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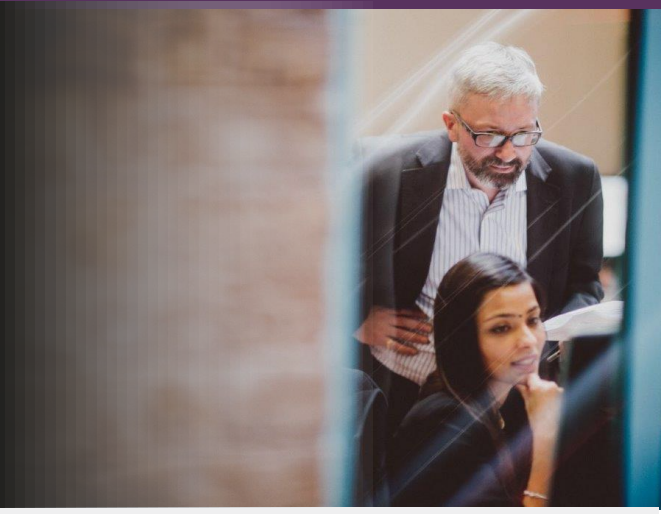
Contract formation



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Contrary to popular belief, legally binding contracts don't always take the form of lengthy written documents.

Under English law, contracts can be made orally and in a dynamic business environment, this frequently happens. However, whether a binding agreement has been made depends upon the core principles of a contract being satisfied. Generally speaking, for a contract to be valid and binding, there must be:

1. an offer from one party and acceptance of that offer by the other;
2. a mutual intention between the parties to create legal relations;
3. some form of "consideration" passing one way and the other (e.g. money or services); and
4. certainty as to the terms of the contract.

Provided that these principles are complied with, a binding contract can be made at any time, in any place and in almost any manner.

These core principles of English contract law were explored in the case of MacInnes v Gross. The case concerned an investment banker (**MacInnes**) and the ultimate majority stakeholder in the RunningBall Group (**Gross**), a real-time sports data provider.

MacInnes sued Gross for €13.5m, alleging that Gross was in breach of an oral agreement made between the two whilst having dinner in Mayfair in March 2011.

MacInnes alleged that he and Gross had struck a legally binding contract at dinner, where MacInnes would assist Gross in the sale of his stake in the RunningBall Group in exchange for 15% of the difference between the actual sale price of the business and the lower of either 100m Swiss Francs or eight times the business' 2011 earnings before interest and tax. Gross denied that such an agreement existed and said that all that had taken place was an informal meeting over dinner, at which some headline commercial terms had been discussed.

Gross accepted that when the pair met in Mayfair, there was discussion about the future of the RunningBall Group and the possibility of MacInnes supporting the business. Gross also accepted that there was a discussion about the possibility of MacInnes participating in the benefit of a sale of the RunningBall Group. However, Gross said that all such discussions were predicated on the basis that MacInnes would invest in the RunningBall Group by buying shares at a preferential rate based on an agreed formula. Clearly, the claims being put forward by the parties whilst broadly similar in terms of context, were significantly different in terms of substance.

Interestingly, MacInnes emailed Gross following the meeting in March 2011 setting out certain observations concerning the RunningBall Group and the options that were open to Gross in respect of a possible sale. Crucially, that email contained two paragraphs concerning MacInnes' potential role. That email was the only contemporaneous record of the discussions that had taken place over dinner and set out that MacInnes was delighted that he and Gross were "agreed on headline terms". Contrast this to the recent case of Blue v Ashley, involving Sports Direct's CEO Mike Ashley, where no paper or electronic trace could be found evidencing the alleged contract.

"The case sheds light on the pitfalls of relying on oral or otherwise informal arrangements made in casual settings."

Around nine months later, it became clear that a sale of the RunningBall Group was beginning to crystallise at which point MacInnes emailed Gross, forwarding his previous email and stating that he was conscious that their agreement had worked in his favour. MacInnes went on to say that the two of them should be "completely aligned" going forwards and Gross replied that they needed to make a "proper contract". MacInnes never responded to that statement notwithstanding his obvious contention that a "proper contract" had already been made.

As time went on, MacInnes' role in the sale of the RunningBall Group became increasingly limited and by the time of its sale he was almost entirely peripheral. Broadly, the terms agreed for the sale were:

- €20m cash;
- €50m worth of shares in the buying entity; and
- deferred consideration depending on the subsequent performance of the company (initially subject to a hold-back).

On that basis, MacInnes demanded payment for €13.5m as the "objective market value of his services", by reference to the formula agreed by the parties under the alleged contract made in March 2011.

The Court was, therefore, required to determine whether a legally binding contract had indeed been made when MacInnes met with Gross in March 2011.

Unfortunately for MacInnes, the Court found in favour of Gross without much hesitation. Indeed, the judge was "*firmly of the view that no binding contract was made [and that] there was no intention to create legal relations.*"

Interestingly, the judge went on to affirm that "t*he mere fact that the discussion took place over dinner in a smart restaurant does not, of itself, preclude the coming into existence of a binding contract. A contract can be made anywhere, in any circumstances. But I consider that the fact that this alleged agreement was made in a highly informal and relaxed setting means that the court should closely scrutinise the contention that, despite the setting, there was an intention to create legal relations.*"

The key takeaway from this case is that relying on informal arrangements is simply not worth the risk. Unfortunately, Mr MacInnes learned the hard way that legal agreements should be documented in writing with the benefit of clear and considered legal advice.

For more information speak to corporate lawyer, Ben Brownscombe, today.

Ben Brownscombe
020 7299 7005
ben.brownscombe@riaabg.com
www.riaabarkergillette.com