

CASENOTES

CAUTION: EMAILS CONTINUE TO BE READ AS A CONTRACT

In re Gaudet, 625 S.W.3d 887

(Tex. App.—El Paso [8th Dist.] 2021).

Mabery v. River Ranch Holdings LP, No. 04-19-00798-CV,
2021 WL 2118372 (Tex. App.—San Antonio [4th Dist.] May 26, 2021).

By Lane Marie Brown*

In spring 2021, two Texas appellate courts followed the *Copano Energy, LLC v. Bujnoch*¹ decision that a collection of emails can be considered together to find the elements of a contract that meets the statute of frauds. *In re Gaudet*² and *Mabery v. Morani River Ranch Holdings LP*³ were both real estate disputes which considered whether a series of emails can be used as evidence to prove the existence of an enforceable contract. Both courts correctly relied on *Bujnoch*.

In *Gaudet*, the El Paso Court of Appeals followed *Bujnoch* when it decided a mandamus challenge that included a breach of real estate contract claim.⁴ *Gaudet* was a prospective buyer who had made a non-refundable deposit to enter an option contract to design a custom home.⁵ More than a year after negotiations failed, *Gaudet* sued for specific performance regarding the custom home he had been contemplating.⁶ To prove an enforceable contract for sale of real property, *Gaudet* attempted to tack a series of emails onto the receipt for builder design services.⁷

The court quoted *Bujnoch* in noting, “[N]othing precludes an email from being considered . . . a writing that would consummate a contract,

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1. 593 S.W.3d 721, 730 (Tex. 2020) (concluding multiple emails could be used to find the essential elements of a contract).

2. 625 S.W.3d 887, 888 (Tex. App.—El Paso [8th Dist.] 2021 [mand. denied]).

3. No. 04-19-00798-CV, 2021 WL 2118372, at *1 (Tex. App.—San Antonio May 26, 2021, no pet.).

4. *Gaudet*, 625 S.W.3d at 893–95.

5. *Id.* at 890, 893.

6. *Id.* at 891.

7. *Id.* at 894.

because email is used for ‘nearly every type of communication, from the flippantly inconsequential to the bindingly formal.’”⁸ The court continued with the *Bujnoch* caution that “the e[mail]’s context must be carefully examined to determine whether it truly evidences the grave intent to be legally bound.”⁹ The court found that the emails did “not show anything more than continued negotiations over house features, square footage, and . . . the ultimate price of the house,” and the contract claim failed.¹⁰

Then, in *Mabery*, the San Antonio Court of Appeals followed *Bujnoch* when it held that a collection of writings, including a series of emails, did not constitute an agreement to pay a real estate sales commission.¹¹ Notably, through email, the real estate broker and seller had negotiated a sales commission for the sale of a ranch, along with a hunting and breeding business, to a specific buyer.¹² Ultimately, the deal failed to close, and the question was whether the brokerage commission applied to the eventual sale to another buyer.¹³

Echoing *Gaudet*, this court found the emails were “no more than ongoing negotiations between [the parties] on the amount of the brokerage commission that would eventually be integrated into the . . . [c]ontract.”¹⁴ The court further cited *Bujnoch*, “[E]mails containing terms proposed to be incorporated into a later contract fail[] to satisfy the statute of frauds because they reflect one party’s description of terms . . . rather than any party’s agreement to be bound by a contract.”¹⁵ While the commission claim failed, again the court was willing to construe a series of emails as writings that could constitute elements of an enforceable contract.

When the Texas Supreme Court decided *Bujnoch* in 2020,¹⁶ it gave valuable direction on the consideration of emails as evidence to support

8. *Id.*

9. *Id.*

10. *Id.* at 895.

11. *Mabery v. River Ranch Holdings LP*, No. 04-19-00798-CV, 2021 WL 2118372, at *10 (Tex. App.—San Antonio May 26, 2021, no pet.).

12. *Id.* at *1 & n.3.

13. *Id.* at *2.

14. *Id.* at *4 & n.4.

15. *Id.* at *5 (internal quotation marks omitted).

16. This case was a contract dispute over a pipeline easement, and the significant question was whether a series of emails created an enforceable written contract under the statute of frauds. The court held that the forward-looking emails did not prove a contract because there was no evidence in the emails, or any other writings, of the parties’ agreement to be bound under the terms contemplated in the emails. See *Copano Energy, LLC v. Bujnoch*, 593 S.W.3d 721, 723–24 (Tex. 2020).

the elements of a contract under the statute of frauds.¹⁷ The Court emphasized that the writings must evidence the parties' intent to be bound by the contract as well as their agreement to the terms.¹⁸ Thus, emails that contemplate terms of an agreement can be construed as elements of a contract when the parties express, in email or another writing, their intent to be legally bound to those terms.¹⁹

This line of cases highlights the importance of being cautious with email communication, particularly when discussing a potential deal. While no Texas court has yet found all elements of an enforceable contract in a series of emails, it is certainly willing to consider the evidence. As common as email is for business communication, it could be a matter of time before a defendant is caught in an email contract. And this caution raises the next query: Will Texas courts find a string of text messages creates a written contract?²⁰

17. *Id.* at 728.

18. *Id.* at 729.

19. *Id.* at 730.

20. *St. John's Holdings, LLC v. Two Elecs., LLC*, No. 16 MISC 000090 RBF, 2016 WL 1460477, at *1 (Mass. Land Ct. Apr. 14, 2016) ("Based on the undisputed facts . . . the court finds that the text message at issue can constitute a writing under the [s]tatute of [f]rauds sufficient to bind . . . to an agreement to sell the [s]ubject [p]roperty.").

