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Commercial Court reaffirms approach to the issue of intention to create legal relations in contract formation

A binding contract requires the four elements of offer, acceptance, consideration and intention to create legal relations.

In [Blue v Ashley \[2017\] EWHC 1928, 26 July 2017](#), the Commercial Court recently ruled on the last of these elements, reaffirming the principle that when considering whether there is such an intention, the test is an objective one, with the "touchstone" being "how the words used, in their context, would be understood by a reasonable person. For this purpose the context includes all relevant matters of background fact known to both parties."

The case is also a salutary reminder of the uncertainty that can come with negotiating commercial contracts in informal situations and surroundings, and of failing to evidence them in writing.

Mr Ashley, a well-known businessman, and Mr Blue, whose background is in investment banking, attended a business meeting at a bar in London. Both Mr Blue and Mr Ashley drank alcohol at the meeting, and Mr Blue subsequently alleged that during the meeting Mr Ashley and he agreed that should the share price in Sports Direct International plc (a company in which Mr Ashley is the majority shareholder) double, Mr Ashley would pay Mr Blue £15 million. This alleged agreement was not recorded in writing or otherwise.

After the share price doubled, and Mr Ashley refused to pay to Mr Blue the full amount which the latter considered was owed to him, Mr Blue commenced proceedings against Mr Ashley.

Mr Justice Leggatt dismissed the claim, stating that "in the course of a jocular conversation...Mr Ashley said that he would pay Mr Blue £15 million if Mr Blue could get the price of Sports Direct shares (then trading at around £4 per share) to £8. Mr Blue expressed his agreement to that proposal and everyone laughed...no reasonable person present in the Horse & Groom on 24 January 2013 would have thought that the offer to pay Mr Blue £15 million was serious and was intended to create a contract, and no one who was actually present in the Horse & Groom that evening – including Mr Blue – did in fact think so at the time. They all thought it was a joke. The fact that Mr Blue has since convinced himself that the offer was a serious one, and that a legally binding agreement was made, shows only that the human capacity for wishful thinking knows few bounds."

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This case is a clear endorsement of the objective test for an intention to create legal relations. It is also a sobering reminder (no pun intended) that one must be careful about conducting what one considers to be contract negotiations in an informal setting and without recording any alleged agreement in writing.

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