



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## You Just Hit “Send.” Did You Also Form a Valid, Binding Contract?

BY BOWDITCH & DEWEY • AUGUST 1, 2024

In *Boulay v. Boulay*, the Land Court addressed whether email correspondence may constitute a valid, binding contract in the context of a real estate transaction. In Massachusetts, a specific pitfall of negotiations via email is that email exchanges may serve as binding agreements when the exchanges memorialize the terms of an agreement. What a party may believe to be negotiations, legally may constitute contract formation.

In *Boulay v. Boulay*, the Court reviewed strings of email and text messages that the Respondent in the case believed to be sufficient to constitute a valid, binding agreement to sell real estate. The Court determined that the communications between the parties did not set forth all material terms, and therefore the parties did not “reach a meeting of the minds sufficient to create a binding and enforceable contract between them, as there was no unanimous intention to be bound . . .”

The Court also focused on the statement made by each party to the communications that he wanted an attorney to prepare documents memorializing the deal terms. This statement indicated to the Court that neither party intended to be bound by their email communications.

The Court differentiated negotiations via email from contract formation via email. The Court wrote, “[w]hile emails can serve to memorialize the proposed terms of an agreement, the emails here do not serve to put into writing any concrete agreement. The emails are proof of negotiations, not proof of a binding agreement. The parties both stated their desire to have a formal contract drafted by an attorney and agreed that their email negotiations were not to be the final forms of their contract.”

A takeaway from *Boulay* is that the simple act of hitting “send” may result in a valid, binding contract unless parties clearly voice their intent, or lack of intent, to be bound to the content of their email exchanges.

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*Boulay v. Boulay*, 2024 WL 913679 (Mass. Land Ct. Mar. 4, 2024).

See *Fecteau Benefits Grp., Inc. v. Knox*, 72 Mass. App. Ct. 204, 211 (2008); *Duff v. McKay*, 89 Mass. App. Ct. 538, 544 (2016).