BÄR & KARRER

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SUBJECT-MATTER JURISDICTION OF THE ZURICH EMPLOYMENT COURT IN INCENTIVE PLAN DISPUTES

In its decision LA220017 of 9 May 2023, the High Court of the Canton of Zurich clarified the scope of the Zurich Employment Court's subject-matter jurisdiction. In particular, the High Court held that there is no such subject-matter jurisdiction with regards to a parent company if an employee of a subsidiary raises a claim relating to their participation in the parent company's incentive plan.

FACTS OF THE CASE AND PROCEDURAL HISTORY

On 23 April 2019, the plaintiff entered into an employment contract with a subsidiary of the defendant. In the employment contract, the plaintiff was granted participation in the defendant's Long-Term Incentive Program („LTIP"), which was governed by separate plan rules.

The LTIP in question was an incentive plan under which key employees could be granted options to purchase shares in the parent company, i.e., the defendant.

The plaintiff's employment contract was terminated with effect from 30 November 2020. On 9 December 2020, the plaintiff exercised her right under a previously granted „Option Agreement" to acquire shares of the defendant. On 12 January 2021, the defendant, in turn, exercised its right under the LTIP to repurchase the shares in question from the plaintiff. A dispute then arose regarding the share price applicable to that repurchase.

The plaintiff initiated legal proceedings against the defendant before the Zurich Employment Court, whereupon the defendant raised a plea of lack of subject-matter jurisdiction. The Employment Court denied its subject-matter jurisdiction and dismissed the action. The plaintiff then appealed that decision to the High Court of the Canton of Zurich.

THE HIGH COURT'S HOLDING

SUBJECT-MATTER JURISDICTION OF THE EMPLOYMENT COURT

The High Court had to decide on the contours of the Employment Court's subject-matter jurisdiction.

The Swiss Code of Civil Procedure („CCP") generally leaves the issue of subject-matter jurisdiction to the Cantons (Art. 4 para. 1 CCP). Accordingly, it is the cantonal law of Zurich which governs the subject-matter jurisdiction of the Employment Court, in particular the Law on the Organisation of Courts and Authorities in Civil and Criminal Proceedings („COL").

Pursuant to § 20 para. 1 let. a COL, the Employment Court decides on disputes arising from the employment relationship between employer and employee.

The High Court held that this provision establishes two requirements, which have to be met cumulatively to establish subject-matter jurisdiction: First, the parties must be employer and employee. Second, the dispute must arise out of their employment relationship.

In applying these requirements to the case under consideration, the High Court concluded that the Employment Court had been correct in declining its subject-matter jurisdiction, based on the following reasoning:

First, the parties involved could not be said to be „employer" and „employee", respectively, as there was no employment contract between them; the mere fact that the efforts rendered by the plaintiff for the subsidiary indirectly also benefited the parent company was insufficient to show a factual or effective employment relationship between plaintiff and parent company.

Second, while it is true – as the plaintiff argued on appeal – that the concept of „employment actions" should generally be construed broadly, the present action did not fall under this category.

In particular, the claim advanced by the plaintiff concerned the applicable price for the defendant's repurchase of the shares. The basis for the calculation of that price – contractual clauses and formulas – was contained in the LTIP rules themselves. In contrast, neither the employment contract between the plaintiff and the subsidiary nor the employment law provisions of the Swiss Code of Obligations have any bearing on this question.

The High Court also dismissed the argument raised by the plaintiff that denying the Employment Court's subject-matter jurisdiction in such cases would be unduly burdensome for employees: While it is true that employees raising several related claims may be forced to bring these before different courts, this is to be accepted in view of the unambiguous statutory language.

Lastly, the High Court held that well-compensated employees such as the plaintiff – with a monthly compensation of around CHF 20'000.00 and seeking to enforce an LTIP-claim worth more than CHF 530'000.00 – were in any event not in need of the special protections applicable under employment law. While the High Court did not set out a specific threshold for considering an employee well-compensated in this sense, it referred to case law by the Swiss Federal Supreme Court („SFSC") concerning the qualification of bonus payments as discretionary gratification versus mandatory variable salary, which gives some guidance (cf. SFSC 142 III 381 establishing a threshold of five times the median Swiss salary).

CONLUSION

As the prerequisites for the Employment Court's subject-matter jurisdiction were not met, the Employment Court had been correct in dismissing the action. Accordingly, the High Court denied the plaintiff's appeal.

It should be noted that this decision concerned the High Court's interpretation of the cantonal law of Zurich and can therefore not be extrapolated to other Cantons without further analysis.

KEY TAKEAWAY

At least in the Canton of Zurich, actions by employees based on their participation in a non-employing parent company's incentive plan cannot be brought before the Employment Court.

Accordingly, employees may be forced to litigate different claims relating to the same employment relationship before different courts, potentially complicating the enforcement of their claims.

For employers, the case under discussion highlights the complexities associated with claims raised under an incentive plan, particularly where – as is normally the case – a separate parent company administers the plan on behalf of the subsidiaries, which in turn are the employing entities. Whereas in this case, the parent company did not deny its standing to be sued, the question of which entity is obliged under a given plan (and therefore has standing to be sued) may be doubtful in other instances and must be assessed on a case-by-case basis. Employers should carefully consider how to structure the interplay between employment contracts and plan rules, in particular as it relates to dispute resolution mechanisms, i.e., jurisdiction clauses and arbitration agreements.

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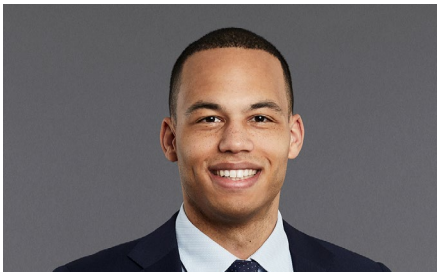

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