

# Before You Hit “Send:” Texas Supreme Court to Tackle Whether Emails Satisfy the Statute of Frauds and Become a Binding Contract for the Sale of Property

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On October 8, 2019, the [Texas Supreme Court](#) entertained oral argument on whether emails regarding the purchase of a second pipeline easement satisfied the statute of frauds.

In [Bujnoch, Life Estate, et al. v. Copano Energy, LLC, et al.](#), the Texas Court of Appeals reversed the trial court’s summary judgment in favor of Copano Energy, LLC (“Copano”).

Copano’s representative engaged in an email exchange with an attorney representing several landowners in connection with the sale of a second easement in favor of Copano. The emails identified the second easement as “an additional 20 feet,” “contiguous to the first easement,” “generally on the north side of the existing 24 inch line.” Copano’s representative agreed to pay the lawyer’s “client \$70 per foot for the second 24-inch line,” and specifically agreed to pay one client “\$88 per foot for the second easement.” Below every email message, Copano’s representative typed his name.

When Copano refused to honor the terms set forth in the emails, the landowners’ sued Copano for breach of contract. Copano fired back with a summary judgment motion that argued the emails did not satisfy the statute of frauds. The trial court granted summary judgment without specifying the basis for its ruling.

However, the Court of Appeals reversed and remanded after concluding that: (1) the emails could be read together to satisfy the statute of frauds’ memorandum requirement; and (2) when the emails are read together, they include the essential terms of an agreement sufficient to satisfy the statute of frauds. The Court also identified at least two fact issues that precluded summary judgment: (1) whether the Copano representative intended to sign the emails; and (2) whether the parties agreed to conduct the transaction by electronic means.

The statute of frauds is an affirmative defense to the enforceability of a contract, and requires that certain types of contracts, including contracts for the sale of property, must be in writing signed by the party to be bound. The writing or memorandum need not contain all of the terms of the agreement, but must contain the essential terms of the agreement. The writing or memorandum may be comprised of multiple signed writings that related to the same transaction.

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There was no dispute that the emails related to the same transaction—the purchase of a second easement. To satisfy the statute of frauds, the signed writings need not expressly reference one another if signed by the party to be bound. Accordingly, if Capano’s representative signed the emails, then there was no need for the emails to expressly reference one another.

Electronic signatures can be legally effective when the party to be bound uses an electronic symbol evincing an intent to sign the email.

The Texas Supreme Court has not weighed-in on when an email qualifies as an electronic signature. Intermediary courts have expressed divergent views the issue. A Houston Court of Appeals has held that an email address in the “from” field of an email may constitute a signature for purposes of the statute of frauds even though the sender’s name appears nowhere else in the email. The Fort Worth Court of Appeals has held that a signature block, standing alone, did not evince an intent to sign the email. The Corpus Christi Court of Appeals previously found no intent to sign an email when neither the sender’s name nor his signature block appeared below the message.

Because Capano’s representative typed his name at the end of each email which at times included a signature block, and he testified in his deposition that he sometimes negotiates agreements through email, and Capano honors those agreements, the Court found, at a minimum, a fact issue existed as to whether the representative intended to sign the emails.

The Court also found that the emails contained essential terms of the parties’ agreement—the identity of the parties and an adequate description of the property to be sold.

Essential terms of a contract may never be supplied by parol evidence, but details which merely explain or clarify an essential term may be shown by parol evidence. Because the emails adequately described the sellers as the lawyer’s “client,” the emails identified the sellers by reference to the attorney-client relationship with their lawyer. Any parol evidence would not be used for the purpose of identifying the sellers, but only for clarifying or explaining who the lawyer’s clients are.

Next the Court considered the sufficiency of the property description. The property description must furnish within itself or by reference to another existing writing the data or means to identify the property with reasonable certainty. The Court concluded that the emails provided sufficient data to do just that by explaining that the second easement would be “an additional 20 feet wide,” “contiguous to the first easement” and “generally on the North side of the existing easement.” With this description, the Court reasoned that this description provided the means to identify the property with reasonable certainty including the “size, shape and boundaries” of the property in reference to the original easement.

The Court rejected Copano’s argument that the emails merely showed an intent to agree in the future when the emails contained the essential terms of the agreement.

Finally, the Court considered whether the parties agreed to transact business electronically. Parties need not expressly agree to conduct the transaction by electronic means. Such an agreement may be inferred by the parties’ conduct and surrounding circumstances. Capano’s representative testified in his deposition that he at times negotiates contracts over email, and that Capano would honor the agreements reached over email. Based on that deposition testimony, the Court concluded that a fact issue as to whether the parties’ agreed to transact business electronically precluded summary judgment.

Stay tuned for the Texas Supreme Court to weigh-in on the issue.

Practice Tips :

- Check your email settings for automatic signature or signature blocks
- When emailing about a proposed transaction limit the purpose of the email or specify what it is not, e.g. not an offer, not an acceptance, no operative effect, subject to a definitive agreement signed by both parties, etc.
- Consider using automated disclaimer language in emails

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