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Contract Formed by Email is Binding

Yes, really. In *Nicholas Prestige Homes v Neal (2010)* the Court of Appeal has confirmed that a contract concluded by email was binding. How did such a seemingly obvious point come to be taken and what can we learn from this case? There appear to be three key messages.

First, the Court upheld the rule that the claimant firm of estate agents were not entitled to a commission on a sale of a property which had been arranged by another firm of agents. The claimant firm had not introduced the purchaser to the purchase. However, because they were sole agents at the time they were entitled to damages equivalent to their commission because they lost the "certain" chance of earning it.

Secondly, the seller represented herself in the County Court and the Court of Appeal. Whilst they bent over backwards to give her the benefit of the doubt, she could not avoid the almost inevitable conclusion that she was bound by the terms of the contract she had made.

The third key message, therefore, is that it is easy to bind yourself into an agreement by email. This is how it happened. After a site visit the claimant estate agents sent Mrs Neal an email which said they would be joint agents until 31 December 2006 and that from 1 January 2007 they would have sole selling rights. Two sets of terms for the different agency arrangements were attached. The claimant chased up with a phone call and Mrs Neal replied by email saying: "That's fine, look forward to some viewings." The Court of Appeal highlighted two issues that were crucial to the outcome:

(i) whether it mattered that Mrs Neal had not fully read the email or the attachments (it did not) and

(ii) (ii) that her acceptance was a reply to the original email such that there was no possibility of arguing that her message "that's fine" related to anything different.

Conclusion

The case would have been remarkable had the Court not found that a contract existed. It does highlight the ease with which contracts can be formed by email and the danger of not reading things properly. It was no defence to say that the emails or attachments had not been read or did not reflect what was intended. Once accepted, the terms were binding. Oh, and we would say this, had Mrs Neal taken advice and not acted in person she might well have avoided two court hearings, adverse costs orders and have had a good chance of reaching a more favourable negotiated settlement.

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