High Court Finds Bank Contractually Bound By Statements Made At Town-Hall Meeting

In ***Daniel John Brader & others v Commerzbank AG*** **[2013] SGHC 284**, the Singapore High Court held that an announcement made in a Town-Hall meeting amounted to a contractually binding promise. Since the information concerning a guaranteed minimum bonus pool available for distribution to employees was intended to give rise to a legally binding commitment, and was sufficiently certain to be enforceable, that announcement constituted a separate free-standing unilateral contract between the bank and its employees.

Summary of Facts

Dresdner Kleinwort ("DKIB") is the global investment banking division of the Singapore branch of Dresdner Bank AG ("Dresdner Bank"), a bank incorporated in Germany. Dresdner Bank was originally a wholly owned subsidiary of Allianz SE. In January 2009, Dresdner Bank was sold to Commerzbank, which assumed its obligations under German law. Prior to being sold, it made a bid to retain staff by promising DKIB employees worldwide that it would pay them their bonus for 2008 based on a protected minimum bonus pool of €400 million.

In the wake of the global financial collapse that year, a decision was made to separate Dresdner Bank's investment banking and commercial banking business, with a view to exiting the investment banking business. As a result, many of DKIB's employees feared for the future of their careers as the new owners were not likely to retain existing employees. Many lost their motivation and several tendered their resignations. Further resignations would have had serious adverse effects on DKIB's operations. To address this problem, the Chief Executive Officer of DKIB announced a retention plan to DKIB's employees during a business update on 18 August 2008. At this Town-Hall meeting, employees were told that there would be a guaranteed minimum bonus pool of €400 million, which would be allocated to individuals on a discretionary basis according to individual performance. The meeting was beamed to the New York and London offices, and also broadcast through DKIB's intranet to other employees including those in Singapore. A special effort was made to encourage all employees to attend this meeting and to understand what was announced. This announcement was subsequently confirmed, both verbally and in writing, on a number of occasions.

By way of a subsequent email, Dresdner Bank sought to introduce a material adverse change (MAC) clause into the bonuses arrangement. This clause purported to reserve their right to review and reduce the provisional award if its financial position proved to be worse than forecast. Following a review of its financial performance, DKIB sought to

Key issues

- On the right facts, promises made by employers to employees outside of the four corners of their written employment agreement may become legally binding.
- Employers should take care to avoid making any firm promises or commitments of substance to employees, if these are not intended to become legally binding.
- Care should also be taken to ensure that all communications of substance are made clearly, and proper and complete records kept.
- Employers may also wish to take stock of and relook their written employment agreements to ensure that they contain tightly drafted "entire agreement" and variation clauses.

invoke the MAC clause, and reduce bonuses by 90%.

The Plaintiffs were 10 employees claiming either the balance 90% of their provisional bonus awards, or alternatively, damages for breach of contract.

Judgment

The Court found that on these unique facts, the announcement made at the Town-Hall meeting satisfied the requisite elements for a classic unilateral contract. DKIB was therefore contractually bound to adhere to the promise made. Specifically, the Court found that the key elements of offer, acceptance, consideration and an intention to create legal relations were all present to make the contract enforceable :

a) The announcement was an offer which effectively constituted a promise from DKIB to pay the bonuses from a minimum bonus pool, in return for which the employees would continue their employment and performance. This was in substance a unilateral contract, with the result that there was a waiver of the requirement of acceptance by the employees;

b) The employees did not need to communicate their acceptance to DKIB. Instead, they simply needed to continue their employment and performance, and DKIB would come under an obligation not to revoke the offer;

c) The bonus pool was a factor in the employees' decision to remain and as such there was sufficient consideration to make the contract enforceable. In any event, the employees would be conferring a 'practical benefit' in the form of stability and the continuation of operations, a result which DKIB wanted to arrive at with the offer of the minimum bonus pool;

d) The intention to create legal obligations could be inferred from the assurances made, in relation to such an important subject matter as employee remuneration. After all, "*one does not generally use words such as 'minimum' or 'guaranteed' to convey a provisional decision*."

e) Gaps in the contractual terms were no bar to the finding of a unilateral contract in this instance, as these gaps (such as the as yet unarticulated quantum of bonus for each employee, terms of payment etc) could be filled by DKIB's past practices of allocating the discretionary bonuses.

The announcement thus superseded whatever contract that might have existed, and imposed new contractual obligations on DKIB. The employees were awarded payment of the balance 90% provisional bonuses as damages for breach of contract.

Implications

This case highlights to employers the risk that statements made by them regarding matters of substance may be legally binding in certain circumstances, even if those statements fall outside the four corners of the written employment agreement. Where this is so, the Court will enforce the obligations arising from the statements, regardless of how inconvenient the consequences might be.

Should employers not wish a promise or commitment of substance to be legally binding, they should make this clear in the drafting of any announcement or presentation materials. They should also avoid making firm promises or commitments to employees on matters of substance, especially using words such as "guaranteed" and "minimum" - which may convey the impression that there was an intention to make such promise or commitment legally binding.

To ensure that employers do not assume contractual obligations inadvertently, they may wish to include in their written employment agreements tightly drafted "entire agreement" and variation clauses. Taking a conservative approach, such clauses should clarify that any and all contractual obligations between employer and employee must be reduced into writing and signed by both parties before becoming legally enforceable, regardless of whether these obligations arose before or after the written employment agreement. This may reduce the likelihood that a Court will find a contract to have arisen on the basis of oral communications thereafter.

Where the subject matter is of particular gravity, steps must be taken to ensure utmost clarity when communicating with employees. In particular, proper and complete records of communications with employees should be kept.

In the close, this case is important as it demonstrates the difficulty of resisting claims even if the commitments made are qualified, or on an informal basis. Those in managerial positions will need to be aware of this increased risk.

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