Houston Court of Appeals Finds Pre-PSA Emails Created Binding Contract

10.24.17

The use of email in modern transactions is pervasive. Few negotiating parties consider, however, the possibility that those emails may create a binding obligation when the transaction requires finalization through a formal contract. The First Court of Appeals in Houston recently issued an opinion that may have a significant impact on contract formation in the digital age. The case, styled *Le Norman Operating LLC v. Chalker Energy Partners III, LLC*, holds that emails—even ones circulated within an organization—may provide evidence of a binding contract sufficient to overcome summary judgment, and that an email address in the "from" line may suffice as an electronic signature to form a contract.

The dispute in *Le Norman Operating* originated in the sale of oil and gas assets (the "Assets") pursuant to a bid process. The sellers were a group of working interest owners in oil and gas properties in the Texas Panhandle (the "Sellers"). The Sellers were represented by Chalker Energy Partners in the negotiations. Le Norman Operating LLC ("LNO") expressed interest in participating in the bid process, and was given bid procedure documents and a Confidentiality Agreement specifying the parameters of the bidding process. Chalker Energy eventually selected LNO's bid for submission to the Sellers pursuant to the bid process, but the Sellers rejected the bid. This led to a three-day negotiation that LNO eventually terminated as unsuccessful. The Sellers renewed negotiations five days later, and LNO countered with a proposal to purchase the Assets. Chalker Energy again took the proposal to the Sellers, who all communicated their acceptance of the offer to Chalker Energy in writing, many doing so electronically. Chalker Energy and the Sellers used email throughout their decision-making process, including Chalker Energy's ultimate acceptance of LNO's offer. Emails continued to pass among the Sellers and with LNO, with references to the Assets as "what was being sold to [LNO]." Moreover, a representative of one of the Sellers sent an email to LNO congratulating them on the purchase.

Nevertheless, the Sellers and LNO still had to agree on the final components of the PSA. Before the parties could begin that process, Jones Energy presented a new offer to Chalker Energy two days after the acceptance of LNO's offer, which the Sellers also accepted. Within a week, the Sellers executed a PSA with Jones Energy to convey the Assets. LNO and the Sellers never executed a PSA, and the Sellers broke off further communication about the transaction. LNO filed suit against Sellers for breach of contract. The Sellers counterclaimed for declaratory relief that there was no contract, that LNO breached the Confidentially Agreement and bid procedures, and also sought damages LNO allegedly caused by complicating the transaction with Jones Energy. The trial court granted summary judgment for the Sellers finding no contract and that LNO breached the bid procedures.

The appeals court reversed. The Sellers argued that the evidence failed to show a meeting of the minds between the Sellers and LNO without a finalized PSA. The appeals court disagreed, relying heavily on emails—both the emails between Chalker Energy and LNO, as well as the emails circulated internally between the Sellers—to find a fact issue as to contract formation. In an apparent attempt to counter reliance on the deal-related emails, the Sellers argued no contract was formed under the Texas Uniform Electronic Transaction Act "because the parties did not agree to conduct business electronically, and because the e-mail[s] lack[ed] an electronic signature." The appeals court rejected this argument, holding that the conduct of the parties showed an intent to conduct business by email, and that the identification of a party in the "from" line of an email was sufficient to function as an electronic signature.

Following the *Le Norman Operating* decision, negotiating parties should take heightened care to ensure that a binding contract is not accidentally formed through email communications before negotiations are complete. One way to avoid the issue is to establish by letter agreement that the parties will not be bound until a final contract is signed. The Sellers in *Le Norman Operating* appear to have attempted this very strategy by including in their bid procedures that no contract would exist until a PSA was executed. The Sellers lost their protection, however, when the bid process ended and negotiations restarted outside of that process. Negotiating parties should be mindful, not just of the need to establish at the outset of negotiations that emails cannot form a contract, but also of the need to stay within the negotiating limitations

previously established by the parties. Finally, negotiating parties should be mindful that at least one appeals court recognizes that an email address in the sender block of an email constitutes a signature under the Texas Uniform Electronic Transaction Act. Not all Texas courts appear so relaxed in their approach to what will constitute an electronic signature. The *Le Norman Operating* decision specifically noted a conflicting Second Court of Appeals decision. *See Cunningham v. Zurich American Insurance Co.*, 352 S.W.3d 519 (Tex. App.—Fort Worth 2011, pet. denied). Parties should be aware that what constitutes a signature is not settled in Texas, and should take care accordingly.

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