

Here's The Drill: Court Rules that Sending a Thumbs-Up Emoji Can Constitute Acceptance of a Contract

August 1, 2023

By Jeff Scorgie, Mallory Cramp-Waldinsperger and Michael C. Ly, Summer Student

The Facts

In a recent decision in *South West Terminal Ltd. v Achter Land*, 2023 SKKB 116, the Court of King's Bench for Saskatchewan held that a text message of a thumbs-up emoji “👍” constituted acceptance of a contract.

South West Terminal's representative had previously purchased grain from Mr. Chris Achter through various deferred grain contracts since approximately 2015. Following the COVID-19 pandemic, South West Terminal's sales team stopped meeting with grain producers in person and instead executed contracts via text or email.

In their previous transactions, Mr. Achter responded by text to the South West Terminal employee's requests for confirmation of a contract with “looks good,” “ok,” or “yup.” In each of these instances, the grain was delivered as per the terms of the contract. The Court's decision states that there was no evidence in each of the prior transactions that Mr. Achter was merely confirming his receipt of the document.

On March 26, 2021, South West Terminal sent a text to Mr. Achter and other sellers advertising a price of flax that it was prepared to enter into contracts for. Shortly after sending the text message, the two parties spoke on the phone. The South West Terminal employee drafted a contract for the purchase of 86 metric tonnes of flax for \$17.00 per bushel, or \$669.26 per tonne for delivery in November, 2021. The employee signed the contract and texted a photo of the document to Mr. Achter, asking him to confirm the contract. Mr. Achter responded with a thumbs-up emoji.

Achter did not deliver any flax to South West Terminal in November 2021. At the time, flax was trading at \$41.00 per bushel, or \$1,614.09 per tonne.

In response to the legal claim, Mr. Achter argued that his use of the emoji was simply to confirm receipt of the contract. However, the Court determined that while texting an emoji is not a traditional means of signing a contract, it nevertheless functioned as a valid signature in the circumstances of the case. When reaching this decision, the Court explained that the thumbs-up message conveyed the two purposes of a signature: the signatory could be identified by his cell phone number and it communicated his acceptance of the contract.

The Court ordered Achter Land & Cattle Ltd. to pay damages for breach of contract after it failed to deliver an order of flax.

The Bottom Line

This decision highlights the potential consequences of digital messaging when discussing or executing a commercial contract. While

the circumstances of the case provided the Court with important context for interpreting the emoji, companies and their employees should remain cautious of their communications in this era of digital transactions. It is important that intentions with respect to entering into a commercial contract are clearly communicated, preferably through formal written communication, otherwise there is a risk of unintended legal consequences.

Here's the Drill is a regularly issued newsletter that discusses updates and developments affecting the Canadian construction and infrastructure industry as well as strategic considerations for all those involved in construction projects. To receive the email newsletter, [click here](#) and subscribe to our "Construction" list.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Jeff Scorgie

Toronto
416.619.6288

Email:
jscorgie@weirfoulds.com

Jeff Scorgie is a Partner in the Construction Practice Group at WeirFoulds. His practice focuses on drafting and negotiating contracts and advising on other "front end" aspects of construction projects.



Mallory Cramp-Waldinsperger

Toronto
416.619.2093

Email:
mcramp-waldinsperger@weirfoulds.com

Mallory Cramp-Waldinsperger is an Associate in the Regulatory Practice Group at WeirFoulds LLP.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035