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It is a well-established legal principle that a contract contains promises, for which the failure to adhere to those promises, could result in a remedy under various forms of the law for the aggrieved party.¹ As contracts became a part of business dealings, the extent of this principle found its way into transactions for the sale of goods and property.² In recent years, courts have found binding contracts within the email exchanges of parties involved in contract dealings.³ In *St. John’s Holdings, LLC v. Two Electronics, LLC*,

²See RESTATEMENT (SECOND) OF CONTRACTS: CONTRACT DEFINED § 1 (1981) (providing general definition of contract). “A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”

³See UNIFORM COMMERCIAL CODE § 2-204 (1952) (stating statutory elements of contracts for sale of goods). U.C.C. § 2-204 states:

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

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Morever [sic], given the now widespread use of email as a form of written communication in both personal and business affairs, it would be unreasonable to conclude that email messages are incapable of conforming to the criteria of CPLR 2104 simply because they cannot be physically signed in a traditional fashion....
the court held that text messages had the capability of creating binding contracts.¹ Finding that the text messages were signed in a previous memorandum and order, the *St. John’s Holdings* court held that the Statute of Frauds was satisfied even when a sizeable portion of the contractual dealings were handled over text messages.⁵

St. John’s Holdings ("SJH") expressed interest in purchasing the Subject Property owned by Two Electronics through their real estate broker.⁶ Two Electronics’ broker received an email containing a "Binding Letter of Intent" from the broker representing SJH to purchase the Subject Property.⁷ SJH never signed the first letter and when it sent another letter of intent via email, it failed to sign again.⁸ The manager of Two Electronics spoke with his broker to make revisions to the letter of intent, and afterwards sent an email to SJH’s broker stating they were ready to proceed, but there were a few issues.⁹ The next day, SJH’s broker sent an email with the unsigned Final Letter of Intent to Two Electronics’ broker, but Two Electronics’ manager did not review the document because SJH had again failed to sign.¹⁰

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² See id. at *8 (giving court’s in-depth reasoning within memorandum). “[T]he Court finds that the February 3rd text message is a writing and that, read in the context of exchanges between the parties, it contains sufficient terms to state a binding contract between SJH and Two Electronics.” *Id.; see also Seth Heyman, Can Texting Create a Binding Contract?, UPCOUNSEL BLOG, https://www.upcounsel.com/blog/can-texting-create-binding-contract (last visited Apr. 2, 2018) (explaining court’s findings).
³ See *St. John’s Holdings, LLC, 2016 WL 1460477, at *3 (summarizing purpose of contractual dealing). Piccione was the manager of Two Electronics, McDonald was the manager of SJH, Cefalo acted as the broker for SJH, and Barry acted as the broker for Two Electronics. *Id.* SJH offered $3,232,000. *Id.*
⁴ See id. (describing first Letter of Intent). On January 27, 2016, Cefalo ("SJH") sent a Letter of Intent to purchase the Subject Property. *Id.* The letter also contained the deposit, due diligence period, and closing date. *Id.*
⁵ See id. (illustrating first communications between parties). Piccione reviewed the initial terms and communicated revisions to Barry. *Id.* Two days later, on January 29, 2016, SJH sent a second letter to Two Electronics increasing the nonrefundable deposit from $128,000 to $168,000, but did not sign it. *Id.* Piccione reviewed and again communicated to Barry about terms in the letter. *Id.*
⁶ See id. at *4 (explaining Two Electronics’ issues with second intent letter). Barry sent an email to SJH stating that Piccione preferred three weeks for a due diligence period instead of four, no thirty-day extension, and an applied penalty to the deal if the $200,000 is not paid at the end of forty-eight months. *Id.*
⁷ See id. (giving details of final intent letter). The only change within the final letter was a reduction of the date for the $200,000 amount from sixty months to forty-eight months post-closing. *Id.* None of the issues raised by Piccione in the second intent letter review were raised in SJH’s email. *Id.*
The same day SJH sent the Final Letter of Intent, a second potential buyer sent Two Electronics an offer to purchase the Subject Property, but for a smaller amount.11 The following day, Two Electronics' broker sent SJH's broker a text message explaining the normal practice of signing intent letters and asking if SJH could sign and return it.12 SJH signed multiple copies of the Final Letter of Intent and provided a deposit check for their broker to proceed; SJH's broker notified Two Electronics' broker through a text message.13 While both parties' brokers conducted a physical meeting to exchange documents, Two Electronics' manager accepted the offer of the third party by completing a written purchase and sale agreement.14 SJH's broker sent a text message to Two Electronics' broker asking about the status of their negotiation, but Two Electronics notified him that they refused to execute the Letter of Intent.15

SJH brought an action against Two Electronics claiming that their rights as a buyer were violated because Two Electronics failed to proceed with the Letter of Intent to purchase the Subject Property.16 SJH claimed that the text messages and emails were evidence of an agreement between the parties and thus, satisfied the requirements for a valid contract under the Statute of Frauds.17 The court determined whether the parties simply conducted negotiations for the property or if they created an enforceable contract through electronic communications.18

The Statute of Frauds was first introduced into modern law in 1677 by the English Parliament to prevent fraud in contractual dealings.19

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12 See id. (discussing request for signed Letter of Intent).

13 See id. (showing text message communication). “At 4:25 PM on February 3, 2016, Cefalo sent a text message to Barry stating: Tim, I have the signed LOI and check it is 424 [PM] where can I meet you?” Id.

14 See id. at *4-5 (describing deal with third party).

15 See id. (stating Piccione's reasons for refusing Final Letter of Intent). Barry attempted to set a meeting time for Piccione to sign the received letters, but Piccione notified Barry that another party had taken the deal. Id.


17 See id. (listing SJH's claim).

18 See id. (providing issue of case).


IV. No Action against Executors, upon a special Promise, or upon any Agreement, or Contract for Sale of Lands, unless Agreement, be in Writing and signed.
Effectively, it became the law for all territories that fell under English power in the late 1600s through the early 1700s. The original 1677 Statute of Frauds expressly stated what type of dealings were to be governed by the statute, but while it aimed to be a form of protection against fraud, it failed to address dealings that would develop in the future. While the original 1677 version has since been repealed and revised multiple times, the foundational aspect is still used throughout the English sphere of influence today.

The United States used the 1677 Statute of Frauds as a model for its own legislation to protect against fraud in contractual dealings within the States. Although the legislation was not adopted in whole, it was

And bee [sic] it further enacted by the authoritie [sic] aforesaid [t]hat from and after the said fower and twentieth day of June noe [sic] Action shall be brought whereby to charge any Executor or Administrator upon any speciall [sic] promise to answere [sic] damages out, of his owne [sic] Estate or whereby to charge the Defendant upon any special [sic] promise to answere [sic] for the debt default or miscarriages of another person or to charge any person upon any agreement made upon consideration of Marriage or upon any Contract or Sale of Lands Tenements or Hereditaments or any interest in or concerning them or upon any Agreement that is not to be performed within the space of one yeare [sic] from the, makeing [sic] thereof unlesse [sic] the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in Writeing [sic] and signed by the partie [sic] to be charged therewith or some other person thereunto by him lawfully authorized.

Id.  

21 See Act for Prevention, supra note 19 (listing contractual topics that statute protects).


Most common law jurisdictions have adopted the provisions of the Statute of Frauds in some form which generally requires contracts for the sale of land to be in writing and signed by the party to be charged. In Alberta (Canada), it is the original English statute that is in force.

Id.  

The progenitor of statutes of frauds in this country was the English statute entitled ‘An Act for the Prevention of Frauds and Perjuries.’ Although it has no effect on statutes of frauds in this country, all provisions of the English Statute of Frauds, except those relating to land and guaranty contracts, were repealed by The Law Reform (Enforcement of Contracts) Act.
remodeled into different versions to serve each state respectively. While the federal government has not adopted a Statute of Frauds, every state has enacted a statute governing the contractual dealings of parties involved in real estate and other matters.

In Massachusetts, the state legislature enacted a Statute of Frauds governing contracts for the sale or dealings of land. The goal of the Massachusetts version of the Statute of Frauds is to protect all real property transactions and ensure sufficient evidence is present within written documents for land dealings. However, the judiciary has interpreted the statute and determined that oral contracts are an exception to the Massachusetts Statute of Frauds.

Technological change in the form of communication forced the judiciary to decide whether electronic communication in contractual dealings satisfied the Statute of Frauds. To help the courts make those

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Id.


26 See MASS. GEN. LAWS ANN. ch. 259, § 1 (West 2018) (stating Massachusetts' contractual requirement for land dealings). The fourth portion of the statute states:

No action shall be brought: . . . Fourth, Upon a contract for the sale of lands, tenements or hereditaments or of any interest in or concerning them . . . Unless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized.

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Id.

27 See Schwanbeck v. Fed.-Mogul Corp., 592 N.E.2d 1289, 1293 (Mass. 1992) (listing Massachusetts' objective in real estate dealings and protection); see also Blackstone Realty LLC v. FDIC, 244 F.3d 193, 198 (1st Cir. 2001) (stating Massachusetts' objective in real estate transactions). "Massachusetts cases suggest that the adequacy of descriptive language in an agreement is to be determined 'as between the parties' actually involved in the transaction." Id.


Such an agreement [equitable qualification] 'may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.' . . . The application of this equitable exception to the operation of the statute has depended upon the degree of reliance on the oral agreement by the party pursuing specific enforcement.

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Id. (quoting RESTATEMENT (SECOND) OF CONTRACTS § 129 (1981)).

decisions, the Massachusetts legislature adopted the Uniform Electronic Transactions Act, which provided specifications on how to determine whether electronic signatures and contracts sufficiently met the requirements of the Statute of Frauds.\(^{30}\) As emails became an active part of business dealings, courts held that emails could in fact create binding agreements between parties.\(^{31}\) Presently, more people have become familiar with using text messages in the business world as a quick way to convey important information in a matter of seconds by pressing a few buttons.\(^{32}\)

In *St. John’s Holdings*, the issue before the court was whether the parties simply negotiated a transaction of the property or if their electronic communication created a binding and enforceable contract.\(^{33}\) To address the main issue of whether an enforceable contract was formed, the court first had

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\(^{31}\) See id. (detailing common perceptions of email use in contract dealings).

\(^{32}\) See Lawrence Morales, II, *Symposium: The “Best Of” Litigation Update 2017: Discoverability and Admissibility of Electronic Evidence*, 79 ADVOC. 119, 126 (2017) (providing example of how text messages are viewed by Texas’ legal community). The State Bar of Texas provides:

Text messages have replaced many forms of communication, and for some reason, many individuals believe that text messages—and other forms of instant messaging—are private and will not be discovered in litigation. Of course, this belief is incorrect, and text messages are every bit discoverable as any other type of writing.

\(^{33}\) See *St. John’s Holdings, LLC*, 2016 WL 1460477, at *5 (stating issue considered by court).
to determine whether a contract was formed that satisfied the Statute of Frauds. The court noted that traditional contract formation included an offer, acceptance, consideration, an agreement with sufficiently defined terms, and mutual intent to engage in a contractual dealing. While the court stated the traditional elements of a contract, the dynamic portion of the court's discussion dealt with whether the text messages exchanged by the parties' brokers constituted a valid writing under the Statute of Frauds. The traditional definition of a writing involves intent and sufficient discussion over the essential terms of the proposed agreement, which are typically present in letters of intent. The joint analysis of Shattuck v. Klotzbach and Feldberg v. Coxal paralleled the facts and the issue of whether a sufficient writing existed in St. John's Holdings. Feldberg and Shattuck addressed the sale of property and what constituted a sufficient electronic writing under the Statute of Frauds. Ultimately, the court found that the text messages were sufficient writings under the Statute of Frauds due to the essential terms regarding the sale and purchase of the property that were discussed, and no changes were made except for the method of

34 See id. at *6 (detailing Statute of Fraud's requirement relative to real estate transactions).
35 See id. at *5 (stating elements of valid contract). The court used the reasoning of the Supreme Judicial Court in Situation Mgmt. Sys., Inc. v. Malouf, Inc., 724 N.E.2d 699 (Mass. 2000) to define the elements of an enforceable contract. St. John's Holdings, LLC, 2016 WL 1460477, at *5. Furthermore, the court noted that a "meeting of the minds" is still required to find a contractual agreement. Id.
36 See St. John's Holdings, LLC, 2016 WL 1460477, at *6 (highlighting issue court focused on). The court reasoned that:

Resolving this issue [of whether the February 3 text message satisfies the Statute of Frauds] requires determining whether (a) a text message can be a writing under the Statute of Frauds, (b) whether the alleged writing contains sufficiently complete terms and an intention to be bound by those terms, (c) whether the text message is signed, and (d) whether there is an offer and acceptance.

Id.
37 See St. John's Holdings, LLC, 2016 WL 1460477, at *6 (explaining what court considered in determining whether a writing existed).
40 See St. John's Holdings, LLC, 2016 WL 1460477, at *7 (describing facts of similar cases); Feldberg, 2012 WL 3854947, at *6 (acknowledging emails can satisfy Statute of Frauds). The Shattuck court held that "email messages exchanged between a prospective buyer and seller satisfied the Statute of Frauds" because "[t]he plaintiff-buyer and defendant-seller had engaged in negotiations concerning the sale of property through their attorneys that were conducted in person, by telephone, and email." St. John's Holdings, LLC, 2016 WL 1460477, at *7. Furthermore, the Feldberg court decided on "whether a series of emails between their [both parties] attorneys regarding the sale of property was sufficient to satisfy the Statute of Frauds" and held that the "transactions provided a reasonable and supportive response to the defense of Statute of Frauds." Id.
acceptance within the text messages.\textsuperscript{41} Lastly, the court found that the vital
text messages included a signature where previous texts had not.\textsuperscript{42}

While some may disagree with the use of text messaging in business
dealings, the undisputed facts of \textit{St. John’s Holdings} suggest that this form
of communication is capable of becoming a norm in the business world.\textsuperscript{43}
First, the court properly analyzed the traditional elements of a contract and
the requirement of present intent of both parties to enter into an agreement
for the sale and purchase of land, which is the practice of other
jurisdictions.\textsuperscript{44} Next, the court provided an analysis of how a text message
could meet the writing requirement of the Statute of Frauds by defining how
each element was met.\textsuperscript{45} Lastly, the court used detailed reasoning to find
that the text message met the signature requirement under the Statute of
Frauds, and that the decision aligned with the Uniform Electronic
Transactions Act.\textsuperscript{46}

By following the traditional elements of a contract, a party arguing
that it was not their intent to perform a disputed action can easily be
addressed by applying proven methods as to what the parties sought to do
within their letters of intent and whether negotiations were no longer
needed.\textsuperscript{47} Also, by expressly reaffirming the Statute of Frauds requirement

\begin{footnotesize}
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\item \textsuperscript{41} See \textit{St. John’s Holdings, LLC}, 2016 WL 1460477, at *8 (discussing how court deemed that
text messages were sufficient writings).
\item \textsuperscript{42} See \textit{id.} at *9 (emphasizing signature as vital element that led court to conclude text messages
were sufficient writings).
\item \textsuperscript{43} See \textit{St. John’s Holdings, LLC}, 2016 WL 1460477, at *1 (“The question raised by defendant’s
Special Motion to Dismiss is whether a text message, all too familiar to most teenagers and their
parents, can constitute a writing sufficient under the Statute of Frauds to create an enforceable
contract for the sale of land.”).
\item \textsuperscript{44} See \textit{id.} at *8 (explaining court’s use of traditional contract law elements).
\item \textsuperscript{45} See \textit{id.} at *6 (stating elements process used by court to find text as sufficient writing).
\item \textsuperscript{46} See \textit{MASS. GEN. LAWS ANN. ch. 110G, § 7} (West 2018) (stating electronic signatures are
enforceable); see also \textit{St. John’s Holdings, LLC}, 2016 WL 1460477, at *9 (discussing reasoning
behind court’s finding of text as sufficient writing). The court noted:

A series of unsigned text messages between Cefalo and Barry followed over the next
couple of days, which were briefer and less formal, requesting updates on the status of the
executed Final LOI. These communications are evidence that each of the parties opted
to electronic means to conduct their transaction. Typing their names at the end of
certain messages containing material terms, but declining to do so for more informal
discussions, is indicative that the parties chose to be bound by those signed
communications.


\item \textsuperscript{47} See Poindexter, \textit{Letters of Intent in Commercial Real Estate Leases}, ALI CLE (July 25, 2007),
available at http://files.ali-cle.org/files/coursebooks/pdf/CN001_chapter_02.pdf (discussing
presence of intent letters in agreement litigations). The author notes:
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that a sale of land be evidenced in writing with the essential terms present, the court allowed the use of other forms of communication, specifically electronic, to be considered in meeting the requirements set forth by the statute. Moreover, in discussing the use of the text message as a sufficient writing, the court set a standard for parties seeking to conduct land dealings to properly consider how they are signing land agreements. This decision joins other jurisdictions’ decisions in considering the sufficiency of e-signatures in electronic communications within business dealings.

The finding that the text message amounted to a sufficiently signed writing will allow higher courts in various jurisdictions to begin routinely interpreting electronic communications as sufficient writings under the Statute of Frauds, assuming that all other requirements are met. However, the decision creates a risk that text messages could expand beyond real property sales and into general business dealings, which could cause an increase in claims pertaining to agreements made over text messages. Legal counsels are likely to advise caution as the use of text messages are likely to be subject to similar traditional analysis as used by the court in St. John’s Holding.

One of the most common scenarios involves parties who negotiate a letter of intent but agree to later “formalize” this document. The intent to later formalize does not prevent the formation of a binding and enforceable contract. This is especially true when there is evidence that the parties view the execution of a formal contract as merely a convenient memorial of their agreement. However, evidence of preliminary negotiations or an agreement to enter into a binding contract in the future does not, alone, constitute a contract. For the contract to be enforceable it must appear that further negotiations are not required to work out important or essential terms.

Id. at 315.

48 See St. John’s Holdings, LLC, 2016 WL 1460477, at *6 (applying elements of Statute of Frauds to other forms of communications).

49 See id. at *9 (stating typed name at end of electronic message is evidence of intent); see also MASS. GEN. LAWS ANN. ch. 110G, § 7 (West 2018) (“If a law requires a signature, an electronic signature satisfies the law.”); MASS. GEN. LAWS ANN. ch. 110G, § 9 (West 2018) (“The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties’ agreement, if any, and otherwise as provided by law.”); Ovsepian, supra note 43, at 53 (“That extra step of typing a name at the end of an email highlights the writer’s intent to authenticate the email.”).

50 See Reid, supra note 29 (discussing Texas law addressing e-signature sufficiency); see also Brecher, supra note 44 (stating how many states, including New Jersey, have adopted Uniform Electronic Transactions Act).

51 See Ovsepian, supra note 43, at 54 (stating that electronic communications should constitute sufficient writings when identification of parties is met).

52 See Kemper, supra note 29 (discussing legal effect on future business dealings).

53 See Heyman, supra note 5 (stating cautionary example of how to proceed when involving text messaging in business dealings).
The court’s use of the traditional elements of contract law and the Statute of Frauds led to a fair and accurate decision. In applying those traditional elements, the court was able to address how new communications technology should be considered in light of long-standing precedent. The court prevented major changes to existing law and provided modern approaches in applying the law to future communication methods. Furthermore, the court used emails as an example of how text messages should be viewed in the context of land dealings. The court ruled accurately and has implemented a fair and firm ruling that many jurisdictions should follow.

Darius Brown