CLEVELAND & CO

External in-house counsel

# CONTRACTS VIA EMAIL

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On 30 October 2017, the High Court (the "**Court**") assessed and made a decision regarding contracts via email and the care that must be taken when entering pre-contract negotiations. *Goel and another v Grant and another [2017] EWHC 2688 (Ch)* (the "**Goel Case**") identified the risk of inadvertently entering into a binding contract before terms are finalised. The key issues raised by the case are set out below.

## BACKGROUND

Contracts are considered legally enforceable agreements if they satisfy the four key elements:

1. offer and acceptance;
2. consideration;
3. intention to create legal relations; and
4. certainty of essential terms.

Whilst there is no legislation directly dealing with email communications, case law has been developed stating that the general principles of contract law apply to emails. With that in mind, if these criteria are fulfilled through the exchange of emails, then a contract can be considered formed and legally enforceable.

## CASE LAW

The Goel Case concerned Mr Goel and Mr Gupta (the "**Applicants**") and Mr Sumner (the "**Second Respondent**") who were both creditors and members of Meem SL Ltd (the "**Company**"). Stephen Grant and Anthony Cook (the "**Administrators**") were appointed as joint administrators of the Company in April 2016.

The Applicants brought a derivative claim on behalf of the Company. E-mail correspondence took place between the Applicants and the Administrators regarding a potential assignment. The Applicants alleged that there was a concluded agreement that the Administrators would assign the Company's claim to them for £5,740. However, the Administrators disagreed and sought to sell the Company's claim by auction to achieve the best value.

To stop this auction, the Applicants brought a claim against the Administrators and Mr Sumner, alleged that:

- there had been an agreement concluded over a series of emails between the Applicants' solicitors and Administrators; and
- failing this, the proposed auction of the Company's claim would unfairly harm the Applicants' interests as creditors/members of the Company.

On the facts, the Court held that no binding contract had been concluded. Notably, Mr David Halpern QC explained that there was no offer made nor was it capable of acceptance, as the language used in the emails suggested merely a tentative discussion of ideas. This was reinforced by the fact that the Applicants knew that further documents would need to be drafted and agreed before completion of the assignment.

## CONTRACT VIA EMAIL CONSIDERATIONS

Given that each case will be assessed on its own facts, care should be taken when entering into pre-contract discussions. To prevent these discussions being construed as a binding contract, all correspondence should be marked 'subject to contract'. Whether this statement is effective in preventing a party being unwittingly bound by contractual obligations depends on how consistent the parties' words and conduct are in practice.

## NEXT STEPS

For more information, and any guidance or advice on the enforceability of your contracts, Cleveland & Co, your External In-House Counsel are here to help.

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