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eINSIGHT

When an E-Mail Signature is an Electronic Signature is a Settlement Signature

An e-mail signature can be a thoughtful closing to a mundane correspondence, or a mindless addendum to an otherwise critical message. Some are automatically placed at the foot of every message we send, while others are customized for a particular recipient. Does an e-mail signature constitute a legally binding signature? And if so, is this e-mail signature sufficient to bind parties to a settlement agreement?

The California State Court of Appeal addressed the issue of when an e-mail signature amounts to an electronic signature, and when an electronic signature is sufficient to enforce a settlement agreement in *J.B.B. Investment Partners, Ltd., et al., v. R. Thomas Fair, et al.* No. A140232, 2014 WL 6852097 (Cal. Ct. App. Dec. 5, 2014). The case concerned a series of e-mails and text messages, a voicemail, a round of golf, and a week-long communication delay – a perfect recipe for a dispute concerning when, how and where a contract was made. Ultimately, the Court found **that merely signing one's name at the bottom of an e-mail is far from sufficient to bind that person in contract, let alone to a settlement agreement**. Under California's Uniform Electronic Transactions Act ("UETA"), the party looking to enforce the e-mail as an electronic signature must show that 1) the parties agreed to conduct an electronic transaction and 2) the signing party wrote his or her name on the email with the intent to formalize an electronic transaction.

Background

This case involved a dispute between two real estate investors on the one hand, and the owner of two apartment units on the other. After Plaintiffs had invested $250,000 in Defendant Hand's apartments, they allegedly discovered several fraudulent misstatements and omissions made by the Defendant. Before commencing the litigation, the parties engaged in settlement discussions, and on July 4, 2013, Plaintiffs' counsel sent Hand an e-mail ("July 4 Offer") laying out the terms of the proposed $350,000 settlement, included in which were the following statements:

- "All litigation would be stayed pending full payments"
- "The Settlement paperwork would be drafted in parallel with your full disclosure of all documents and all information…"

- We require a YES or NO on this proposal; you need to say I ACCEPT … Anything less shifts all focus to the litigation and to the Court Orders we will seek…"

- "Let me know your decision."

The July 4 Offer did not contain a signature line or signature block, nor was the e-mail signed by any of the Plaintiffs.

The following day, Fair responded to the offer with a seemingly ambiguous e-mail from his cell phone ("July 5 Response") at 10:17 a.m., which read:

> "[Plaintiffs' counsel], the facts will not in any way support the theory in your e-mail. I believe in [the apartment complex]. So I agree. Tom fair[.]"

Counsel for the Plaintiffs responded soon thereafter, asking Hand to clarify his response. Before receiving such response, Plaintiffs filed the instant lawsuit, which complaint was then sent to Defendant at 12:25 p.m. During the next two hours, Fair sent three text messages and left one voicemail, in which he apologized for being on a golf course that prohibited cell phone use, reiterating his acceptance of the terms presented in the July 4 Offer. At 1:53, Plaintiffs' counsel sent a confirmatory e-mail acknowledging receipt of Fair's acceptance, and noting that "I will work on the formal settlement paperwork" and "will seek to get that settlement paperwork to you for review by Monday."

On July 11, 2013, the written settlement agreement, complete with signature blocks for all parties and a clause explicitly permitting the document to be electronically signed, was sent to Defendant. Defendant did not sign that written settlement offer, and the parties proceeded to trial. Upon a motion to enforce the settlement agreement pursuant to California *Code of Civil Procedure* § 664.6, the trial court ruled that the central issue was whether the two parties had a meeting of the minds as to the terms of the settlement, and that the July 4 Offer was accepted by Fair's July 5 Response. This conclusion was supported by the court's interpretation of the surrounding circumstances and communications. The trial court entered judgment for the Plaintiffs and Defendants timely appealed.

Discussion

On appeal, the Court found that, as a preliminary matter, in order to determine whether the settlement agreement could be enforced under *CCP* § 664.6, there must first be a determination of whether the settlement was signed as required by the statute. Where the alleged signature is electronic in form, party seeking enforcement of the signature must show that A) the parties agree to conduct a transaction by electronic means pursuant to UETA § 1633.5(b), and that B)it amounts to an electronic signature under UETA §1633.2(h). Neither of these conditions was address by the trial court, yet they were determinative on appeal.

A) Parties agree to conduct electronic transaction

The question of whether the parties agreed to conduct a transaction by electronic means is determined by examining the context and surrounding circumstances of the transaction. While an explicit agreement to allow electronic signatures is not required, it is a relevant factor.

Furthermore, evidence that a signature was requested or permitted in electronic form in past or future agreements will be relevant.

Here, there was no signature requested in the July 4 Offer, nor did the offer invite a signature with a signature block. Instead, the offer merely requested a "YES," "NO," or "I ACCEPT" in return. Furthermore, the July 11 written proposal included signature blocks, as well as explicit language permitting electronic signatures. And Plaintiffs' counsel wrote a follow-up e-mail on July 19 to Fair stating, "It's a good thing we have a settlement, then; let's put pen to paper and close it…We are not going to stay anything until we have a signed deal." All these communications would indicate that both parties agreed that any settlement would only be enforceable as a written, signed document.

B) Electronic Signature

In order to fulfill the requirement of § 1633.2(h), a party must show more than merely proof that the signature in question was made by the person against whom enforcement of the contract is sought, and that the signature was electronic. The party must also show that the signature was "executed or adopted by a person with the *intent to sign the electronic record*." *Id.* Furthermore, the court may value evidence of whether *both* sides intended for a document or signature to be binding as an electronic signature.

Here, the Court found that there was substantial evidence to support Defendant's argument that Fair did not intend for his signature to formalize an electronic transaction. First, Defendant's July 5 voicemail and text messages did not indicate that he intended his prior e-mail signature to act as a binding legal signature, but merely that he agreed with the negotiated terms. Second, the July 4 Offer indicated that further paperwork would be prepared, which paperwork would serve as the final settlement agreement. Third, Plaintiffs' July 5 filing of this instant complaint – which by the terms of the July 4 Offer would seem to terminate the offer prior to acceptance – and subsequent drafting a written settlement agreement negate any argument that the Plaintiff believed the July 5 Response to be a binding signature.

Conclusion

The rules governing electronic transactions and signatures under the UETA are well established and informative: it must be clear that both parties agreed to conduct an electronic transaction, and that the signing party intends for that electronic signature to act as a binding signature. However, the *J.B.B.* Court seemed to add even heightened scrutiny to this analysis when a part seeks to enforce a settlement agreement with an electronic signature. Agreements of such legal import and consequence should be unequivocal in their terms, and the parties forthright in their intent.

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