Can Your Email Exchange Become a Binding Contract?

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Certain contracts must be in writing and signed. Among them are contracts for the sale of real estate, contracts for the sale of goods for a price in excess of $500, and contracts to "answer for the debt of another," such as a guaranty. But what if the "writing" is an email exchange? Is that enforceable, and if so, then what suffices as the signature?

Florida has adopted the Uniform Electronic Transaction Act (UETA), which states that if a law requires a contract to be in writing, then an electronic record is sufficient to constitute a writing, and that if a law requires a writing to be signed, then an electronic signature is sufficient to constitute a signature. The UETA also states that an "electronic signature" includes a "symbol… attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

A recent Texas case interpreting the Texas version of UETA discusses how this works in the case of an email exchange.

In *Khoury v. Tomlinson*, the Texas Court of Appeals considered a situation where the parties had exchanged emails to resolve a dispute among themselves. In the emails, Tomlinson agreed to repay to Khoury the sum of $400,000 that Khoury had loaned to Tomlinson's company, Petrogulf. Tomlinson later failed to make the payment, and Khoury sued. Tomlinson argued that the statute of frauds requires a contract to answer for the debt of another to be in writing, signed by the party to be charged, and that while the agreement was in writing because of the email correspondence, he had not signed it, and it was therefore not enforceable.

The court disagreed. The court held that Tomlinson's name, appearing in the sender field of the email, was sufficient to constitute a signature.

The court distinguished one case cited by Tomlinson, *SN4, LLC v. Anchor Bank*, where the court refused to find that the name or email address shown in the "from" field was sufficient. In that case, the writing that needed to be signed was contained in an attachment to the email rather than in the email itself, a distinction that the *Khoury* court found to be important.

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The *Khoury* court also noted that another Texas case, *Cunningham v. Zurich American Insurance Co.*, held that a signature block containing the sender's name at the bottom of the email was not a signature because there was no evidence that the sender typed it by hand. The court surmised the signature block had been inserted automatically when the email was sent. The *Khoury* court disagreed, stating that the signature block is created by the email account holder when he sets up the account, and there is no fundamental difference between typing the name by hand and instructing the computer to add a pre-prepared signature block.

An important consideration in the *Khoury* case was that the sender intended to be bound by the terms of the email when he pushed "send." While the parties could have avoided the need to obtain a court ruling on that issue, as well as the risk of losing in court, by using an old-school handwritten signature, the era of e-commerce is at hand, and if contracting parties are going to do business with a string of emails, then the law will find ways to accommodate that. However, given the unsettled case law in this area, there is some risk in drawing legal conclusions as to whether these agreements would be enforced in court. It may therefore be wise to err on the side of caution and consult counsel if you want to make sure that contractual rights and obligations made in emails are rock-solid.

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