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litigation bulletin

August 2009

a broker's word is its bond: verbal contract held binding in *UBS v. Sands*

What you think is a casual discussion about a potential transaction may very well be a binding verbal contract. It took two trials and two trips to the Ontario Court of Appeal, but in *UBS v. Sands*,[1] Sands Brothers Canada, Ltd. ("Sands") found that out the hard way. Sands tried to back out of a sale to UBS Securities Canada Inc., ("UBS") of 100,000 shares Sands held in Bourse de Montreal Inc. ("Bourse"). Bourse was a privately held company that operated the Montreal Stock Exchange.

In November of 2006, a UBS representative discussed the purchase of the Bourse shares with Sands' president. Sands said that it was interested in the transaction, but wanted the sale to close in 2007 for tax reasons. UBS agreed to a January 3, 2007 closing date and Sands told UBS to "draw up the papers".

After the telephone conversation, UBS sent a confirming email to Sands setting out the number of shares being sold, the price per share and the closing date. Sands did not respond to the email in writing, but it did confirm its acceptance of the terms in a telephone call with UBS the next day.

Before the closing date, Bourse announced that it was publicly listing its shares. Sands wrote to UBS asserting that no agreement had been reached between the parties. UBS argued that a verbal contract was reached over the telephone and demanded that Sands fulfill its obligations.

After two trials it was finally determined that the verbal contract between the parties was binding. The trial judge considered that it was customary in the securities industry to make binding agreements verbally. That fact, and the rest of the evidence on the conversations between UBS and Sands, led the Judge to conclude that a reasonable person would consider a binding agreement to have been reached in November of 2006.

1 (2009), 95 O.R. (3d) 93 (C.A.).

On Appeal, the Court agreed with the Judge below that Sands was liable for anticipatory breach of its agreement with UBS. Due to the unique nature of the shares, the appropriate remedy was an order compelling Sands to complete the transaction.

The case should serve as a reminder that words exchanged in a conversation can have the same consequences as words exchanged in writing. Particularly in the securities industry, if a conversation would leave a reasonable person with the impression that a deal was reached, courts will enforce the bargain. To avoid unintended consequences, any party negotiating a contract should follow up telephone conversations with a note to the other party confirming what was discussed. At a minimum, if the other party sends its own note setting out what they think you agreed to, make sure to respond in writing to set the record straight if the other party's version of the conversation is inaccurate.

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