



SEMAPHORE

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Emoji Seals Contract

A farming corporation employee's use of a "thumbs up" emoji in a smartphone discussion of a grain order has been deemed satisfactory to have established a legally-binding contract by a Canadian court.

King's Bench for Saskatchewan Justice TJ Keene delivered the summary judgment in favour of grain and crops input firm South West Terminal Ltd (SWT), which brought the case against Achter Land & Cattle Ltd (Achter).

SWT claimed the parties entered into a deferred delivery purchase contract on 26 March 2021 in which SWT agreed to buy and Achter agreed to deliver 87 tonnes of flax for a contracted price of C\$669.26 per tonne. Delivery of the flax, which was due to happen in the month of November 2021, never occurred.

Achter denied entering into the contract, and in the alternative or in addition, relied on the statutory defence found in s 6(1) of Canada's The Sale of Goods Act, RSS 1978, c S-1 (SGA). The farm business contended that any agreement was unenforceable because there was no note or memorandum of contract.

However, Justice Keene accepted evidence the two individuals directly involved in negotiating such contracts – Kent Mickleborough and Chris Achter, respectively – had an established practice of confirming photographed contracts via smartphone.

"So in short, what we have is an uncontested pattern of entering into what both parties knew and accepted to be valid and binding deferred delivery purchase contracts on a number of occasions," stated Justice Keene.

"It is important to note that each time Kent added to the offered contract 'Please confirm terms of durum contract' and Chris did so by succinctly texting 'looks good', 'ok' or 'yup'. The parties clearly understood these curt words were meant to be confirmation of the contract and not a mere acknowledgement of the receipt of the contract by Chris.

"There can be no other logical or creditable explanation because the proof is in the pudding. Chris delivered the grain as contracted and got paid. There was no evidence he was merely confirming the receipt of a contract and was left just wondering about a contract."

In regard to the disputed contract, Mr Mickleborough stated in an affidavit: "I then wrote up the contract for a purchase of 87 metric tons [sic] of flax for \$669.26 per ton [sic], with a delivery period in November 2021 (the 'Flax Contract'). I then signed the contract, 'Please confirm flax contract'. Chris texted back a thumbs up emoji. At the time, I understood this to be that Chris was agreeing to the contract and this was his way of signalling [sic] that agreement."

In his deposition, Mr Achter attested that in this instance the thumbs up emoji had been used to simply confirm receipt of the contract and not that he was agreeing to its terms.

He stated that whereas previous contracts between the parties were predominantly for already-harvested grain, this order involved grain that was yet to be produced. Therefore not wanting "to be bound to deliver grain that I cannot produce due to circumstances outside my control", he expected that the agreement "would be a production contract with an Act of God clause".

However, Justice Keene found that Mr Achter was seeking a “bit of a cake and eat it too situation” over the use of the emoji and determined that his subsequent actions supported the respective understanding that an agreed contract was in place.

“I am satisfied on the balance of probabilities that Chris okayed or approved the contract just like he had done before except this time he used 👍 emoji. In my opinion, when considering all of the circumstances, that meant approval of the flax contract and not simply that he had received the contract and was going to think about it.

“In my view a reasonable bystander knowing all of the background would come to the objective understanding that the parties had reached *consensus ad item* – a meeting of the minds – just like they had done on numerous other occasions.”

Justice Keene stated that on the balance of evidence, he was satisfied to grant the plaintiff’s application for summary judgment.

“There are no genuine issues that require a trial. This is an expeditious and proportional way to resolve these matters.

“The court holds for the above reasons that there was a valid contract between the parties that the defendant breached by failing to deliver the flax.

“This case did raise novel issues but on the balance was not overly complicated.”

In summary, the court ruled:

- plaintiff SWT’s application for summary judgment was granted
- judgment against Achter for damages in the amount of C\$82,200.21 payable to SWT plus interest on the said C\$82,200.21 as per The Pre-judgment Interest Act from and after 30 November 2021 to the date of the order
- SWT to receive fixed costs of C\$500 for the notice of objection application and in addition SWT shall receive from Achter costs assessed under column 1 of the Tariff.

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