

ANTHONY & PARTNERS

Attorneys At Law

Business Advocacy | Bankruptcy & Creditors' Rights | Complex Litigation | Real Estate

813.273.5616 | anthonyandpartners.com

March 2018

Is Your Email a Contract?

By Nicholas Lafalce

Before you send your next e-mail, you may want to think twice. When parties are negotiating the terms of an agreement, their communications often include a number of proposed terms, with the shared understanding that all final terms and conditions will be memorialized in a formal agreement after everyone agrees. Yet, if the formal agreement is never finalized and a dispute arises, those discussion e-mails may come back to haunt you.

In some circumstances, such as the sale of real property or a sale of goods over \$500, Florida law requires a writing signed by the party against whom enforcement is sought that verifies the agreement. A developing body of case law has held that this writing can take a number of forms, including an e-mail exchange. When an e-mail contains what is considered the "essential terms" of a contract, or evidences a "meeting of the minds," the aggrieved party can seek enforcement of these terms. In addition, electronic signatures are now as acceptable as putting pen to paper.

For instance, in *Romacorp, Inc. v. Prescient, Inc.*, an e-mail allegedly intended by Prescient to invite an offer from Romacorp to purchase a piece of property was determined by the trial court to contain the essential elements of a contract for sale and purchase. 1:10-cv-22872, 2011 WL 1430277 (S.D. Fla. Apr. 14, 2011).

Romacorp sued Prescient for breach of contract for Prescient's refusal to sell the property to Romacorp. The contract was alleged by Romacorp to be evidenced by an e-mail in which Prescient stated that



it was going to sell the property through a sealed bidding process, but that Prescient wanted to offer the property to Romacorp first. Prescient's e-mail set an asking price and stated "let me know an offer you would like to make on the property." Romacorp e-mailed back stating that rather than participate in the sealed bidding process, Romacorp accepted Prescient's offer and requested that Prescient prepare the appropriate documentation.

Prescient sought to have Romacorp's complaint dismissed, asserting that Prescient's e-mail lacked the essential elements necessary to form a contract. The trial court disagreed, holding that because Romacorp was seeking only damages relating to the alleged breach rather than specific performance, the presence within the e-mail of a description of the property, an asking price, a purchaser, a seller, and a signature date collectively were sufficient to form a binding contract.

In *Castelli v. Castelli*, the appellate court determined that an ex-husband's e-mail to his ex-wife contained sufficient language to exercise the right of first refusal to purchase the marital home following tender of a third-party offer. 159 So. 3d 271 (Fla. 4th DCA 2015). As part

of their divorce proceeding, the parties were ordered to sell their home, albeit reserving the right of first refusal to the husband. The appellate court held that the husband's e-mail was sufficient to create a binding contract between the parties. Further, the wife's e-mail to the husband in response was held to have breached the newly formed contract by imposing new conditions on the husband's purchase of the property that were extraneous to the court's order.

One precaution against your e-mail exchanges unwittingly arising to a binding agreement is to make sure that the e-mails are clear that any terms are of no effect until and unless they are reduced to a formal agreement. And when you are ready to draft that formal agreement, legal counsel should be engaged to assist and to make sure that any prior negotiations are precluded from controlling the terms of the contemplated agreement.

Are you concerned about the legal significance of any communications you have had during the course of negotiations? Are you dealing with a situation in which enforcement of an "e-mail agreement" is sought? If so, please contact our firm for additional information.

MEET PARTNER JOHN W. LANDKAMMER

John W. Landkammer has been named Partner at Anthony & Partners, LLC in the firm's downtown Tampa office. Mr. Landkammer has represented various types of business clients, financial institutions and other creditors, including commercial banks, private equity lenders, and corporations. His practice includes a broad spectrum of representation of these types of clients in litigation, bankruptcy, negotiation of loan workouts, asset sales/purchases, and documentation of debtor-in-possession financing and other loan transactions and security interests. Mr. Landkammer is a Tampa native and a graduate of H.B. Plant High School. He is a Tampa attorney who focuses on solving a diverse range of business problems throughout the state of Florida.



STAFF MEMBER PROFILE



Stanford D. Rowe, known as Stan, is an associate with Anthony & Partners, where his practice focuses on commercial litigation. After studying finance at Florida State University, Stan pursued his Juris Doctorate at the University of Florida Levin College of Law. Prior to joining Anthony & Partners, he was a summer associate with a Tampa-based law firm where he focused on commercial litigation, real estate, and environmental law.

Practice Area:

- Litigation

Professional:

- The Florida Bar
- Hillsborough County Bar Association



ANTHONY & PARTNERS SPONSORS HAWL RECEPTION

Anthony & Partners was a proud sponsor of the Hillsborough Association of Women Lawyers' annual judicial reception held at Le Meridien on February 1, 2018. The event was well attended by the judges of the 13th Circuit Court serving Hillsborough County.

ANTHONY & PARTNERS

Attorneys At Law

Tampa Office

201 North Franklin Street
Suite 2800, Tampa, FL 33602
813.273.5616 tel
813.221.4113 fax

Bartow Office

415 East Main Street
Bartow, FL 33830
863.537.8025 tel
863.537.6490 fax

Toll Free:

888.247.8909

Web:

anthonyandpartners.com

Email:

info@anthonyandpartners.com