Can a contract for the sale of land be "signed" by email?

Insights - 24/10/2019

A recent decision in the UK has held that an email from a solicitor, with an automatically generated footer, was sufficient to satisfy the requirement that a contract for the sale of land be "signed" by or on behalf of each party. This case is a reminder that care is needed so as not to inadvertently become contractually obliged to proceed with a transaction before a party intended the terms to be final.

Contracts for the sale of land etc. must be in writing

Section 2 of the UK Law of Property (Miscellaneous Provisions) Act 1989 stipulates that contracts for sale etc. of land to be made by signed writing. More particularly, subsection (1) provides, amongst other things, that "[a] contract for the sale or other disposition of an interest in land can only be made in writing"; and subsection (3) provides that the relevant written document "must be signed by or on behalf of each party to the contract".

The Cayman equivalent is section 37(2) of the Registered Land Law (2018 Revision). Relevantly, and disregarding the proviso to that section (which deals with exceptions to the requirement for writing) it provides that:

> *"no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorised".*

For the purpose of section 2(3) of the UK Law of Property (Miscellaneous Provisions) Act 1989 (and similarly, for the purpose of section 37(2) of the Registered Land Law), can the contract be "signed" by an email that incorporates an automatically generated email footer? In apparently the first UK case to deal with this specific issue, the County Court of Manchester has answered "Yes". The case is the decision of His Honour Judge Pearce (**HHJ Pearce**) in *Neocleous & Anor v Rees*

[2019] EWHC 2462 (Ch) (20 September 2019).

Neocleous & Anor v Rees

In that case, the parties' solicitors agreed in an exchange of emails (constituting a single email chain) to compromise the dispute by the defendant (R) transferring to the claimants (N) a small piece of land adjacent to Lake Windermere in consideration of £175,000 to be paid by N to R. N subsequently sought specific performance of the compromise agreement.

R argued that the emails exchanged between the parties' solicitors did not satisfy the requirement that the contract had to be "signed" by or on behalf of each party. This was because the purported signature by R's solicitor on an email setting out the main terms of the settlement agreed between the parties arose from the automatic generation of his name, occupation, role and contact details at the foot of the email.

HHJ Pearce found for N, holding that the automatic email footer was a sufficient act of signing.

I quote the following summary of the decision from a UK source:

> "A name in the 'footer' of an email amounted to a signature for the purposes of section 2 of the 1989 Act as long as the name was applied with authenticating intent. In this case, therefore, R's solicitor had signed the relevant email on behalf of R.
>
> Although under the email account's settings the relevant words were added automatically to every email without any action or intention on the solicitor's part, the setting up of that rule in the first place had involved the conscious action of a person. It was difficult therefore to distinguish between a name and other details added pursuant to a general rule from the situation where the sender manually adds those details to every email, especially as the recipient of the email has no way of knowing whether the details were added automatically or manually. Looked at objectively, the presence of the name indicated a clear intention to associate the author with the email.
>
> It was also relevant that R's solicitor had inserted the words "Many thanks" before the automatic footer in his email as this strongly suggested that the solicitor was relying on the automatic footer to sign off his name."

Electronic Transactions Law (2003 Revision)

In a Cayman context, the Electronic Transactions Law (2003 Revision) lends support to the outcome in *Neocleous & Anor v Rees*. In that Law, "electronic signature" is defined to mean "an electronic sound, symbol or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record". Based on

Neocleous & Anor v Rees, it may be argued that an email footer satisfies this definition. Assuming that to be the case, Part V of the Law, especially section 18 & 19, deals with the application of electronic signatures in the Cayman Islands.

It is beyond the scope of this note to review Part V in detail. Attention is drawn to the following provisions:

- Section 19(1) reads:

> *"Where the signature of a person is required by a statutory provision, rule of law, contract or deed, that requirement shall be met in relation to an electronic record if an electronic signature is used that is as reliable as was appropriate for the purpose for which the electronic record was generated or communicated, in all the circumstances, including any relevant agreements."*

- And, section 19(3) reads:

> *"An electronic signature shall be reliable for the purpose of satisfying the requirement referred to in paragraph (1) if -*
>
> (a) the means of creating the electronic signature is, within the context in which it is used, linked to the signatory and to no other person;
>
> (b) the means of creating the electronic signature was, at the time of signing, under the control of the signatory and of no other person;
>
> (c) any alteration to the electronic signature, made after the time of signing, is detectable; and
>
> (d) where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable."

Suffice to note that, in *Neocleous & Anor v Rees*, the judge held that a solicitor's email footer satisfied the authenticating intent to which section 19(3) is directed. To quote again from the UK source referred to above:

> "R had argued that signing a document requires the writing of the signatory's name or mark in his/her own hand, even though the writing may be inserted electronically (e.g. by a hand-written signature being scanned and the digital document that results being inserted in to the document). This argument was rejected by the judge in favour of the broader and simpler test of whether the signatory's name was applied to the document with authenticating intent. This mirrors the approach of the recently published Law Commission report on the electronic execution of documents which is at pains to stress that it does not focus on nor favour a

particular type of technology."

What lesson can one learn from Neocleous & Anor v Rees?

It remains to be seen whether *Neocleous & Anor v Rees* will be followed by higher courts in the UK, or how it will be received in the Cayman Islands. Until that time, however, the case should put Cayman attorneys-at-law and other persons on notice of the importance of ensuring that all pre-contract exchanges of emails which purport to set out the terms of a proposed disposition of property are headed "subject to contract" to avoid the possibility of the parties inadvertently becoming contractually obliged to proceed with a transaction at a time when they may not yet be in a position to do so.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

Meet the Author

James Bergstrom

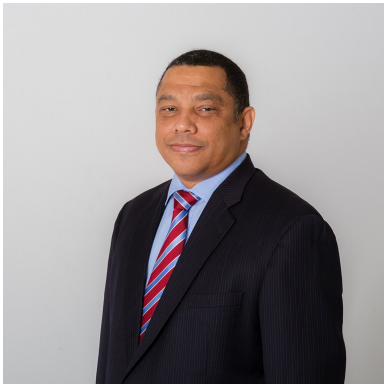
Partner

Cayman Islands

E: james.bergstrom@ogier.com

T: +1 345 815 1855

Key Contacts



Cline Glidden

Counsel

Cayman Islands

E: cline.glidden@ogier.com

T: +1 345 815 1785

Related Services

Cayman Local Legal Services

Property law