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PERSPECTIVE

Some indefinite promises are enforceable, it seems

By James Hardin

The black letter law that indefinite promises are unenforceable has been a valuable tool for defendants in litigation, particularly employers defending against employee claims of vague or aspirational statements allegedly made in the workplace (e.g., “if you keep up the good work, there will always be a place for you at the company”). But a recent opinion from the state Court of Appeal, *Moncada v. West Coast Quartz Corp.*, 2013 DJDAR 15355 (Cal. App. 6th Dist. Nov. 22, 2013), may have moved the dividing line between fatally indefinite statements and enforceable promises in favor of employees. The Court of Appeal held that an employer’s promise to several employees was sufficiently definite to support breach of contract and fraud claims. Plaintiffs likely will cite the decision to bolster the argument that certain oral or written statements allegedly made by their employers are enforceable in contract and tort.

In *Moncada*, West Coast and its two owners told the plaintiffs (and other employees) that they were planning to sell West Coast and that the process would take two to 10 years to complete, but if the employees stayed, they would receive “stock or stock options in West Coast so that when the company actually sold, they would be rewarded for their loyalty.” They allegedly repeated the lie to various employees over a five-year period to coax them into staying with the company, despite the employee’s reservations and outside job offers. When frustrated employees began leaving the company, the defendants responded by promising the plaintiffs a bonus that would allow them to retire if they remained. Indeed, the defendants “repeated the promise numerous times whenever an employee expressed doubt or a wish to leave the company.” One plaintiff “turned down nine offers of employment from other companies during that period [in which the defendants repeatedly made this promise] in reliance on defendants’ promise of a bonus at the time of West Coast’s sale.” In November 2009, five years after the defendants started making this promise, the plaintiffs learned that the defendants had sold and transferred all of their shares in West Coast for over \$30 million. Plaintiffs were never paid the promised bonuses, and sued for breach of contract and

fraud, among other claims.

On appeal, the court — not addressing whether the promise was vague or indefinite — found that the elements for promissory fraud had been specifically pled because “defendants concealed the fact that they wanted plaintiffs to remain employed at West Coast to make the company more attractive to potential buyers, and only intended to give plaintiffs a nominal or no bonus for remaining employed.”

At a minimum, it is a departure from current case law in that it enforces a promise that lacks any objective basis for determining the amount allegedly owed.

On the breach of contract claim, the court applied the general rule proscribing indefinite promises: “The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. ‘Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable.’” (Emphasis added).

First, the court stressed that the contract was clear enough to determine the existence of a breach: “[D]efendants told plaintiffs that if they stayed and continued to work for West Coast until the company sold, defendants would give plaintiffs bonuses that would be sufficient for plaintiffs to retire. The agreement between plaintiffs and defendants was clear and certain; the parties knew their obligations under the agreement. Moreover, the agreement was also sufficiently certain to determine the existence of a breach. Plaintiffs stayed and worked at West Coast from the time of the initial promise in 2004, until 2009 when West Coast was sold for approximately \$30 million....” (Emphasis added).

Second, the court found that the promise was sufficiently clear to provide a basis for giving an appropriate remedy: “Moreover [distinguishing this case from previous cases], the promise here was to pay plaintiffs an amount that would be sufficient to retire ... using information about the Plaintiffs’ debts and obligations, their lifestyles at the time and actuarial information sufficient to allow financial planners to set a specific amount

for each of them given their specific circumstances at that time. Contrary to defendants’ argument, retirement amounts are not vague and indefinite; rather, they are readily determined using standard formulae and actuarial tables.”

Third, addressing the state high court’s concern regarding courts unduly interfering with businesses, see *Scott v. Pacific Gas & Electric Co.*, 11 Cal. 4th 454 (1995) (“courts will not enforce vague promises about the terms and conditions of employment that provide no definable standards for constraining an employer’s inherent authority to manage its enterprise.”), the *Moncada* court found that enforcing the subject promise would not “constrain defendants from managing West Coast” nor “potentially propel the court into the daily operations of the company.”

On the promissory estoppel claim, the *Moncada* court found that the promise was sufficiently clear and definite for the same reasons noted in the breach of contract analysis.

Justice Patricia Bamatre-Manoukian dissented to part of the decision, finding that the plaintiff had not and could not allege any terms “showing a meeting of the minds as to either the amount of the promised retirement bonuses or a method for calculating the bonuses” and therefore “the scope of defendants’ duty to pay a retirement bonus and the limits of an acceptable performance have not been sufficiently defined to provide a rational basis for the assessment of damages.” Her most trenchant criticism was highlighting the lack of an objective measure for determining the appropriate retirement bonus: “The amount required for any of the plaintiffs to retire and not have to work again is obviously uncertain since the amount could vary tremendously without any agreed-upon method or standard by which the amount of the retirement bonus could be determined.”

Moncada is potentially significant in several respects. At a minimum, it is a departure from current case law in that it enforces a promise that lacks any objective basis for determining the amount allegedly owed (i.e., amount(s) “sufficient for [several plaintiffs] to retire”), a point critical not only for determining damages but also whether a breach has occurred in some cases. The majority relied exclusively on *Sabatini v. Hensley*, 161 Cal. App. 2d. 172, 177 (1958), for the propo-

sition that an employer’s promise to pay a bonus was enforceable even though the amount was not fixed and there was no mechanism identified to set the agreed upon amount. But the dissent soundly distinguished *Sabatini*, and the *Hunter v. Sparling*, 87 Cal. App. 2d 711 (1948), case cited by the plaintiffs for the same point, because “both decisions apply the doctrine of quantum meruit, which allows a party who has provided services for the benefit of another to recover the reasonable value of the services....” However, the plaintiffs in *Moncada* did not allege a quantum meruit claim, and this doctrine usually applies in the absence of an enforceable contract to avoid the unjust enrichment of the party receiving services not contracted for. Moreover, the plaintiffs in *Moncada* did not seek the “reasonable value” of their services, but a contractually agreed upon amount “sufficient to retire.”

Beyond that, it is unlikely that *Moncada* foretells a significant break from the doctrine of the unenforceability of indefinite promises because it is based on fundamental contract principles and the opinion itself could be narrowed or distinguished on several bases. For example, it could be distinguished based on its unique facts (i.e., an employer repeatedly told the same lie to various employees as part of a five-year fraudulent scheme to trade on their loyalty and then sell the company and pay them nothing); narrowed to a particular factual context (such as promises of “bonuses” once a company is sold) (analogous to a *Lazar* fraudulent inducement claim, see *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996)); or interpreted to hold only that a promise which is reasonably certain for determining if a breach occurred can be less specific regarding the amount of damages due if a reasonable amount can be ascertained based on the circumstances.

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