" and it is "*clear what a reasonable person would have understood the parties to have meant*", there is no "*limit to the amount of red ink or verbal rearrangement or correction which the court is allowed*".

In other words, once a court is convinced that a literal interpretation of a contract leads to an absurd result or clearly does not reflect the intentions of the parties at the time of the contract, it is entitled to rewrite that aspect of the contract completely. Thus, the House of Lords has provided encouragement to courts to adopt a more interventionist approach where it is clear that something has gone wrong with the drafting. This bolder approach to construction will need to be taken into account by insurers, policyholders and brokers (as well as their lawyers) when considering potential coverage issues arising from policies which are less than clearly drafted.



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