

When A Guarantee Isn't Really A Guarantee: Federal Court Clarifies Minimum Guaranteed Sum Clauses

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In a significant decision for commercial contracting in Malaysia, the Federal Court in *The New Straits Times Press (Malaysia) Bhd v Aideah Communication Sdn Bhd* [2025] 5 CLJ 661 has brought much-needed clarity to the legal effect of “Minimum Guaranteed Sum” (MGS) clauses. The central question: does the use of the term “guarantee” impose an absolute obligation, or can it be qualified by a standard of “reasonable endeavour”?

This case is a key addition to Malaysian jurisprudence on contractual interpretation especially on performance obligations that sit between best efforts and strict guarantees. It also serves as a cautionary tale as labels alone do not determine liability, but drafting does.

The Respondent in this appeal (Aideah Communication Sdn Bhd) was successfully represented by the firm’s senior partner, Datuk DP Naban, partner, Bahari Yeow together with associate, Amina Qistina binti Mohd Idris.

Background

In 2013, Aideah Communication Sdn Bhd entered into an agreement with The New Straits Times Press (NSTP) to source advertisements and provide editorial content for NSTP publications. In return, Aideah would receive a percentage of the Net Advertising Revenue generated.

The contract contained clauses 4.1 and 4.2, which referred to a “Minimum Guaranteed Sum” of revenue that Aideah was to help achieve. Clause 4.3, however, stated that Aideah’s obligation was to exercise “reasonable endeavour” to achieve the MGS, a softer, performance-based standard rather than a firm commitment.

A dispute arose when Aideah allegedly failed to meet the revenue thresholds in 2015. NSTP issued shortfall invoices for the difference between the actual revenue and the MGS and sought to set off these amounts against sums owed to Aideah.

The High Court allowed NSTP's counterclaim, interpreting the MGS as a binding financial guarantee. Meanwhile, the Court of Appeal reversed the decision, siding with Aideah on the basis that no absolute obligation was imposed. The Federal Court affirmed the Court of Appeal's ruling by rejecting the arguments put forward by the appellant.

The Federal Court's Reasoning

The apex court applied a holistic, contextual approach to contractual interpretation and held as follows:

1. No Clear Language Imposing an Absolute Obligation

Clauses 4.1 and 4.2 did not contain any express language imposing a strict duty to achieve the MGS.

The court noted that prior agreements between the parties did contain unequivocal "guarantee" language, highlighting the absence of such clarity in the 2013 Agreement.

2. Clause 4.3 Qualifies the Entire Obligation

The obligation to pursue the MGS was expressly qualified by a requirement to use *reasonable endeavour*.

Reading the contract as a whole, the Court found that Clauses 4.1 and 4.2 were not standalone obligations but operated subject to Clause 4.3.

3. "Reasonable Endeavour" Is Not Unenforceable or Uncertain

The court rejected NSTP's argument that such a clause was too vague to be enforceable. Under the Contracts Act 1950, consideration existed in the form of Aideah's services, and the performance standard was assessable objectively.

4. Burden of Proof Rests with the Obligee

It was NSTP's responsibility to prove that Aideah failed to exercise reasonable endeavour, a burden it failed to discharge.

Commentary

- Labels are not enough

Calling a provision a "Minimum Guaranteed Sum" does not automatically impose an absolute obligation. Courts look at substance over form, and the use of the word "guarantee" alone is insufficient.

- Efforts clauses are enforceable

"Reasonable endeavour" or "best efforts" clauses are valid and legally binding. Courts can evaluate performance standards based on an objective assessment of diligence and conduct.

- Clarity of drafting is crucial

If a performance obligation is intended to be a binding guarantee, this must be made explicit in the language of the contract, ideally with consequences for non-performance. Conversely, if obligations are intended to be qualified, those limitations must be equally clear.

- Burden of proof is on the claimant

In disputes involving performance thresholds tied to reasonable efforts, the party alleging breach bears the evidential burden. Mere failure to hit a target is not enough as there must be proof of negligence, omission or insufficient effort.

From a business perspective, the case offers valuable guidance on how to structure performance-related obligations in commercial contracts:

- If parties intend to impose absolute revenue or performance guarantees, this must be clearly drafted with no reliance on general labels.
- Conversely, if targets are aspirational or contingent on external factors, using “reasonable endeavour” or “best efforts” clauses (with defined parameters) provides flexibility while retaining enforceability.
- Parties should also consider including performance metrics, reporting mechanisms, or escalation clauses to support enforceability and avoid ambiguity.

The Federal Court's decision reinforces a long-standing principle in contract law: language matters. Simply describing a target as “guaranteed” will not suffice if the contract also includes a qualified performance standard. The ruling promotes a nuanced and commercially realistic approach to contractual obligations, recognising that not all targets are meant to be absolute.

Legal and commercial teams should revisit existing contracts especially those involving financial thresholds, sales targets or performance targets to ensure the drafting accurately reflects the parties' intentions. Where in doubt, clarity should prevail.

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