September 20, 2018

How does a coffee shop conversation become a binding contract?

By: Shaun Fluker

Case Commented On: *Schluessel v Margiotta*, 2018 ABQB 615 (CanLII)

How many times have you walked into a Starbucks looking forward to a coffee break only to find all seats occupied by people working on a laptop? Their cup is empty, and has been for hours. Starbucks revolutionized the industry in many ways, certainly one of which was that the coffee shop became a social destination and later a business office. Free wifi and highly caffeinated beverages will do that. The contractual dispute which is the focus of this ABlawg post arose out of a conversation at one of these tables at a Starbucks. *Schluessel v Margiotta* is a cautionary tale to take care in what you say to others in coffee shops – it may cost you a lot of money! The case is also an illustration of the difficulties in legal reasoning which face a trial judge presented with a dispute over whether an oral contract has formed.

Schluessel and Margiotta were friends. Back in 2011, Margiotta needed $250,000 and Schluessel lent him the money. Sometime thereafter, Schluessel agreed to take shares in Green Oasis Environmental, a company for which Margiotta is President and Chair of the Board, as repayment for the $250,000 loan. Schluessel alleges that in subsequent conversations Margiotta agreed to re-acquire the shares of Green Oasis Environmental by purchasing them back from Schluessel for $300,000. Margiotta alleges that he did not agree to this.

We are not told why Schluessel wanted Margiotta to reacquire the shares, but a likely reason is that Green Oasis Environmental shares had little or no market value. Schluessel alleges that conversations between the parties took place in 2014 and 2015 which formed the terms of an oral contract whereby Margiotta agreed to re-acquire the shares by purchasing them from Schluessel for $300,000. By failing to deliver the $300,000, Schluessel argues that Margiotta breached the contract. The issue to be resolved by Madam Justice Burns was whether an oral contract was formed as alleged by Schluessel. A conversation at Starbucks between Schluessel and Margiotta was the focal point of the analysis.

In order to determine whether an oral contract was formed, Madam Justice Burns seeks guidance from the law's truth seeker – the reasonable objective person. For now, we won't comment on this person's ethnicity, sexual orientation, economic status, or other identifying characteristics, but it is best when these characteristics are revealed by the court. The role for the reasonable objective person who listened in to these conversations between Schluessel and Margiotta is to decipher whether the two men intended to enter into a binding contract with sufficient certainty of terms on matters such as offer, acceptance and consideration, without examining the inner thoughts, emotions or beliefs held by either party. Wishful thinking by either party does not produce a binding contract out of a conversation (paraphrasing from paras 9 – 14). The tricky

part, of course, is that there is no written documentation upon which to conclude whether a contract was entered into by the parties.

The evidence provided by Schluessel and Margiotta conflicts as to what was discussed between them from March 2014 to the culminating meeting at Starbucks in March 2015. Schluessel alleges that in several discussions leading up to March 2015, he indicated to Margiotta that he wanted his money back and that, in order to make this happen, Margiotta promised to repurchase the shares for $300,000. Margiotta counters that he made no such promise, but merely indicated that as a favour to his friend he would look into the prospect of doing so – at most there was a potential for agreement between the parties. Schluessel wrote several letters to Margiotta which purport to reiterate what was agreed to in person (at least as Schluessel saw things), and other written correspondence and emails were exchanged between the parties leading up to the meeting at Starbucks. Margiotta instructed his lawyer to write a letter to Schluessel in response to some of this correspondence. Eventually Schluessel and Margiotta agreed to meet at Starbucks in March 2015. Schluessel alleges it was to finalize the deal, and Margiotta alleges it was to have further discussions about whether they could come up with an agreeable plan for him to buy back the shares (at paras 18 – 30). Subsequent to this meeting, Schluessel sent further written correspondence to Margiotta on numerous occasions indicating that he was expecting to receive documentation reflecting the payment terms agreed to at the Starbucks (at paras 37 – 41).

Having regard to the evidence on what transpired before the meeting at Starbucks, what was said at the meeting, and what happened after the meeting (including the lack of response by Margiotta to the post-meeting letters and emails from Schluesser), Madam Justice Burns concludes the reasonable objective person would find that Schluessel and Margiotta entered into an oral contract at the Starbucks whereby Margiotta would repurchase the shares from Schluessel for $300,000 (at para 35). Hence, the coffee shop conversation became a binding contract and Schluessel was awarded $300,000 in damages for breach of contract.

Contract law rarely captures my attention, and there is really nothing of interest generally about this decision. But sometimes it is interesting to swim foreign waters. The stated facts of the case initially caught my eye, but on further reflection I was intrigued by the reasoning process in this decision. It is apparent that Margiotta's evidence did not come across as credible to Madam Justice Burns (at paras 42 - 45), and this seems to be her primary basis for finding that an oral contract was formed here. In their evidence of what was said to each other, Schluessel was more believable than Margiotta.

A finding on the credibility of a witness is obviously beyond reproach here, and it is not my intention to question this. However, it does seem as though the inner thoughts and beliefs of Margiotta – which are not supposed to be relevant here - were more persuasive than the actual evidence put forward by Schluessel on whether an oral contract was reached. Margiotta is portrayed as deceptive and untrustworthy. For example, Margiotta says what he needs to in order to get what he wants (at para 43); Margiotta told Schluessel whatever he thought would suffice to maintain their friendship at the Starbucks meeting (at para 44); Margiotta is unresponsive and evasive after the Starbucks meeting (at para 45).

The evidence put forward by Schluessel is the various letters and emails written by Schluessel that speak of repayment terms agreed to in discussions and were sent to Margiotta prior to the Starbucks meeting, but all are written only by Schluessel and there does not appear to be any evidence, written or otherwise, that suggest Margiotta conceded to the terms of these letters and emails sent by Schluessel. All other evidence appears to be what the parties allege was said during their various discussions.

Early in her judgment, Madame Justice Burns writes that "[w]hat matters is not what the parties were thinking, planning, anticipating, or hoping; rather, courts look to how parties conducted themselves in the eyes of a reasonable, objective observer" (at para 10). The conduct of the parties is particularly relevant in a dispute over the formation of an oral contract (at para 14). In a dispute like this, it seems to me that it would be difficult, if not impossible, to separate assessments about conduct from conclusions on the inner motivations of the parties. Giving meaning to conduct requires some context, and I don't know how the reasonable objective person finds this meaning without probing into the inner thoughts of the parties. But it is important that this applies to both parties.

We learn a little bit about the deceptive motivations of Margiotta in these dealings, but what is missing in this judgment is much reflection on the inner thoughts of Schluessel. We are told that Schluessel was angry for being duped on the value of the Green Oasis Environmental shares (at para 3), but we are not told how this would motivate his conduct here. Interestingly, the belief of Schluessel that Margiotta has the financial means to repay him seems to be relevant in favour of Schluessel, but Margiotta's inner belief that he has no such means is not relevant (at para 50). We are led to believe that Schluessel was a diligent and careful negotiator in pursuing an agreement with Margiotta to get his money back. But if that is the case, where was his due diligence and care on the value of the shares, or his ability to liquidate them for cash, when he accepted them as repayment for the loan in the first place? As Madam Justice Burns notes towards the end of her judgment, not all business decisions turn out to be commercially reasonable.

This post may be cited as: Shaun Fluker, "How does a coffee shop conversation become a binding contract?" (September 20, 2018), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/09/Blog_SF_Schluessel_v_Margiotta_Sept2018.pdf

To subscribe to ABlawg by email or RSS feed, please go to http://ablawg.ca

Follow us on Twitter @ABlawg