



### ***Determining Whether Communications Between Attorneys Constitute a Settlement Agreement***

**From the Desk of Kyle Riley:** Attorneys representing their respective clients often engage in email, telephone and in-person discussions to reach a settlement agreement. But which statements by counsel are sufficient to constitute a binding settlement agreement? Read on to find out.

**Claims Pointer:** In this case arising out of a dispute over a construction project, the plaintiff sought to enforce communications between the attorneys as a settlement agreement. On review, the Washington Court of Appeals determined that the communications were insufficient to constitute a settlement agreement because defendant's statements failed to show an assent to be bound by the terms of a settlement agreement. This case serves as an overview and example of how courts review communications to determine whether certain statements constitute a settlement agreement.

***Goebel Design Group, LLC. v. Clear NRG, LLC., No. 77090-0-1, Washington Court of Appeals Div. I (August 6, 2018) (unpublished).***

Goebel Design Group, LLC, ("Goebel") entered into a contractual agreement with Clear NRG, LLC ("Clear"), under which Clear agreed to perform remodel and construction work on a project. Following a dispute, Goebel filed suit against Clear. Thereafter, attorneys for both parties entered into settlement discussions. Goebel offered to settle the suit for \$50,000 and a personal guarantee by Clear's sole member, or \$65,000 and no personal guarantee. Clear responded by offering \$40,000 and a personal guarantee, or \$55,000 and no personal guarantee.

Goebel made another offer, composed of a personal guarantee, and \$2,000 monthly payments for 25 months, along with interest on the unpaid balance. Clear's counsel responded "[l]ooking like my client is inclined to accept your most recent settlement proposal. Devil is in the details though. Send me the docs to review." Counsel for Goebel forwarded the settlement documents. Counsel for Clear review, edited, and returned the settlement documents. Counsel for Goebel

stated that it incorporated most of Clear's changes, except for one substantive change. Clear stated that it did not intend to make that change, and described the single rejection as "fine."

Five days later, Goebel's counsel followed up on the status of the settlement agreement. Clear's counsel noted that he was waiting to hear back from his client. One week later, on March 28, counsel for Goebel sent another email:

David - can you please provide me with an update. I am having trouble understanding why this is taking so long. Please note, the first payment date of April 1. No matter where we are in the process, your client should be prepared to make that payment. Thank you.

Clear's counsel responded by stating "[a]ttached payment being mailed to Goebel today. I will follow up with my client and try to get the doc[ument]s executed." Included with the message was a copy of the \$2,000 check made out to Goebel. However, on April 10, counsel for Clear emailed Goebel by stating that his client was leaning towards the higher settlement option



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with no personal liability, and asked for a credit on the \$2,000 payment. Goebel's counsel responded by stating that the parties "already have a deal" and that Clear had already started making payments in accordance with the deal. Two weeks later, Goebel filed a motion to enforce the settlement agreement. The trial court granted the motion and Clear appealed the trial court's decision.

The Washington Court of Appeals explained that general concepts of contract law apply to settlement agreements. A contract is formed when both parties "objectively manifest their mutual assent." When determining if a party manifested their intent to enter into a contract, courts look to "the reasonable meaning of a person's words and acts." The court explained that "acceptance" is an expression that may be communicated by a word, sign, or writing of the "intention to be bound by the offer's terms."

**Clear's first statement:** "[l]ooking like my client is inclined to accept your most recent settlement proposal."

The court stated that "looking like" signified potential future acceptance and was insufficient to suggest an outright acceptance by Clear. Accordingly, the court concluded that Clear's statement was "not an objective manifestation of assent to be bound to the terms of Goebel's offer."

**Clear's second statement:** "I sent these to [my client] this morning for his input. I haven't received his input back, but I sort of doubt he'll have any further changes."

Counsel's statement that he doubted his client would have any other changes was "not an objective manifestation of assent to be bound to the terms of Goebel's offer."

**Clear's third statement:** "Attached payment being mailed to Goebel today. I will follow up with my client and try to get the doc[ument]s executed." Prior to that email, Goebel's counsel had stated "[n]o matter where we are in the process, your client should be prepared to make that payment."

Goebel argued that Clear's email and the \$2,000 payment constituted a manifestation of an assent to be bound by the offer. However, according to the court, Goebel's use of the term "the process," may have referred to the process of negotiating a settlement or the process of "formally executing the agreed upon terms." Because "process" was susceptible to at least two meanings, Goebel's email could not be understood to mean that an initial \$2,000 payment by Clear would constitute acceptance of the proposed settlement agreement. Consequently, the court noted that the email exchange, "coupled with the payment, does not demonstrate an objective manifestation of assent to the proposed terms."

The court determined that Goebel failed to meet their burden that a binding settlement agreement had been formed.

**NOTE:** This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/770900.PDF>



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