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July 17, 2023

Use of a thumbs-up emoji creates a valid and binding contract

By Stephen Thiele

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In a groundbreaking legal ruling, a Saskatchewan court has recognized that a thumbs-up emoji (👍) can be a valid signature and result in the formation of a binding contract.

In [South West Terminal Ltd. v Achter Land](#), 2023 SKKB 116, the plaintiff, a buyer of flax, sought summary judgment to enforce a contract that the parties had allegedly entered for the supply of flax. On March 26, 2021, the plaintiff had sent via text message an offer to buy 86 metric tonnes of flax for \$17 a bushel, with a delivery in November. Attached to the text message was a form of offer, executed by the plaintiff. The defendant responded to the text with a thumbs-up emoji.

While the plaintiff contended that the response constituted an acceptance of the contract, the defendant submitted that:

(i) the emoji was a mere acknowledgment that the offer had been received;

(ii) in any event, the purported agreement lacked certainty of terms; and

(iii) the requirements of section 6 of Saskatchewan's [The Sales of Goods Act](#) (the "SGA") were not met.

The court rejected all of the defendant's arguments and granted summary judgment in favour of the plaintiff.

With respect to whether the thumbs-up emoji constituted an acceptance of the plaintiff's offer to buy flax, the court explained that the law of contract provides that a valid and binding agreement is formed when there is an offer by one party that is accepted by the other with the intention of creating a legal relationship, supported by consideration. Courts apply an objective standard to contract formation, assessing whether, to the objective reasonable bystander, the parties have indicated an intention to contract with one another.

As determined by the Supreme Court of Canada in [Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga](#), 2021 SCC 22 at [paragraph 38](#), the nature of the parties' relationship and the interest at stake will help inform

whether there was an intention to create a legal relationship.

In this case, the parties had done business together for almost ten years and contracts had been formed in the past in a manner similar to the alleged contract involving the defendant's emoji response. In those other contracts, the plaintiff would provide a scanned copy of the contract, containing a wet signature, to the defendant via a text message, and the defendant would curtly respond with either the word "okay" or "yup", or with the phrase "looks good". The contract would then be fulfilled, without any question or problem.

Given the similarity in circumstances, the plaintiff viewed the thumbs-up emoji as forming a valid contract, particularly considering that the defendant never indicated otherwise or that it required anything further to signify a valid and binding commitment to sell the amount of flax sought by the plaintiff.

The court agreed with the plaintiff's view. The thumbs-up emoji was simply another form of curt response which signified approval and acceptance of the contract.

The court was justified in reaching this conclusion based on the ordinary meaning of a thumbs-up emoji and the provisions of Saskatchewan's [The Electronic Information and Documents Act, 2000](#) (the "EIDA") .

Online dictionary sources stated that the thumbs-up emoji was "...used to express assent, approval or encouragement in digital communications, especially in western cultures."

Meanwhile, the [EIDA](#) provided that an acceptance could be expressed in an electronic form, including, as stated under section 18(1) (b), the "touching or clicking on an appropriately designated icon or place on a computer screen

or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter."

With respect to certainty of terms, the defendant specifically argued that the contract was incomplete because it had not received the "General Terms and Conditions" of the agreement and that the delivery period only vaguely referred to the month of November.

The court rejected these arguments based on the modern judicial approach to contractual interpretation found in [Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53](#), which directed the court to consider the surrounding circumstances of the contract.

The court again noted the parties' lengthy business relationship and that terms and conditions had been repeatedly set out in previous contracts. Those terms and conditions were never changed and were merely standard boiler plate. Accordingly, the failure to provide the defendant with the standard terms and conditions of the flax contract did not create any uncertainty.

Similarly, reference to only the month "Nov(ember)" in the contract for delivery was not too vague because from past dealings the parties knew that this meant November 2021. Lastly, section 6 of the [SGA](#) was unhelpful to the defendant.

Among other things, section 6 provided that a contract for the sale of goods of a value of \$50 or more was not enforceable unless some "... note or memorandum of the contract was made and signed by the party to be charged or his agent in that behalf."

The court simply concluded that the thumbs-up emoji was good enough to meet the requirements of section 6. Although a non-traditional way to



“sign” a document, the emoji had originated from the defendant’s iPhone, which had also been used to receive the plaintiff’s offer, and constituted a valid “signature” because a specific individual could be identified as the user of the iPhone.

This case is important because it sheds light on the evolving nature of electronic communication and its implications for contract law. Overall, the ruling opens the door for greater flexibility in contract execution by recognizing that parties can establish binding agreements through various electronic means and responses, and demonstrates that the formality of a signature will not be a barrier to contract enforceability, as long as the essential elements of a contract, such as offer, acceptance, and consideration, are present.

Practically speaking, it might be wise for parties who engage in negotiating a contract through the use of text messages to avoid using an emoji when responding to a contractual offer because use of the chosen emoji may have unintended consequences and create a binding contract when no such intent was meant. By their nature, emojis are intended to replace words, but different people may have vastly different interpretations of what the omitted words were intended to be. A contract can create serious obligations. Accordingly, it is recommended that a party responding to an offer should clearly set out their position using plain language rather than a curt emoji.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

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