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Article Information

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Supreme Court allows Jewish law to govern employment contract

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A recent decision of the New South Wales Supreme Court has stopped the administrators of a synagogue from wrongfully terminating a Rabbi and has affirmed that aspects of other systems of law can validly govern employment relationships.

Tim Capelin, partner, and **Emily Setter, law clerk**, review the decision and its implications for employers.

Case Details

The administrators of South Head & District Synagogue attempted to make Rabbi Milecki, the Chief Rabbi of the synagogue, redundant on the basis that the Synagogue was unable to meet the payments due to the Rabbi under his employment contract. The Synagogue had originally reduced the Rabbi's annual income from $843,000 for FY2015 to $756,000 for FY2016 and a projected $641,000 for FY17.

Importantly, the Rabbi's employment contract provided that the contract would be defined in accordance with Halacha, or Jewish law. The contract also provided that any disputes arising under the employment contract would be decided according to Jewish law by the Chief Rabbinate of Israel or by mutual agreement between the Rabbi and the Board of Management.

The Rabbi claimed that Hazakah, as an aspect Jewish law, was a term of his employment contract, either expressly or by implication. Relevantly, 'Hazakah' is a guarantee of life tenure for Rabbis who have been appointed by a congregation. Under this principle, a Rabbi cannot have his contract terminated, except by agreement, or pursuant to a decision of a properly constituted Din Torah.

It was also significant that the Rabbi's employment contract contained no express provisions in respect of duration or termination.

The administrators sought a determination that the Rabbi's employment could lawfully be terminated other than adjudging by a Din Torah in accordance with Jewish law. The Rabbi filed a cross-summons, arguing that the dismissal was wrongful, and that the court should restrain the administrators from giving effect to the purported dismissal.

The judgement comes eight years after the New South Wales Supreme Court granted an interlocutory injunction preventing a Rabbi from being dismissed in Gutnick v Bondi Mizrachi Synagogue.

The Court in this case went one step further, determining that the principles of Jewish law validly governed the employment of the Rabbi. Accordingly, the Rabbi was entitled to life tenure, subject to agreement or a decision of a properly constituted Din Torah. As the administrators had dismissed the Rabbi outside of this process, the dismissal was wrongful. The Court granted an injunction restraining the administrators from giving effect to the termination and ordered the administrators to pay the costs of the Rabbi.

Lessons for Employers

Whilst the facts behind this decision may appear well removed from most employers' circumstances, there are general principles of relevance.

Employers have the capacity to incorporate provisions from other systems of law into employment contracts, or indeed from other documents (e.g. policies). In order to avoid unwanted or surprising restrictions and obligations, employers should fully consider which parts of the alternative system of law, or document, they wish to incorporate. In order to increase certainty, it may be appropriate to incorporate these aspects as express terms in the employment contract itself.

In addition to expressly incorporating terms into employment contracts, terms may be implied into employment contracts by reference to the conduct and objective intention of the parties. In order to avoid "surprises" of this kind, employers should avoid making commitments or promises outside those contained in the written contract. It can also be useful to include "entire agreement" or "no reliance" clauses in the written contract.

Should you have any questions concerning how the decision may affect your business, please contact a member of Piper Alderman's Employment Relations team.