



Texas Supreme Court Requires Precise Language for Email Contracts

The Texas Supreme Court has issued a stark reminder that contract principles still govern when parties transact business over email. In *Copano Energy, LLC v. Stanley D. Bujnoch, Life Estate, et al.*, the Court faced the question of whether a chain of emails was sufficient to establish an enforceable contract.

In 2011, the landowners entered into easement agreements with Copano for a 30-foot easement for a 24-inch pipeline. The pipeline was installed, and a year later a Copano representative contacted the landowners' lawyer about obtaining more easement to construct another pipeline. The parties then exchanged a series of emails about proposed terms.

A month later, a different Copano representative emailed the lawyer and attached a proposal that ranged from \$20 to \$40 per foot under five different scenarios. The lawyer responded to the first representative, stating "[t]his is not our deal. What is going on?" The representative replied that "[o]ur deal still stands." Copano, however, never installed the pipeline, and the landowners sued for breach of contract. The court of appeals reversed the summary judgment in favor of Copano, which was based on the statute of frauds.

The Supreme Court recognized that while multiple writings for a real estate contracts can satisfy the statute of frauds, they must include essential elements of an agreement without resorting to oral testimony. The Court acknowledged that one of the email exchanges contained an offer and acceptance but did not specify the content of exactly what was offered or accepted. The emails also referred to earlier conversations but without detail about those discussions.

The Court also held that the statute of frauds barred the contract claim based on another email exchange because: (1.) they failed to reflect an agreement to be bound by the terms they described; and (2.) no later writing evidenced an agreement to be bound by the terms in that exchange. The Copano representative used several future-tense phrases such as "will be asking" and "will be buying." Those emails merely contemplated a future meeting between the parties and described what Copano anticipated offering. In other words, the emails constituted a request to negotiate at a later meeting. In sum, the Court recognized that emails only containing futuristic language that considers a possible contract cannot satisfy the statute of frauds.

It is imperative for parties intending to make oil and gas or real estate deals over email to include all essential terms of their agreement. While parties can get loose or informal with language when emailing, *Copano* serves as a good reminder that courts will scrutinize emails just like any other deal. Generally referring to prior conversations will not be considered by courts, and courts will only look to the writings for evidence of an agreement. In sum, if a term is critical to your deal, you should include it in writing.

For more information please contact Hunter Barrow at 713.351.0349 or via [email](#).