

SCA: When is an Electronic Signature a Signature?

“A signature communicated through an electronic medium like email correspondence is not a binding signature unless agreed to by the parties. In the absence of such agreement, a signature will only be valid if it appears in manuscript form regardless of the medium of communication. When entering into contracts, explicit provision must be made regarding what is meant by ‘signature’,” asks Rosalind Lake and Priyanka Naidoo in Norton Rose Fulbright’s *General*.

“On 18 March 2020 the Supreme Court of Appeal found that funds were improperly transferred by a financial services provider (FSP) when it received fraudulent emailed instructions from a hacker posing as its client. The court found that the FSP acted without receiving proper instructions and contrary to its mandate because there was no signature on the instructions.”

“In terms of the client’s written mandate to the FSP, the FSP was engaged to act as the client’s agent and invest money on his instructions, provided that such instructions would be sent to a stated fax number or email address ‘with client’s signature’. The client’s email account was hacked by fraudsters. The fraudsters sent three separate emails to the FSP instructing that amounts be transferred to certain accounts. Two of the emails ended with the words ‘Regards, Nick’, and the third email ended with the words ‘Thanks, Nick’.”

Read the article.