

## In The News

# Texas Justices Told Emails Can't Support Breach Claims

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*Law360*

Law360 (October 8, 2019, 8:20 PM EDT) -- Copano Energy LLC told the Texas Supreme Court in oral arguments on Tuesday that email exchanges between its representatives and an attorney for a landowner discussing the price the company would pay for an easement are not enough to sustain the breach-of-contract suit it is now facing.

Copano Energy is trying to overturn a ruling from the Thirteenth Court of Appeals allowing the claims from landowner Stanley Bujnoch to proceed, arguing the ruling doesn't adhere to the Texas Statute of Frauds, which requires certain kinds of contracts to be in writing to be valid.

Copano argues that the email exchanges between its representatives and Bujnoch about a price for the easement that was never honored isn't enough to sustain an agreement to buy the pipeline easement because the emails don't contain "an offer and acceptance of all essential terms," while Bujnoch disagrees.

Justice Jane Bland asked counsel for Copano, D. Mitchell McFarland of Munsch Hardt Kopf & Harr, P.C., to explain how there's no agreement to purchase the easement when one of the emails from a Copano representative to Bujnoch's attorney references an apparently agreed-upon, \$70-per-foot price for the easement, and said the "deal still stands."

McFarland said the court has held in previous cases that this type of exchange is "not enough" to adhere to the statute of frauds.

"[The deal] still stands without a property description and without a description of who the clients are," he said, detailing why he believes the emails are insufficient to establish there's a contract. "There's no doubt that they knew what they were talking about, but that is also true in all of these cases that this court has decided for decades regarding the statute of frauds."

According to court records, Bujnoch filed suit alleging Copano had breached their agreement to buy an easement on his property, citing the email exchanges as the basis for the deal. In the emails, a representative of Copano offered to buy the 20-foot pipeline easement for \$70 per foot, and Bujnoch accepted.

But in later discussions, a different Copano representative offered to pay no more than \$40 per foot. According to court records, Bujnoch's attorney reached out to the first representative about the discrepancy and was assured via email that the original "deal still stands." When Copano refused to pay the \$70-per-foot price, the current lawsuit was initiated.

The trial court granted Copano summary judgment, but in December 2017, the Thirteenth Court of Appeals reversed that ruling, holding that when taken together, the emails did constitute an agreement that satisfied the requirements in the statute of frauds.

Kyle Lawrence of Beck Redden LLP, who represents Bujnoch, told the court in oral arguments on Tuesday that the statute of frauds exists to protect parties from fraud, and to safeguard the "integrity of contracts."

"It's intended as a shield to protect parties from the enforcement of oral contracts or alleged oral contracts that they never entered or knew nothing about. There's no risk of that type of fraud here," he said. "Instead, here, Copano is trying to use the statute as a sword to repudiate an agreement that was fairly, honestly and knowingly entered."

Copano is represented by D. Mitchell McFarland, Carrie Schadle and Connor Best of Munsch Hardt Kopf & Harr PC.

Bujnoch is represented by Kyle Lawrence, Joe W. Redden Jr., Matthew P. Whitley and M. Jake McClellan of Beck Redden LLP.

The case is Copano Energy LLC et al. v. Stanley D. Bujnoch et al., case number 18-0044, in the Texas Supreme Court.

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