



Commercial Law Briefing

Intention to create a legal relationship



Sharman Law Solicitors

Bedford 01234 303030

Amphill 01525 750750

The High Court has recently applied the test for determining whether parties had intended to be contractually bound in the context of a conversation that took place during an informal business meeting held in a public house.

Under English law, a contract cannot be made without the intention to create a legally binding arrangement. Lord Clarke explained the approach in *RTS Flexible Systems Ltd v. Molkerei Alois Müller GmbH & Co KG* [2010] UKSC 14:

"It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations..."

The facts of the case are that a Mr Blue, an investment banker, came to an alleged agreement with a Mr Ashley, owner of Sports Direct Ltd, that if Mr Blue were able to facilitate Sports Direct Ltd's share price rise to £8 per share, he would pay him an incentive based fee alleged to have been £15 million. Three months after the share price hit £8 per share, Mr Blue received a sum of £1 million in his bank account, which he believed to be a payment showing commitment to the agreement. Mr Ashley disputed this, and claimed that the payment was a bonus for other work by Mr Blue. Mr Blue issued proceedings against Mr Ashley for non-payment of the remaining £14 million he alleges he was owed.

The judge in this case dismissed Mr Blue's claim. He gave 8 reasons for doing so;

- The setting of a pub is an unlikely one to negotiate a contractual bonus arrangement
- The purpose of the meeting was not to discuss Mr Blue's remuneration
- The evidence showed the conversation was not of a serious nature
- It would not have made commercial sense for Mr Ashley to make such an offer and was out of character
- It was fanciful to suggest Mr Blue had the power to move the share price as discussed
- The offer was too vague for it to be taken seriously, there was no measurable consideration of what Mr Blue would be doing to earn the payment

- None of the witnesses, including the one sober witness, thought that Mr Ashley was being serious
- Mr Blue only began to attach significance to the conversation once the Sports Direct Ltd share price increased.

In applying the objective test, explained as above by Lord Clarke, the court held that no reasonable person present at the meeting would have concluded that Mr Ashley's offer was serious and intended to conclude a contract.

Blue v Ashley [2017] EWHC 1928, 26 July 2017

Simon Parrott
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