Case No: F30MA354
[2019] EWHC 2462 (Ch)

IN THE COUNTY COURT AT MANCHESTER
BUSINESS AND PROPERTY WORK

MANCHESTER CIVIL JUSTICE CENTRE
1 BRIDGE STREET WEST
MANCHESTER
M60 9DJ

Date: 20/09/2019

Before :

HIS HONOUR JUDGE PEARCE

- -

Between :

(1) MR STAVROS NEOCLEOUS **(2) MRS KALLIROY NEOCLEOUS**	**Claimants**
- and -	
MS CHRISTINE REES	**Defendant**

- -
- -

Mr MARK CAWSON QC (instructed by **SLATER HEELIS LLP**) for the **Claimants**
Mr DUNCAN HEATH (instructed by **AWB CHARLESWORTH SOLICITORS**) for the **Dt**

Hearing date: 6 August 2019

- -

JUDGMENT

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Pearce :

Introduction

1. The Claimant seeks specific performance of an alleged contract of compromise which involves a disposition of an interest in land. The Defendant, accepting that the contract would otherwise be enforceable,

contends that the alleged contract fails to comply with the formalities required by Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 ("the 1989 Act") and therefore is not enforceable.

2. Section 2(1) of the 1989 Act provides, in so far is relevant:

"(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all of the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.

...

(3) The documents incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

…"

3. In this case, the putative contract is contained in a string of emails. The purported signature of the solicitor on behalf of the Defendant was by "*automatic*"[1] generation of his name, occupation, role and contact details at the foot of an email. The case raises a point as to whether this is adequate to render the document "*signed*" on behalf of the Defendant within the meaning of section 2(3) of the 1989 Act which has been explored by various authors but seemingly has not previously been the subject of a reported determination.

4. Following a trial on 6 August 2019, I reserved judgment.

[1] The extent to which this can properly be called automatic is explored later in the judgment.

The Facts

5. The Claimants and the Defendant own property at Ghyll Head on the eastern side of Lake Windermere. The Claimants' property, which borders the lake to the west and the A592 to the east is known as Louper Weir. The Defendant's property, known as Wilders' Wood comprises two parcels of land. The larger part is to the south east of Louper Weir, on the opposite side of the A592. The smaller is a small piece of land with an adjacent jetty ("the Landing Plot") which is on the eastern bank of the lake and is only accessible on land by crossing the Claimants' property. A right of way across Louper Weir appears on the Defendant's title to Wilder's Wood, but such a right is not referred to on the Claimants' title to Louper Weir.

6. On 26 August 2016, the Defendant applied to HM Land Registry to change the register by registering a right of way against the title to the Claimants' property. In the application, the Defendant alleged that the Claimants had, from June or July 2014, refused to allow the Defendant, her family or friends to use that right of way in order to gain access to the Landing Plot.

7. The Claimants objected to the application, disputing the existence and/or extent of a right of way on various grounds and denying that they were bound by the alleged right. The matter was referred to the First Tier Tribunal in February 2017. The parties provided disclosure and exchanged witness statements, four on behalf of the Claimants, six on the Defendant's part. A hearing was listed, commencing with a site inspection on 26 March 2018, and the hearing itself to follow on 27 to 29 March.

8. In the lead up to the Tribunal hearing, settlement discussions took place between Mr Daniel Wise, of Salter Heelis Solicitors LLP on behalf of the Claimants, and Mr David Tear of AWB Charlesworth Solicitors on behalf of the Defendant. During these discussions the possibility of the dispute being resolved by the Claimants acquiring the Landing Plot was raised.

9. On 8 March 2018:

   i) At 15:52 Mr Tear sent an email to Mr Wise setting out proposed settlement terms under which the Claimants would buy the Landing Plot for £200,000 in full and final settlement of the application to the Tribunal and all other claims, the offer being open for acceptance until 4pm on 9 March 2018.

   ii) At 16:53, Mr Wise replied to Mr Tear's email, rejecting the offer, commenting adversely on the proposed settlement figure and drawing attention to the legal costs that would be incurred were the matter to go to a hearing. The email concluded by saying that unless the settlement figure was reconsidered, then the Claimants would proceed to trial, and that Mr Wise looked forward to receiving the hearing bundle the following day so that Counsel could be instructed.

10. On 9 March 2018:

   i) During the course of the morning, Mr Wise tried to speak to Mr Tear to establish whether the Defendant would be willing to agree a lower figure than £200,000.

   ii) At 13:05, Mr Wise emailed Mr Tear asking that he call him back.

iii) By email sent to Mr Tear at 15:24, Mr Wise offered on the Claimants' behalf to settle for £175,000. The email concluded: *"I need to let my counsel's clerk know by 4pm today whether or not the hearing is proceeding. Please therefore let me know asap and by 3.40 pm if this is agreed"*.

iv) Shortly thereafter, Mr Tear telephoned Mr Wise to say that he had instructions from the Defendant to accept the Claimants' offer of £175,000. Mr Tear said that he would send an email to confirm the terms of settlement, and Mr Wise replied that he would confirm the terms of settlement in writing on Monday 12 March 2018 when he returned to his office

v) At 16:28, Mr Tear emailed Mr Wise in the following terms:

"Dear Daniel,

Further to our telephone conversation I am pleased to confirm that terms of settlement between our respective clients have been reached on the following basis:

(1) Your clients will pay to my client the sum of £175,000 (one hundred and seventy five thousand pounds - "the Settlement Sum") for the transfer of my client's jetty/boat landing plot/mooring (which is contained within title number CU67453) ("the Land") to Mr & Mrs Neocleous and the release of my client's right to pass and re-pass over the land used as a road and coloured brown on the conveyance dated 1 June 1945 between Poole (1) and Wootton (2) ("the Release").

(2) Although a date by which the Transfer and Release must have been completed has not been discussed, it has been agreed that your

clients will use their best endeavours to complete the Transfer and Release as soon as possible.

(3) On completion of the Transfer and Release the Settlement Sum becomes payable immediately.

(4) The above is in full and final settlement of the Tribunal proceedings and any and all further claims between the parties. Our clients will bear their own legal costs of these proceedings and in respect of the Transfer and Release.

I would be grateful if you would acknowledge receipt of this email and confirm your agreement to the above in order that I can then advise the Tribunal.

Many thanks

David Tear

Solicitor and Director

For and on behalf of AWB Charlesworth Solicitors"

(There followed contact details for Mr Tear.)

11. On the following Monday, 12 March 2018:

i) Mr Tear emailed Mr Wise at 09:32, chasing a response and stating, "*I need written confirmation from you in respect of the above before I can advise the Tribunal the matter has been resolved.*"

ii) At 10:05, Mr Wise replied to Mr Tear's email of 16:28 on 9 March 2018 in the following terms:

"*Thank you for your email and I confirm my agreement with its contents.*

Kind regards

Daniel

Daniel Wise – Associate

Dispute Resolution for and on behalf of Slater Heelis LLP"

(Again there followed contact details)

iii) Upon receipt of Mr Wise's email timed at 10:05, Mr Tear spoke to the Tribunal, informing them that the matter was resolved, and asking that the hearing be vacated. The Tribunal informed Mr Tear that a consent order would be required.

iv) At 11:09, Mr Tear emailed Mr Wise saying, "*Apparently we need a Consent Order. I'll prepare something and email this to you."*

v) Mr Tear wrote to and emailed the Tribunal in the following terms:

"We *refer to our telephone conversation today.*

We confirm that terms of settlement have been reached between the parties whereby the Respondents will pay to the Applicant a sum in return for the transfer of part of her property and release of rights over the Respondents' land.

As advised, we are in the process of obtaining a signed Consent Order setting out the terms of settlement and this will be forwarded to you shortly. In the meantime we would be grateful if you would confirm the hearing later this month will be vacated."

12. Thereafter, the Claimants put Slater Heelis in funds to pay £175,000 for the Landing Plot.

13. By email dated 16 March 2018, Mr Tear sent to Mr Wise a first draft of a consent order for his approval. The email was headed *"Subject to Contract"*. By email dated 22 March 2018, Mr Wise responded with amendments to the

consent order. The email also enquired whether the Defendant intended to collect or remove items from the land or whether she wanted the Claimants to deliver the same. The email was headed *"Without Prejudice and Subject to Contract"*.

14. On 22 March 2018, the Tribunal wrote to Mr Tear stating:

"*The Tribunal Judge has asked me to vacate the hearing listed for 27-29 March 2018 (site view on 26th) and apologise for the lateness in acknowledging your email dated 12 March 2018".*

15. On 19 April 2018, the Tribunal wrote to the parties requesting confirmation within 28 days as to what order the parties required, failing which the hearing would be re-listed.

16. The Claimants' solicitors did not receive a reply to the email of 22 March 2018 but on 9 May 2018, the Defendant's solicitors emailed a letter to the Tribunal requesting that the hearing be re-listed.

17. On 15 May 2018, Mr Wise on behalf of the Claimants emailed the Tribunal and the Defendant's solicitors confirming the Claimants' stance that the matter had been compromised and that there was no basis for relisting the application.

18. In response, on 16 May 2018, Mr Tear emailed a letter to the Tribunal to the effect that the Defendant's position was that terms of settlement had not been finalised between the parties, and stating that the Defendant wished the application to be relisted.

19. On 10 October 2018, the Claimants issued the current proceedings, seeking specific performance of what they allege is a contract of compromise.

The Issue

20. The Claimants contend that the emails referred to at paragraphs 10(v) and 11(ii) above amount to a binding contract of compromise. They agree that, since the agreement involves the disposition of interests in land, it must satisfy the formality requirements of section 2 of the 1989 Act. They contend that the two emails amount to a single document which is signed by or on behalf of each party and that therefore the formalities of the 1989 Act are met.

21. The Defendant's position on the pleadings was that there was no enforceable contract under the 1989 Act because:

    i) The emails did not show an intention to create an agreement for the disposition of an interest in land; rather they showed an intention to reduce their settlement into writing;

    ii) The emails did not contain all of the terms of the alleged agreement since the parties had expressed an intention to reduce such terms to writing in a further document;

    iii) The emails were not signed by the parties.

22. Accordingly the Defendant contended:

    i) There was no contractual intention at the time of the email exchange;

ii) The email exchange did not comply with the requirement of section 2(1) of the 1989 Act in that it failed to incorporate all of the terms of the agreement;

iii) In any event the agreement did not comply with section 2(3) of the 1989 Act in that it was not signed by both parties.

23. At trial, the Defendant conceded the first and second of the points, leaving the only issue between the parties as to whether the signature requirement of Section 2(3) was met.

Evidence

24. The parties each relied upon two witness statements from the solicitors who were involved in the negotiations, Mr Wise and Mr Tear. Mr Wise's statements are dated 9 October 2018 and 5 December 2018. Mr Tear's statements are dated 19 November 2018 and 2 August 2019.

25. Mr Wise's first statement sets out the chronology of his dealings with Mr Tear. His second statement deals in greater detail with events after the exchange of emails that the Claimants allege have compromised the claim. In the light of the sole remaining issue in the claim, this evidence is of no import. He was not cross-examined at trial.

26. Again, Mr Tear in his first statement deals with the sequence of events. He also sets out legal submissions and concludes with the assertion that "*I do not believe that the parties concluded a settlement agreement. They failed to agree all terms and to condense those terms into a single document that was then signed by the parties or their representatives."*

27. In his second statement, he says of the email referred to at paragraph 10.v) above that *"I did not add my name at the bottom of the email, instead it was automatically added as an email footer."*

28. Mr Tear gave oral evidence at trial and was cross examined. During evidence in chief he stated that, on reflection, he did not maintain the point made in the last sentence of paragraph 12 of his first statement, namely that he had headed correspondence with "*subject to contract"* because he did not consider he parties to be bound by previous correspondence.

29. In cross examination, the following further information was elicited (none of which is contentious):

    i) The Defendant's solicitors use Microsoft Outlook for the management of emails.

    ii) The policy of the solicitors was to have an "automatic footer"[2] applied to the end of every email sent from the firm such that, if he created an email, the words "*David Tear, Solicitor and Director, For and on behalf of AWB Charlesworth Solicitors"* were included followed by his contact details (exactly as the email referred to at paragraph 10.v) above.

    iii) Mr Tear noted that at least one of his emails did not have the footer attached – see the email from him to Mr Wise sent at 15.35 on 9 March 2018. He was unable to say whether this was because the settings on

[2] "*Footer*" was the word used by Mr Tear to describe the words added to the end of an email by the software programme. The Microsoft Outlook programme calls this a "*signature*". That may itself be relevant to the issue in the case for reasons canvassed below, but the use of the term in this judgment would be liable to cause confusion when the very issue that arises is whether the appearance of these words means that the document was "*signed*" within the meaning of Section 2(3) of the 1989 Act.

his computer was such that the footer was created for new emails but not emails such as this that were in reply to an incoming email.

iv) Mr Tear accepted that the use of the words "*Many thanks*" above the footer in the email at paragraph 10.v) above was giving his authority to the email.

v) Mr Tear had his client's authority to settle the claim on the terms of the email at paragraph 10.v) above.

The Claimants' case

30. The Claimants contend that the typed name of the sender at the foot of an email, whether entered by the sender or generated by the software used to manage emails, renders the document "*signed*" within the meaning of Section 2(1) so long as the inclusion of the name was for the purpose of giving authenticity to the document.

31. The Claimants rely on the judgment of His Honour Judge Pelling QC in *J Pereira Fernandes SA v Mehta* [2016] 1 WLR 1543, who said:

"*[27] …it seems to me that a party can sign a document for the purpose of Section 4 (*sc of the Statue of Frauds 1677) *by using his full name or his last name prefixed by some or all of his initials or using his initials and possibly by using a pseudonym or a combination of letters and numbers (as can happen for example with a Lloyds slip scratch), providing always that whatever was used was inserted into the document in order to give and with the intention of giving, authenticity to it. Its inclusion must have been intended as a signature for these purposes…[29] I have no doubt that if a party creates and sends an*

electronically created document then he will be treated as having signed it to the same extent that he would in law as having signed a hard copy of the same document. The fact that the document is created electronically as opposed to as a hard copy can make no difference…[31] … if a party or a party's agent sending an email types his or her or his or her principals' name to the extent required or permitted by existing case law in the body of an email, then in my view that would be sufficient signature for the purposes of section 4."

32. In *Re Stealth Construction Ltd* [2012] 1 BCLC 297, David Richards J noted without demur the concession by the liquidator in that case that, adopting the reasoning of HHJ Pelling QC in *J Pereira Fernandes*, the insertion of a signature at the end of an email was sufficient to render the document "*signed*" for the purpose of Section 2 of the 1989 Act.

33. Equally, in *Golden Ocean Group Ltd v Salgocar Mining Industries Ltd* [2012] 1 WLR 3674, Tomlinson LJ considered an electronic signature in an email to be sufficient to validate a document for the purpose of Section 4 of the Statute of Frauds. As he put it at paragraph 32 of his judgment, "*Mr Hindley put his name, Guy, on the email so as to indicate that it came with his authority and that he took responsibility for its contents. It is an assent to its terms. I have no doubt that that is a sufficient authentication."*

34. Following these decisions, the Claimants contend that the footer on Mr Tear's email of 9 March 2018 is capable of rendering the document "*signed*" for the purpose of section 2 of the 1989 Act so long as the name was included to authenticate the document. The Claimants say that this was clearly the reason

for the presence of the name and hence it renders the document compliant with the necessary formalities.

35. In so far as the Defendant relies on *Firstpost Homes Ltd v Johnson* [1995] 1 WLR 157 for the proposition that a signature for the purpose of section 2 of the 1989 Act must be in the hand of the author and deliberately applied to the specific document rather than automatically generated, the Claimants contend that this is a misreading of the judgment. The *ratio* of the decision is that the presence of one party's name in typing as addressee of a letter purportedly containing a contract for the sale of land could not comply with the formality requirement of section 2(3) since it is not what would is normally understood to be a signature.

36. In any event, the Claimants draw attention to academic criticism of the judgment in *Firstpost* by the authors of Emmet and Farrand on Title, at paragraph 2.041.01, criticism which was noted by the Law Commission in Consultation Paper No. 237, "Electronic Execution of Documents" at paragraph 3.58.

37. The Consultation Paper considers various authorities as well as the E-Signatures Directive 1999/93/EC, domestic legislation in the form of the Electronic Communication Act 2000 giving effect to the E-Signatures Directive and the Electronic Identification, Authentication and Trust Services (eIDAS) Regulation 910/2014. All three of these seek to give electronic signatures similar effect to a handwritten signature, but none purports to determine whether an electronic signature is capable of satisfying an existing statutory signature requirement and indeed Article 2(3) of eIDAS provides that

the regulation "*does not affect national or Union law related to the conclusion and validity of contract or other legal or procedural obligations relating to form."*

38. It is however relevant to note the definition of electronic signature within these instruments:

i) Article 2(1) of the E-Signatures Directive defines "electronic signature" as *"data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication"*;

ii) Section 7 of the Electronic Communications Act 2000 as enacted defined "electronic signature" as

"*anything in electronic form as*

(a) is incorporated into or otherwise logically associated with electronic communication or electronic data; and

(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data or both."[3]

iii) Article 3(10) of eIDAS define "electronic signature" as *data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign"*

39. It should be noted that the emphasis in terms of definition of "*electronic signature*" is not on the form of the signature (for example, whether it is a

[3] By virtue of The Electronic Identification and Trust Services for Electronic Transactions regulations 2016, this was amended to read "*purports to be used by the individual creating it to sign."*

facsimile of handwriting or whether as here it is typed form) but rather on its purpose, namely to authenticate or to sign.

40. The Law Commission Consultation Paper concludes at paragraph 3.80 that: *"The review of the case law above demonstrates that electronic signatures have been found to satisfy a statutory requirement for a signature where there has been evidence of an intention to authenticate the document. Such findings have been made under the Law of Property Miscellaneous Provisions Act 1989, the Consumer Credit Act 1974 and the Statute of Frauds 1677. A finding of validity of an electronic signature does not appear to be limited to a particular type of signature – a typed name at the end of an email is sufficient, as is clicking an "I accept" button on a website. It has been suggested that an email header may not be sufficient. However, it is arguable that even this may function as a signature if there was sufficient evidence to demonstrate an intention to authenticate the document."*

41. The Law Commission Report goes on to consider whether amendment is required to Section 2 of the 1989 Act to make provision for electronic signature and concludes that it is not necessary, stating:

"*Our provisional view is that the combination of EU law, statute and case law means that, under the current law, an electronic signature is capable of meeting a statutory requirement for a signature if an authenticating intention can be demonstrated."*

42. The Claimants contend that the key to understanding Section 2 of the 1989 Act is to appreciate the policy behind the Act – the requirement for a single document (which as here can include a chain of emails) which contains

signatures from both parties authenticating the agreement in the document. The focus then is on the appearance of an intention to authenticate. Where, as here, a party types an email which ends "*Many Thanks*" knowing that the computer upon which it is typed will automatically include the sender's name after the text, there is a clear indication of an intention to authenticate.

The Defendant's case

43. The Defendant first draws attention to the policy behind section 2 of the 1989 Act. Whereas its predecessor, Section 40 of the Law of Property Act 1925, gave effect to a more liberal approach to the formalities required for a contract for the sale of land, Section 2 of the 1989 Act contained a more prescriptive regime. As Peter Gibson LJ put it in *Firstpost*, "*It is to my mind plain that the Act of 1989, which, as its long title indicates, was to make new provision with respect to contracts for the sale or other disposition of interests in land, was intended to simplify the law and to avoid disputes, the contract now being in a single document containing all the terms and signed by all the parties. Thereby it has been sought to avoid the need to have extrinsic evidence as to that contract."*

44. The Defendant contends that *Firstpost Homes Ltd v Johnston* [1995] 1 WLR 157 is authority for the following propositions:

    i) Authorities on what is a sufficient signature for the purposes of the Statute of Frauds 1677 or Section 40 of the Law of Property Act 1925 (the predecessor provision to section 2 of the 1989 Act) should not be relied on in determining whether a document is signed for the purpose

of section 2 of the 1989 Act, since the 1989 Act should not be encumbered with "*ancient baggage*".

ii) Whether a document is "*signed*" for the purpose of the 1989 Act is to be determined by whether an "*ordinary man*" would understand it to have been signed, without requiring an exposition from lawyers.

iii) The question of whether the contract was signed should be capable of determination by looking at the document, without the need to consider matters extrinsic to the document such as the subjective intention of the parties.

iv) In modern English usage, signing a document requires the writing of one's name or mark in one's own hand, albeit that the writing may be inserted electronically, for example by a hand written signature being scanned and the digital document thereby produced being inserted in the document.

45. Looking at the instant case, the Defendant contends:

i) Decisions such as that in *J Pereira Fernandes* relating to Section 4 of the Statute of Frauds should therefore not be applied in the context of Section 2 of the 1989 Act. The concession in *Re Stealth Construction* was wrongly made.

ii) An ordinary person would not consider that the appearance of Mr Tear's name in printed type at the foot of the email renders the document "*signed*", in particular where it had been automatically generated.

46. The Defendant concedes that a document might be treated as "*signed*" where an electronic facsimile of a person's hand written signature (for example one created by scanning the wet ink signature) is incorporated in the document, but such a scenario would differ in two ways from the situation here:

    i) The "*signature*" would be in the hand of the person signing, albeit in a copied version.

    ii) The "*signature*" would have been inserted in the particular document by the exercise of the decision and action of the person inserting it at the time of insertion, rather than as an automatically generated feature of the document.

Discussion

47. It must immediately be identified that there is an unattractive aspect to the position taken by the Defendant. As Mr Tear readily accepted in cross-examination, his client had given him instructions to accept the offer. On the face of it, the Defendant's position appears to involve using a serendipitous technical defect in formality to renege upon a deal reached during the course of litigation where the apparent agreement led to a court hearing being vacated on the assumption that the case had been settled.

48. However, as the Defendant rightly points out, the issue before the court is one of principle and cannot be decided simply on the basis of the court's attitude to the stance taken by the parties.

49. There is force in the submission of Mr Heath on behalf of the Defendant that the criticism of the decision in *Firstpost* by the authors of Emmett and Farrand

on Title involves a misunderstanding of the judgment in particular of Peter Gibson LJ, in so far as they attribute to him an assertion that the signature must be in the writer's own hand, not just printed or typed, and that this accords with the decision of the Court of Appeal in *Goodman v J Eban Ltd [1954] 1 QB 550.* It would appear on a proper reading of the judgment of Peter Gibson LJ that what he was seeking to do when he cited the judgments of Sir Raymond Evershed MR and Denning LJ in *Goodman* was to identify what it meant by "*signature*" in ordinary usage, rather than to identify the *ratio* of the decision in the case that they were deciding

50. In any event, that decision in *Firstpost* is binding on me. It is clear from that decision that a court dealing with the formality requirements of Section 2 of the 1989 Act should treat with caution authorities under earlier statutes. But that does not help to determine what is sufficient to render a document "*signed*" for the purpose of that Act.

51. The Defendant's approach to the meaning of *"signed",* that it requires a handwritten name (or at least a facsimile of such handwriting), depends, as indicated above, on the alleged meaning of that word to the ordinary person. But herein lies a contradiction in the Defendant's case. Whilst the Court of Appeal in *Goodman* may have correctly identified what the ordinary person would mean by that word at the time their judgment was handed down, the ordinary usage of words has a tendency to develop. This can be demonstrated clearly on the material before the court in this case – the word "*signature*" is used in a different sense that Sir Raymond Evershed MR and Denning LJ would have understood it at the time of the *Goodman* judgment, or indeed

Peter Gibson LJ would have understood it when he gave judgment in *Firstpost,* as can be seen within the domestic and EU legislative materials cited above, judgments such as that of Tomlinson LJ in *Golden Ocean* and indeed the Microsoft Outlook programme itself. Many an "*ordinary person*" would consider that what is produced when one stores a name in the Microsoft Outlook *"Signature"* function with the intent that it is automatically posted on the bottom of every email is indeed a *"signature."*

52. Unless one treats *Firstpost* as authority for the proposition that *"signature"* means what an ordinary person would have believed the word to mean at some point in the past, it is not authority for the proposition that the word has any particular meaning beyond that which an ordinary person would understand it to bear. In the current age, that would in my judgment be capable of encompassing the wording of the footer to Mr Tear's email.

53. The sounder guide to whether it in fact is a signature is the test identified by His Honour Judge Pelling QC in *J Pereira Fernandes* and adopted by the Law Commission in its Report namely whether the name was applied with authenticating intent.

54. The Defendant places understandable emphasis on the fact that the footer is created "*automatically*" in the sense that it is added to every email that is sent by Mr Tear. But the use of the word "*automatic*" may tend to mislead. It is true that the addition of the words is "*automatic*" in the sense that they are added to every individual email without any action or indeed intention on Mr Tear's part. It was common ground that the rule that a footer of this type be added to every email involved the conscious action at some stage of a person

entering the relevant information and settings in Microsoft Outlook. Furthermore, Mr Tear knew that his name was added to the email. Indeed, the manual typing rather than automatic inclusion of the words "*Many Thanks*" at the end of the email strongly suggests that the author is relying on the automatic footer to sign off his name.

55. In such circumstances, it is difficult to distinguish between a name which is added pursuant to a general rule set up on an electronic device that the sender's name and other details be incorporated at the bottom from an alternative practice that each time an email is sent the sender manually adds those details. Further, the recipient of the email has no way of knowing (as far as the court is aware) whether the details at the bottom of an email are added pursuant to an automatic rule as here or by the sender manually entering them. Looked at objectively, the presence of the name indicates a clear intention to associate oneself with the email – to authenticate it or to sign it.

56. It is important to bear in mind the policy behind the 1989 Act, as set out by Peter Gibson LJ in the passage cited at paragraph 43 above. There is good reason to avoid an interpretation of what is sufficient to render a document "*signed*" for the purpose of Section 2 where that interpretation may have the effect of introducing uncertainty and/or the need for extrinsic evidence to prove the necessary intent.

57. In my judgment, no such difficult arises if the email footer here is treated as being a sufficient act of signing:

    i) It is common ground that such a footer can only be present because of a conscious decision to insert the contents, albeit that that decision may

have been made the subject of a general rule that automatically applied the contents in all cases. The recipient of such an email would therefore naturally conclude that the sender's details had been included as a means of identifying the sender with the contents of the email, since such a footer must have been added either as a result of a conscious decision in the particular case or a more general decision to add the footer in all cases.

ii) The sender of the email is aware that their name is being applied as a footer. The recipient has no reason to think that the presence of the name as a signature is unknown to the sender.

iii) The use of the words "*Many Thanks*" before the footer shows an intention to connect the name with the contents of the email.

iv) The presence of the name and contact details is in the conventional style of a signature, at the end of the document. That contrasts with the name and contact address of Mr Hale, the person alleged to have signed the letter in *Firstpost*, whose name and address appeared above the text of the letter, in the conventional manner of inserting the addressee's details.

Conclusion

58. For these reasons I am satisfied that Mr Tear signed the relevant email on behalf of the Defendant. Given the common ground between the parties on other issues, it follows that the Claimants are entitled to the order for specific performance that is sought.