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Email Footers: Proceed with Caution

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It is a common understanding that many forms of English law transactions are now conducted through varying types of electronic communication, whether it be by email or some other web-based form of messaging service. It is also a general rule of English law that contracts can be made informally – that is, in most cases for a contract to be legally binding, it need not necessarily have any structural formality. This means that legally binding contracts can be formed through oral conversations, texts, WhatsApp messages and email.

However, under English law, we also have The Law of Property (Miscellaneous Provisions) Act 1989, where its significance is largely known amongst lawyers for setting out the formalities to a contract of sale of land, which does require to be '*in writing*'. It was because of this deep-rooted piece of English legislation that in 2019 the High Courts considered whether an email footer should be treated as a signature to a legally binding contract.

In this article, we take a look at what was decided in *Neocleous v Rees [2019] EWHC 2462(Ch)* and how the Courts regarded email footers in creating legally binding contracts for the sale of property.

The Law of Property (Miscellaneous Provisions) Act 1989

It is section 2 of The Law of Property (Miscellaneous Provisions) Act 1989 ("LP(MP)A") that provides the requirements for a contract for the disposition of an interest in land. It states the following:

Section 2. Contracts for sale etc. of land to be made by signed writing

1. A contract for the sale or other disposition of an interest in land can only be **made in writing** and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.
2. The terms may be incorporated in a document either by being set out in it or by reference to some other document.

3. The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them… **must be signed** by or on behalf of each party to the contract.

The title to section 2 refers to "*signed writing*," and this is further elaborated upon in sub-sections (1) and (3) where it states that the contract must be made in writing and must be signed. However, what does "*signed writing*" mean in today's modern times?

The Law Commission says that electronic signatures can be used to execute documents. On the basis that "*writing*" can include electronic communications such as email, would an email footer suffice to constitute signing? This was considered in *Neocleous*.

Neocleous v Rees [2019] EWHC 2462(Ch)

In *Neocleous*, the parties came to a settlement to resolve some existing rights of way litigation – one such term of the proposed settlement was that Ms Rees would purchase a small parcel of land from Mr and Mrs Neocleous. Given that this was a transfer of land, Section 2 of the LP(MP)A had to be complied with in order for there to be a valid disposition.

The sale was not documented in any conventional form of written settlement agreement. However, the lawyers did exchange the following emails:

1. Ms Rees's lawyer to Mr and Mrs Neocleous's lawyer setting out the principal terms of the intended settlement. Such email also invited confirmation that those were agreed; and
2. a reply from the Neocleous's lawyer confirming that he agreed with the terms of their email.

Ms Rees later decided that she no longer wished to proceed with the purchase of land; her lawyer argued that there was no binding agreement in respect of this. Mr and Mrs Neocleous maintained, however, that the email exchange between the lawyers were tantamount to a legally binding contract as the automatically generated email footers from each lawyer (which stated their name, position, firm and contact details) constituted signatures for the purposes of Section 2(3) of the LP(MP)A.

Does email footer = signature?

The Courts in *Neocleous* held that the email footer of Ms Rees' lawyer did, in fact, render a signing for the purposes of Section 2(3) of the LP(MP)A.

It was further held that, although the email footer was an automatically generated one (*i.e.*, added to every email sent by that lawyer), to apply the rule that a footer of this nature must be added to every email would have to involve the conscious and deliberate act of application in the relevant setting in Microsoft Outlook. The very fact that the lawyer had manually typed 'many thanks' at the end of the email was found by the Courts to be further "*authenticating intent*" that he was relying on the automatic footer to sign off his name. As such, the email exchange between the lawyers was found to have formed a legally binding contract of sale of land.

The Courts further added that the ordinary person would regard an automatically generated email footer as a contractual signature, holding that:

"*Many an "ordinary person" would consider that what is produced when one stores a name in the Microsoft Outlook "Signature" function with the intent that it is automatically posted on the bottom of every email is indeed a "signature" … In the current age, that would in my judgment be capable of encompassing the wording of the footer to Mr Tear's email.*"

Consequently, the Courts held that email footers, regardless of whether they are automatic, are capable of amounting to signed writing such that the lawyer had indeed signed the email on behalf of his client, thereby establishing a legally binding contract.