ANDREW LIU & CO LTD
Units 01-04, 19-24,18th Floor
41 Heung Yip Road,Wong Chuk Hang, Hong Kong

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Non-Shipping case but principles very relevant to shipping cases

In a new non-shipping case *EE Ltd v Virgin Mobile Telecoms Ltd [2025]* EWCA Civ 70, which went all the way to Court of Appeal; its principles of drafting, interpretation is equally applicable to shipping cases. Most shipping lawyers regularly must-read non-shipping cases as principles generated in non-shipping cases are applicable to shipping cases.

Facts:

i. Both parties entered into a supply agreement pursuant to which Virgin committed to use EE's network to provide customers with 2G, 3G and 4G mobile services on an exclusive basis.
ii. EE claimed Virgin breached this exclusivity provision by diverting customers to other networks and as a result suffered losses.
iii. EE claimed damages representing the lost revenue it would have received had such customers remained on its network.
iv. Contract contained an exclusion clause that provides: *each party to exclude its liability to others for "anticipated profits"*

Judgment:

At all stages, EE lost its case against Virgin. Common sense dictates if EE were not to earn revenue, then the whole purpose of the contract means nothing. Yet EE lost the case at each stage due to court's interpretation of contractual term.

The following are the key points that readers must observe carefully:

i. There is no special meaning within the principles of interpretation of contract to the words in the relevant clause in this dispute “anticipated profits”. In fact, in the context of the Contract, this term was equivalent to (and used interchangeably with) “loss of profits“;

ii. The Contract provides no reason whatsoever anywhere in the other clauses to limit the scope of the Exclusion Clause to only include profits earned outside the Contract;

iii. The loss of revenue claimed by EE was in fact a claim for loss of profits; and

iv. The loss suffered by EE did fall within the scope of the Exclusion Clause. EE additionally argued that the claim should be viewed as a reduction in the price, and so not to relate to “profits“. However, this was rejected by the Court even during the appeal process

FDD department of ALCO advice to clients of Andrew Liu is:

i. Reputed lawyers were involved in drafting contract, and yet main issue was excluded in the exclusion clauses. It happened inadvertency as the word “anticipated profit” was not analysed carefully.

ii. Any contractual term should be vetted by lawyers to prevent costly dispute. Clauses is not the matter of plain English and lots of principles of contract must be considered. If the law governing the contract is from different country, it is advisable to seek assistance of lawyers of that country. Half Knowledge or assuming one knows everything is more dangerous and can prove very costly.

iii. FDD department of ALCO remains open to ONLY the clients of ALCO, 24 x 7 to guide them, provide advice and even pursue arbitration worldwide or negotiate claims/deal on casualty cases worldwide.