



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## Land Court Finds that Texting Can Bind Parties

BY JOSHUA LEE SMITH • JANUARY 17, 2017

The Massachusetts Land Court has held that text messages may form a binding contract in connection with the sale of real estate! While neither punctuation nor colorful texting acronyms can make this decision more noteworthy than the many issues with texts, emails and Tweets that we witnessed during this most recent campaign season (e.g., Anthony Wiener, Hillary Clinton and Donald Trump), this decision does serve as an important wake-up call to those who use electronic communications as a means to negotiate real estate transactions.

In *St. John's Holdings LLC v. Two Electronics, LLC*, real estate brokers for the seller, Two Electronics, and the first prospective buyer, St. John's Holdings, negotiated the terms of a letter of intent for the sale of an office property in Danvers, Massachusetts via emails and text messages. Ultimately, the seller's broker sent a text to St. John's broker requesting that the buyer sign the letter and provide the deposit, stating:

"[The seller] wants you to sign first, with a check, and then he will sign. [ . . . ] Can Rick sign today and get it to me today? Tim"

Shortly thereafter, St. John's signed letter of intent and deposit check were delivered to Two Electronics' broker. Rather than countersigning St. John's offer, Two Electronics signed an offer from a second prospective buyer received that same day. St. John's sued and sought an injunction.

For its support, Two Electronics cited *Singer v. Adamson*, 11 LCR 338, 342 (2003), an over 10-year old Land Court decision, in which the court noted that "[e]-mails facilitate rapid, almost instantaneous communication, but in many cases they analogize more closely to telephone calls, or at least to voice mail messages, shot back and forth between parties whose chief goal is prompt response [ . . . ]." However, the Court here rejected *Singer*, finding that, analogous to several more recent decisions involving email exchanges, Two Electronics' broker "signed" his name, "Tim", at the end of the text message, which, together with the culmination of the previous emails and letter of intent formed a binding agreement.

Parties and their agents involved in the negotiation of real estate contracts should make it clear that electronic communications will be non-binding, and that the parties' intention is to be bound only by a written agreement actually signed by the parties. Otherwise, the convenience, ease and speed of emailing and/or texting could lead to the unintended consequence of a binding agreement and your very own potential OMG/SMH moment.