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CONTRACTS

Thumbs-up emoji constituted acceptance of texted contract, Canadian judge rules

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A Canadian judge has ruled a farmer's thumbs-up emoji constituted approval of a contract texted to him by a grain buyer.

Judge T.J. Keene of Saskatchewan ruled against farmer Chris Achter in a June 8 opinion

(<https://www.canlii.org/en/sk/sk/b/2023/2023skkb116/2023skkb116.html#document>).

Achter had argued his thumbs-up emoji merely indicated he had received the contract, not that he agreed to its terms.

Image from Shutterstock.

Keene ordered Achter to pay the grain buyer, South West Terminal, \$82,200 in Canadian dollars for breach of contract. The amount is about \$61,000 in U.S. dollars. Publications with coverage include the *Canadian Lawyer* (<https://www.canadianlawyer.com/practice-areas/corporate-commercial/thumbs-up-emoji-constituted-acceptance-of-contract-saskatchewan-court-rules/377287>), *CNN Business* (<https://www.cnn.com/2023/07/07/business/farmer-contract-thumbs-up-emoji/index.html>), the *New York Times* (<https://www.nytimes.com/2023/07/07/world/canada/canada-thumbs-up-emoji-contract.html>) and the *Washington Post* (<https://www.washingtonpost.com/business/2023/07/07/thumbs-up-emoji-contract-canada/>).

A South West Terminal representative, Kent Mickleborough, had drafted a contract for Achter to sell flax to the company in November 2021 at the price of \$17 a bushel.

Mickleborough signed the contract, took a photo of it and texted it to Achter's cellphone number in March 2021. Mickleborough included the message, "Please confirm flax contract." Achter responded with the emoji.

Achter never delivered the flax, which had risen to a price of \$41 a bushel at the end of November 2021.

Achter says he would never have agreed to the contract because he did not have the grain on hand when it was signed. In such circumstances he insists on an "act of God" clause so he won't be bound to deliver grain he can't produce due to hail, drought or other circumstances outside his control.

Keene noted that Mickleborough said he had worked with Chris Achter since about 2015. In response to previous texted contracts, Achter had responded with messages that included "looks good," "OK" and "Yup." Achter delivered on all those contracts.

Keene said there was "an uncontested pattern" of entering into contracts with "curt words" meant to be confirmation. "There can be no other logical or creditable explanation because the proof is in the pudding," Keene wrote. Achter "delivered the grain as contracted and got paid. There was no evidence he was merely confirming the receipt of a contract."

Achter told the *New York Times* he obviously disagreed with the decision. MLT Aikins represented the grain company. Law firm partner Josh Morrison told the *Canadian Lawyer* the case was "really interesting" and "a classic law school question."

Santa Clara University law professor Eric Goldman told the *New York Times* the precise meanings of emojis in both the United States and Canada will depend on the facts of the case.

"This case won't definitively resolve what a thumbs-up emoji means," said Goldman, who is co-director of the High Tech Law Institute at Santa Clara University School of Law. "But it does remind people that using the thumbs-up emoji can have serious legal consequences."

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