



Business warning on email contracts

Business managers have been given a fresh reminder of the danger of negotiating commercial deals by email without making it clear at what point they intend there to be a legally binding contract.

With terms increasingly being discussed through email correspondence or by telephone, companies are finding to their cost that discussions may constitute a binding agreement even though no document has been drawn up and signed.

Two cases have gone as far as the Court of Appeal, most recently *Grant v Bragg*.

Graeme Grant and Russell Bragg were equal shareholders in a company. Grant was off work for six months due to illness, which gave Bragg the right to buy him out. A draft contract was prepared and email correspondence followed, regarding the terms of the draft. Bragg eventually emailed Grant stating that he would buy the shares on the terms of the draft contract and asking Grant to confirm acceptance. Grant replied by email saying that he accepted.

Later Bragg claimed that he was not bound to buy the shares because no contract had been signed. Mr Grant said that the email exchange constituted a binding agreement and that Mr Bragg was obliged to complete the purchase of the shares.

The High Court agreed that a binding contract had been entered into by email but Bragg appealed to the Court of Appeal. Whilst the higher court has now overturned the decision, saying that on the individual facts of this case, the email correspondence had not been intended to constitute a contract, the judgement reinforced that an email exchange can form

a contract and they highlighted that a slight change in the wording of an email could have led to the opposite conclusion in this case.

Simon Dakin, Corporate & Commercial Director, at **Actons** said - “The outcome of this is a bit of a contradiction as the important lesson is not the ruling, but the fact that if the emails had been worded slightly differently, there would have been a binding contract.

“When companies or their advisers are negotiating terms, they must be very careful to make their intentions very clear. If they intend to put the terms of an agreement into a document and intend that the agreement only becomes binding when the document is signed, it is absolutely vital to state that all correspondence before the contract is signed is on a “subject to contract” basis.

“The same goes for telephone conversations, as very few contracts are required to be in writing under English law.”

For further information, please contact **Simon Dakin** on **0115 9 100 200** or email enquiries@actons.co.uk