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By: Michael A.H. Schoenberg, Esq.

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Texts, Emails, and the Statute of Frauds: When Digital Messages Create Enforceable Contracts

In modern business, many deals are negotiated in fragments: a call followed by a text, a draft term sheet followed by an email, and then a short text message confirming that everyone is “good” or “agreed.” Parties tend to treat those exchanges as informal shorthand rather than binding contracts, presuming the lawyers will prepare more fulsome documents later on that then need to be signed before they become a binding obligation.

That, however, may not be the case as New York courts increasingly take a more practical view of modern technology. Consequently, if the parties’ “informal” communications identify the essential terms of the transaction and they are attributable to the party to be charged, a Court may find that a text message or email supplies the “signed writing” required by New York’s Statute of Frauds to be a binding and enforceable contract.

What is the Statute of Frauds?

New York General Obligations Law § 5-701 – colloquially referred to as the Statute of Frauds – requires certain agreements to be in writing before they can be enforced. The statute applies, among other things, to agreements that cannot be performed within one year (*think*: fulfillment and service contracts), to promises to answer for the debt or default of another (*think*: guaranties), and to the purchase, sale, or transfer of any interest in real estate (*think*: sale contracts and deeds). In commercial disputes, the issue often is not whether the parties spoke, negotiated, or even performed in part. The threshold question is whether there is a written memorandum sufficient to satisfy the statute. Today, that memorandum may be found in an email chain, a series of text messages, or a combination of both.

What Writings Satisfy the Statute of Frauds?

GOL § 5-701 does not require a formal contract signed in ink. It only requires a note or memorandum of the agreement, subscribed by the party against whom enforcement is sought, that states the material terms with reasonable certainty.

The writing also does not need to be a single document. Multiple writings can be read together if they clearly refer to the same transaction. Nor must the signature appear in traditional form. Courts routinely find that typed names, email signature blocks, and other electronic identifiers as capable of satisfying the subscription requirement when the surrounding circumstances show an intent to authenticate the message.

The more difficult question usually is not whether an email or text can count as a writing. It can. The harder question is whether the message contains enough substance. A casual "OK," "sounds good," or "I'll take care of it" may be evidence of discussion, but it may not identify the parties, subject matter, consideration, duration, payment obligations, or other essential terms. Conversely, a concise email or text can be enforceable if it states who is promising what, to whom, when, and on what economic terms.

When Do Electronic Messages Form a Signed Writing?

Although case law varies across the state, the decision in *Lehrman v. Lovo, Inc.*, 790 F. Supp. 3d 348 (S.D.N.Y. 2025), reinforces the modern rule that electronically exchanged messages can satisfy New York's Statute of Frauds where they are sufficiently attributable to the party to be charged. The case arose from allegations that professional voice actors were hired through an online platform to record audio samples for limited internal or academic uses, but that the recordings were later used to create and commercialize AI-generated voice clones. In denying dismissal of the breach-of-contract claims, the court held that the plaintiffs plausibly alleged enforceable agreements formed through online messages, payment, and delivery of the recordings.

The Statute of Frauds issue was significant because Lovo argued that the alleged agreements were unenforceable absent a traditional signed writing. The Court rejected that argument, reasoning that the various messages exchanged between the parties identified the essential terms of the bargain.

Most importantly for text-messages, the *Lehrman* decision explains why the "signed writing" requirement is not limited to ink signatures or formal signature blocks. The Court explained that a writing is "subscribed" when the party's electronic act or identifier demonstrates authentication of the message. In the context of text messages, that authentication may come from the sender's account, identifying phone number or screen name, platform identity, typed name, message metadata, course of dealing, or other facts connecting the message to the party being charged.

The signature requirement is therefore functional: the question is whether the electronic communication can fairly be attributed to the party and whether it was sent or adopted as part of the transaction.

What Are The Key Take Aways and Practical Tips?

For practical purposes, Lehrman supports the proposition that text messages can satisfy the Statute of Frauds when they do three things.

1. They must identify the contracting parties or otherwise make clear who is undertaking the obligation.
2. They must set out the material terms with reasonable certainty, including the subject matter, consideration, scope of performance, and any limitations that are central to the deal.
3. They must be authenticated by some electronic marker or surrounding circumstance tying the message to the party to be charged.

A text chain that includes the sender's phone number, name, admissions, payment references, and transaction-specific terms may therefore function as the signed writing even if no formal contract was ever executed. We must always assume that business texts and emails will become contract evidence. A message sent quickly from a phone can be treated as a written memorandum if it captures essential terms and is attributable to the sender.

Informality is not immunity.

While the best practice remains a formal written agreement, business reality often moves faster than legal documentation. When negotiating by email or text, parties should use deliberate language. If they intend to be bound, they should say so and identify the parties to the deal and its essential terms. If they do not intend to be bound until a definitive agreement is signed, they should say that too with phrases such as "subject to execution of a formal agreement," "non-binding discussion," or "for negotiation purposes only" that help reduce ambiguity.

New York's Statute of Frauds has not disappeared in the digital age; it has adapted to it. For clients accustomed to fast-paced text message discussions, the practical message is straightforward: write as if a judge may someday read it. In New York, the text or email sent to "confirm" a deal may become the writing that proves one.

For more information, please contact:

Michael A.H. Schoenberg, Esq.
(516) 663-6546
mschoenberg@rmfpc.com