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## Sealed with a handshake: when is a verbal deal not a deal?



A former investment banker claims that Mike Ashley struck a £15 million deal with him on a night out  
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The *Blue v Ashley* case making its way through the High Court in London is raising eyebrows for a number of reasons, not least because a get-together in a pub could end up costing Mike Ashley, the founder of Sports Direct, £15 million. So how does a boozy night out turn into such a drawn-out, high-value dispute, and what wider legal issues does this case shine a spotlight on?

This case centres around a scenario that London's commercial courts see more often than one might think: big business deals that are done, or varied, on a mere handshake. A contract is a legal concept that can exist without any paperwork at all. The typical written contract is evidence of the agreement, so in the absence of a written contract, the difficulty comes in proving that a legally binding agreement existed and the details of what was agreed.

While the sums in this dispute pale into insignificance alongside the amounts claimed in previous high-profile cases concerning verbal contracts like *Berezovsky v Abramovich* in 2012 (where the legal costs alone were estimated at £100 million) and a dispute involving the aluminium producer Rusal (where \$1 billion was at stake), the court in *Blue v Ashley* has to grapple with similar issues.

The question here is whether an oral agreement was reached in which Ashley would pay Jeffrey Blue, an investment banker, £15 million in the event that the Sports Direct share price rose to a specified figure. Mr Ashley says the claim is an “opportunistic try-on”.

Importantly, agreements reached orally (as opposed to in writing) can be legally binding. The difficulty lies in identifying whether there was sufficient certainty and intention of both parties, even if there was a “deal”. As with the Russian oligarchs, this case will essentially depend – in the absence of any documentary evidence – on the oral testimony and respective credibility of the two principal protagonists. When a dispute involves individuals who habitually conduct business on an oral agreement, it may be easier to establish such a claim.

Another example of this type of case is *MacInnes v Gross*, which was decided earlier this year. In this instance an Australian tycoon was cleared of claims that he broke his word over an £11.5 million deal allegedly sealed with a handshake in a restaurant in London. The judge dismissed this claim, satisfied that the contract was not legally enforceable as only “headline terms” were discussed.

Proving whether a legally enforceable contract has actually been agreed may not be straightforward and it may be that in the *Blue v Ashley* case, neither party will emerge with a great deal of distinction. In these kinds of cases, having credible witnesses is important, and having gone through all the evidence that can be found, the court will often end up ruling on the balance of probability. **Ian McDonald is the co-leader of Mayer Brown’s global litigation and dispute resolution practice**