

No signature, no sale: The emoji that couldn't seal the deal

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In *Ross v. Garvey*, 2025 BCSC 705, the British Columbia Supreme Court was asked to determine whether a thumbs-up emoji was a valid electronic signature to a contract. This case follows closely on the heels of the “emoji case” *South West Terminal Ltd. v. Achter Land*, 2023 SKKB 116, in which in Saskatchewan courts found that a contract was “signed” using a thumbs-up emoji via text message ([read our article discussing Achter Land here](#)).

Background

The plaintiff, Daniel Ross, is a real estate developer and licensed realtor. He alleged that he had entered into a binding agreement to purchase a residential property from the defendants, brothers Kyle and Matthew Garvey. The Garveys had listed the property privately and were communicating with Ross via text and email.

Ross emailed the Garveys a signed formal offer using a standard real estate contract, which the Garveys initially rejected. Days later, Kyle Garvey emailed Ross a modified version of Ross's offer detailing changes to the price, deposit, and brokerage fees. Although Kyle Garvey referred to this as a “counteroffer” in the email and attached a marked-up version of the standard contract sent by Ross, the Garveys did not sign it.

Ross promptly replied by email accepting the counteroffer. Ross followed up with a text message stating he had sent an “accepted offer.”

Kyle Garvey texted back a thumbs-up emoji.

The Garveys later accepted an offer to sell the property to third party buyers.

Ross sued the Garveys, arguing that they had a binding contract which the Garveys breached by not completing the sale. The Garveys, however, claimed that there was no binding contract since they never signed the contract.

The dispute turned on whether the digital exchange between the parties, particularly the thumbs-up emoji, amounted to a binding and enforceable agreement

The decision

The Court found that a contract was formed in the email and text exchanges by the parties. The language used by Kyle Garvey in the counteroffer email, the document attached, and the subsequent thumbs-up emoji after Ross's acceptance all objectively signaled mutual assent to the deal.

Despite the finding that a contract was formed, the Court ultimately refused to enforce the agreement since the contract failed to meet the requirements of BC's *Law and Equity Act*, R.S.B.C. 1996, c. 253. Specifically, section 59(3)(a) of the Act requires contracts respecting land to be in writing and signed.

Though the Garveys did not sign the counteroffer with an electronic signature, Ross argued that the thumbs-up emoji sent by Kyle after Ross accepted the counteroffer should be treated as a valid signature.

The Court disagreed. The Court adopted the analysis of Justice Barrington-Foote of the Saskatchewan Court of Appeal writing in dissent in *Achter Land*. In line with Justice Barrington-Foote's analysis, the Court concluded that, for the contract to be enforceable, the seller must have inserted a signature in the writing of the contract for the purpose of authenticating the document.

The signature does not need to be a traditional handwritten signature but must bear at least some sort of a formal inscription, made manually or electronically, that reflects the identity of the party who made it. The thumbs-up emoji did not meet this standard.

Key takeaways

1. **Digital communications can form contracts:** To determine if a contract has been formed, courts will look at the objective conduct and communications of the parties, including emails and texts. Here, the thumbs-up emoji was sufficient to form the contract, but because contracts for land have the unique requirement that they be signed, the contract was not enforceable. The consequence of this decision means that there is now precedent in British Columbia in which contracts can be formed through the use of emojis and, if not contracts for land, may be enforced.
2. **Seek professional advice:** The Garveys represented themselves without a realtor, leading to confusion and procedural missteps, such as making a counter offer when the Garveys intended to simply negotiate certain terms. Seeking advice from professionals can stop litigation before it happens.

Conclusion

Ross v. Garvey is a modern reminder that while technology has transformed how deals are made, certain legal formalities remain critical, particularly in real estate transactions.

We will continue to monitor future developments in the use of emojis on the law of contract, including any appeal of the decision in *Ross v. Garvey*.

If you have further questions about this topic, please reach out to any of the key contacts below.

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