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Commercial division update: Forming binding agreements through email

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New York courts treat emails as valid for forming contracts if they show mutual agreement, clear terms and meet formal requirements. However, vague or negotiating emails usually aren't enforceable. Enforceability depends on traditional contract rules, even in digital communications.

The dramatic rise of electronic communications over the last few decades has transformed how businesses negotiate and memorialize agreements. From employment contracts to complex legal settlements, the question of whether emails or other electronic communications can form binding contracts is one that New York's Commercial Division has repeatedly addressed.

The governing principles remain rooted in traditional contract law—an offer containing all material terms, acceptance and intent to be bound—but courts apply these doctrines to modern communications with pragmatic flexibility.

This column surveys recent Commercial Division decisions addressing when emails and other electronic communications give rise to binding agreements under New York law.

Intent to be bound and definiteness

In *Kolchins v. Evolution Markets Inc.*, No. 653536/2012, 2013 WL 4494380 (N.Y. Co. Aug. 19, 2013), *aff'd* 128 A.D. 3d 47 (1st 2015), *aff'd*, 31 N.Y.3d 100 (2018), Justice Eileen Bransten of the New York County Commercial Division found that email correspondence between the plaintiff employee and defendant employer failed to conclusively refute the plaintiff's claim that a renewal employment agreement had been reached.

The employee alleged that, upon the expiration of his earlier employment contract, the employer offered him the same salary, bonus structure, and term as the prior one. The employee sent an email accepting those terms and the employer responded by email acknowledging the acceptance and congratulating the parties on reaching agreement.

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However, thereafter the parties attempted, but failed to, complete memorization of the deal in writing. The court found the negotiations were sufficiently definite to at least raise triable issues of fact as to whether a binding employment agreement was formed.

Following an affirmance by the First Department, the Court of Appeals affirmed, agreeing that a reasonable fact-finder could determine that the e-mails exchanged formed a binding contract.

Statute of frauds

New York General Obligations Law §5-701, the statute of frauds, requires certain types of contracts to be in writing and signed to be legally enforceable. The Commercial Division courts frequently address the issue of whether an exchange of emails satisfies this requirement.

In *Rhodium Special Opportunity Fund, LLC v. Life Trading Holdco, LLC*, No. 653452/2013, 2014 WL 1313370 (N.Y. Co. Mar. 31, 2014), Justice Melvin Schweitzer of the New York County Commercial Division addressed whether a series of negotiating emails between two sophisticated financial entities could constitute a binding definitive agreement sufficient to overcome the restrictions in the parties' nondisclosure agreement (NDA).

The plaintiff alleged that the defendants had breached the NDA by misusing confidential information obtained during merger discussions, while the defendants argued that the email chain itself reflected a binding agreement that nullified the NDA.

The court rejected the defendant's argument, holding that the emails in question—in which the parties indicated the need to negotiate a formal contract—did not form a binding contract. The court found that the communications lacked sufficient definiteness and failed to demonstrate mutual assent to all essential terms of the proposed transaction.

In doing so, the court acknowledged that, under New York law, email correspondence can in some instances satisfy the statute of frauds if it contains all material terms and is subscribed or otherwise authenticated by the parties.

However, the court concluded that the specific emails before it fell short of that standard as they did not manifest a clear intent to be bound.

Agosta v. Fast Sys. Corp., 9 N.Y.S.3d 592 (Suffolk Co. 2015), *aff'd*, 136 A.D.3d 694 (2d Dep't 2016), addressed whether a series of signed and unsigned writings—including a January 2012 email summarizing proposed terms by which the plaintiff would license his patented technology to defendant—could satisfy the statute of frauds when read together.

Justice Elizabeth Emerson of the Suffolk County Commercial Division recognized that an email bearing a party's typed name may constitute a "writing" under the statute of frauds, but declined to hold as a matter of law that the email alone created a binding contract. Instead, the court denied summary judgment, finding factual issues as to whether the writings, viewed collectively, formed an enforceable agreement.

Contractual modification clauses

The Commercial Division has also addressed whether email correspondence can satisfy contractual requirements that any modification to a contract must be set forth in writing signed by the parties.

In *Fortress Credit Corp. v. Cohen,* No. 651498/2024, 2024 WL 4388500 (N.Y. Co. Oct. 03, 2024), *aff'd*, 235 A.D.3d 553 (1st Dep't. 2025), the court considered whether a series of Dec. 2023 email exchanges between lender and borrower constituted a binding amendment to extend the parties' loan agreements.

The borrowers argued that the emails reflected a finalized agreement modifying repayment terms, while the lender—relying on the fact that its email stated the extension would need to be reviewed by bank's management—contended that the communications were informal negotiations lacking the formal requirements of a binding contract.

Justice Joel M. Cohen of the New York County Commercial Division held that the email correspondence did not create a binding amendment. The loan agreements contained an express clause requiring that any modification be made "in a writing signed by the parties." The emails, while referencing potential revised terms, lacked formal signatures and failed to satisfy the contractual requirement of a signed writing. The court determined that such informal exchanges could not override explicit modification provisions.

In *ASV Technologies, Inc. v. Sterling Nat. Bank*, No. 100944/2019, 2020 WL 3839744 (N.Y. Co. July 7, 2020), the plaintiff had executed a license agreement with defendant's predecessor granting it a license to use plaintiff's check fraud detection software. Upon the expiration of that license, the plaintiff sent a renewed license, stating that defendant's continued use of the software would constitute acceptance of the renewed license.

The responsive email acknowledged receipt of the new license, with the recipient stating she would give it to her boss. Justice Andrea Masley of the New York County Commercial Division held that the emails and continued use of the software neither formed a binding contract nor satisfied the statute of frauds.

The court noted that, although emails can serve as documentary evidence and may in some cases satisfy the "signed writing" requirement for the statute of frauds, the specific communications here merely reflected ongoing negotiations and lacked any manifestation of assent to all material terms.

None of the emails reflected intent to be bound, and an automatic email signature was insufficient to constitute a "subscription." Moreover, continued use of the software was equally referable to the earlier agreement and therefore not unequivocal acceptance.

The court also relied on a clause in the parties' earlier license stating that amendments must be in a signed writing executed by both parties. While such clauses do not necessarily preclude the creation of an enforceable amendment through email exchanges, the court concluded that the emails in question did not establish acceptance, and continued use of the license did not satisfy the signed writing contractual required for amendments.

Settlement agreements

CPLR §2014 provides that a litigation settlement agreement, other than one made between counsel in open court, "is not binding upon a party unless it is in writing subscribed by him or his attorney or reduced to the form of an order and entered."

In a recent decision, Justice Robert Reed of the New York County Commercial Division found the parties' email exchange to be insufficient to satisfy Section 2104's requirements. *CoPilot Travel, Inc. v. Magstar Capital, LLC*, 2025 N.Y. Slip. Op. 51388(U) (N.Y. Co. Sept. 2, 2025).

There, plaintiff's counsel sent an email proposing to defense counsel a settlement whereby both sides would drop their claims. Defense counsel responded that his client "is amenable to such an agreement" and requested a draft settlement agreement for review.

Two days later, plaintiff's counsel sent a draft, to which defense counsel submitted a counter proposed agreement. The court found that this exchange, including the use of the word "amenable," fell short of the "clear assent" required for a binding agreement. In addition, the drafts exchanged contained material new provisions not set forth in the parties' email exchange.

In *Rubin v. Deckelbaum*, No. 500685/11, 2014 WL 3924611 (Kings Co. Aug. 6, 2014), Justice David I. Schmidt of the Kings County Commercial Division addressed whether an email exchange between counsel constituted a binding settlement under Section 2104.

The court found the emails exchanged failed to establish that an enforceable settlement had been reached because the emails were ambiguous as to which parties were to receive releases, the draft settlement agreements subsequently exchanged evidenced a disagreement on this issue, and each counsel's email reflected the need for client consent.

Conclusion

Across New York's Commercial Division, courts continue to treat email and electronic communications as legitimate and often critical evidence in determining whether contracts or settlements have been formed. Yet, the cases reviewed make clear that enforceability still turns on traditional principles of definiteness, mutual assent, and compliance with any required formalities.

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