

## CASE NOTE: ITALY

### CASE CITATION:

**Tribunale Mondovì, 7 giugno 2004, n. 375 (decr.), Giur. It. 2005, 1026**

### NAME AND LEVEL OF COURT:

**Motion for summary judgment, Mondovì Civil Court**

### Mr Alfa, lawyer with offices at Mondovì, states the following facts:<sup>1</sup>

1. He is creditor, vis-à-vis Mr Beta of [omissis]<sup>2</sup> for the amount of 3,304.80 in respect of the assistance in criminal proceedings against Mr Beta before the Mondovì Criminal Court.
  2. By an e-mail dated 29 April 2004, a copy of which is hereby filed in electronic format (Exhibit 1) and in paper format (Exhibit 2), Mr Beta answered the claimant's numerous reminders and requests for payment (Exhibits 3 and 4), acknowledging his debt (2.700 plus VAT), and promising that payment would occur by no later than 1st May 2004.
  3. Notwithstanding the above promise, the debtor did not pay at the promised date nor at a later date.
  4. The claimant waited further (notwithstanding the fact that the due date of the payment was well before Beta's promise). To date, the defendant has not paid his debt, so that the claimant has no other option but to bring this action.
- Existence of the requisites provided for by Article 634 of the Code of Civil Procedure.
5. The above e-mail dated 29 April 2004 (Exhibit 2) amounts to a unilateral promise in a private deed.
  6. In fact, the contents of such e-mail amount to an acknowledgment of debt, with a promise to pay. Furthermore, the e-mail is a written document.
  7. Article 10, Paragraph 2, of Presidential Decree 445/2000 provides that "The electronic document, signed with an electronic signature, satisfies the legal requirement of written form" (although it can be freely evaluated by the Judge, but this does not apply to the procedure for summary judgment, because where the document is contested, the matter can only be dealt with in the ordinary action) and e-mails, for the reasons explained below, are electronic documents signed with an electronic signature.
  8. Under Article 1, first Paragraph, sub-section b of the Presidential Decree 445/2000, an electronic document is "an electronic representation of legally relevant acts, facts or data": as an e-mail is an electronic representation of many things, amongst which a statement of will or of knowledge, or both will and knowledge, it is undisputable that it is, together with its contents, an electronic document.
  9. Article 8 of the same Decree provides for the full validity of such a document, providing that "the electronic document, whoever made it, the registration on electronic support and the transmission with electronic instruments, are valid and relevant for any legal effect, if they conform to the provisions of this Decree".
  10. As stated above, Article 10, Paragraph 2, provides that the electronic document satisfies the legal requirement of written form when it is signed with an electronic signature; thus, it is now necessary to determine if e-mails have this latter peculiarity: Article 1, first Paragraph, sub-section cc specifies that an electronic signature is "a set of data in an electronic form, which is attached or logically connected to other electronic data, used as a method of authentication".
  11. To say that an e-mail has been signed with an "electronic signature" (a "simple" one, as opposed to a "digital" signature, which is a particular type of qualified electronic signature, which guarantees a higher authenticity and, consequently, is a certified private document under Article 1, first Paragraph, sub-section n and 10, Paragraph 3 of the Decree) it shall contain a set of data in electronic form which may be connected with other data used as a method of authentication (the law refers to an undersigning, but this is a [judicial fiction – better than - fictio iuris,] as electronic data cannot be signed: the same applies to digital signatures and other electronic signatures).

<sup>1</sup> The text below is a translation of the plaintiffs application.

<sup>2</sup> Under privacy and data protections laws, the parties may request that their personal details are

not shown in legal journals. Thus Alfa and Beta are codenames, the defendant's address is not shown and also the e-mails address abcdefg@yahoo.com below is not the original one.

12. The e-mail in question contains a sender address (abcdefg@yahoo.it), which indicates that it was sent through an account (i.e. a reserved area, accessible only by its owner) created by an Internet Service Provider (the provider of the e-mail box, Yahoo!, but it could be any other ISP, such as www.libero.it or www.tiscali.it); moreover, the e-mail contains the headers, i.e. a set of data containing all the precise information regarding the route followed by the e-mail, from the moment it was sent (it also attests the telephone number through which the sender was connected when sending it), amongst which, above all, the ISP which provided the e-mail account corresponding to the address from which the e-mail was sent.

The set of data “sender address – headers” clearly indicates that the e-mail in question arrived from a reserved area of an ISP (it indicates, in essence, that to send that e-mail one needed to have access to that reserved area), and that it was sent at a given moment and from a given telephone number (through which the sender PC was connected).

The first legal requisite (“a set of data in electronic form”) is therefore constituted by the set of data “sender address – headers”.

13. As we have seen, this first set of data, to constitute an electronic signature, must be logically connected to another set data, used as a method of authentication.

While in the “physical world” the most commonly used validation system is that of “smart card and a password” – as, e.g., for ATMs – on, the internet the simplest and most widely used system is the insertion of username and a password, which the user must type to authenticate and obtain access to a reserved area.

This is what happens for e-mails: to obtain access to an e-mail account (i.e. the reserved area corresponding to a given address such as abcdefg@yahoo.it used by the defendant to send the above e-mail) to send or read e-mails, one needs to have knowledge of this data (or use software – such as Microsoft Outlook Express – which automatically inserts the data every time the PC links to the internet) thus carrying out the necessary electronic validation procedure.

14. As we have seen, the set of data “sender address – headers” (which is inserted in the e-mail at the time it is sent, as though it was a seal) proves that the e-mail in question was written by someone who

obtained access to the reserved area using an username and a password: or, more precisely, it attests that the person who wrote that e-mail must have inserted an username and a password.

Thus, thanks to the first set of data, we know that a second set of data, used as a method of authentication, was used to send that e-mail, and that this second set is logically connected with the first one.

15. In light of the above, it is undisputable that e-mails – including the one herewith annexed as Exhibit (a paper copy of which, exclusively for the Judge’s convenience, is also enclosed) – constitute “electronic documents signed with an electronic signature”, as defined by Article 1, first Paragraph, sub-section cc and 10, Paragraph 2 of Presidential Decree 445/2000, as recently confirmed by case-law (Court of Cuneo, 15 December 2003, n° 848) e by legal authors (V. Amendolagine, *Value of e-mails as evidence in motions for summary judgments*, *Diritto e Giustizia*, Milan, Giuffrè; G. Finocchiaro, *Digital signature and electronic signature, private law profiles*, Milan, Giuffrè, 2003, pages 35 and following; G. Vangone, *Electronic Signatures*, in *Nuova Giur. Civ. Comm.* 2003, 4; A. Lisi, *The value of e-mails in electronic commerce and in Court*, IGED, Edizione Piazza Milano, n° 2/2004).
16. Therefore, as the above e-mail (containing the unilateral payment promise of the debtor) satisfies the requirement of written form, all the requisites for the issuance of the summary judgment are met.

For the above reasons, the Claimant requests this Court to issue, pursuant to Articles 633 and in accordance with the Code of Civil Procedure, a summary judgment ordering Beta, of [omissis] to pay the claimant 3,304.80, plus interest accrued until the date of payment, plus costs.

[Date and place]

The judge upheld the motion and issued the summary judgment as requested.

### Comment

Summary judgments do not contain a detailed reasoning, but simply state that the motion is grounded. However, it can be assumed that the judge agreed with the plaintiff’s arguments.

Some legal commentators have contested the view, expressed in the lawyer’s arguments above, that a ‘simple’ e-mail bears an electronic signature. The reason for such objections is that the logical connection that

must exist between the two sets of data implies that the second set authenticates the first, in that it validates the data and renders any subsequent change detectable. This does not happen when simply obtaining access to an e-mail service, whether web-based or client-based. A user gains access to the service by using a user identification and password. In undertaking this action, all the user is doing is obtaining access to the service. The user identification and password do not authenticate the contents of e-mails sent through that service. While this is a subtle and technical legal argument, it may have significant consequences. A number of decisions based on the same grounds have been published recently. All of them concern summary judgments and thus do not explain the underlying reasons. However, given the increasing number of motions based on this kind of evidence, it is inevitable that judgments will follow with more detailed and instructive reasoning.

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