February 2021
MPT-1
Item

In re Mills

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In re Mills

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MEMORANDUM

To:	Examinee
From:	Isabel Banks
Date:	February 23, 2021
Re:	Charlotte Mills matter

Our client, Charlotte Mills, owns an event planning business that organizes various social and athletic events in the city of Garden Grove. Mills was recently retained by the Ramble Group (Ramble) to plan its annual Springfest, a two-day event featuring a festival and a five-kilometer run. After Mills had already begun preparations for the event, she was informed that Ramble would be using another event coordinator.

Mills wants to know whether she has any legal recourse against Ramble. We have discussed the possibility of pursuing a claim against Ramble for breach of contract based on the communications and/or documents that were exchanged between Mills and Ramble's owner, Kathryn Burton.

I need you to draft a memorandum to me analyzing whether there is an enforceable contract between Mills and Ramble and what damages Mills might be entitled to if she were to sue Ramble for breach of contract. Another associate will assess other potential issues such as promissory estoppel and specific performance.

Do not include a separate statement of facts in your memorandum, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law support your conclusions.

WARREN, SANCHEZ & BANKS LLP
Attorneys at Law

FILE MEMORANDUM

From: Isabel Banks
Date: February 12, 2021
Re: Charlotte Mills matter

This memorandum summarizes my meeting today with Charlotte Mills regarding a potential business dispute:

- Mills is the owner of Mills Event Management (MEM), an event planning and coordination business that handles approximately 20 events per year, including festivals, races, galas, and fundraisers. MEM is basically a "one-woman show"; Mills handles all aspects of the business, bringing in paid helpers as needed.
- Mills has been in the event planning business for three years. Her services are increasingly in demand because she brings a creative perspective to the events she organizes, which boosts event attendance and enhances public and media awareness of the events and their hosts.
- In June of 2020, Mills was contacted by Ramble Group, a company in Garden Grove that hosts the popular Springfest event.
- Springfest is a weekend event that kicks off with a five-kilometer "Fun Run" at 8 a.m. on Saturday, followed by a festival the rest of Saturday and all day Sunday. The festival includes live music, food and beverages, vendor booths featuring local artists, and kids' activities such as face painting.
- Springfest is held in April, typically the first or second weekend of the month. Springfest 2021 will be the fourth annual Springfest.
- Mills's first contact with Ramble Group was a phone call from Ramble's owner, Kathryn Burton, on June 3, 2020. In that phone call, Burton asked about Mills's availability to organize and coordinate Springfest 2021, explaining that the event planning company that Ramble had used in other years was not available.

- During the call, Mills and Burton also brainstormed ideas for Springfest 2021, including possible venues, musical groups, and ways to boost attendance and enhance Ramble's marketing opportunities related to the event. The call ended with Burton saying that she was excited about the prospect of working with Mills.
- Mills and Burton exchanged several emails after the initial phone call, including an email from Mills to Burton that attached a written event planning proposal for Springfest 2021.
- The written proposal was never signed by either party, but Ramble paid the initial $2,000 deposit outlined in the proposal.
- After Mills received the deposit, she began preparations for Springfest 2021, including the following:
  - contacting the city and county and securing the necessary permits for the event, which entailed filling out application forms and paying permitting fees
  - preparing a preliminary budget and master plan for the event
  - creating a new Springfest 2021 website to incorporate the themes and ideas discussed with Burton and paying related webhosting and domain fees
  - reserving Discovery Park and the Garden Grove Promenade as alternate venues for the festival portion of the event
  - designing a preliminary racecourse map for the five-kilometer run
  - contacting local musicians about performing at the event (no bands booked yet, but four bands confirmed to be available)
- In all, Mills's out-of-pocket expenses totaled $3,000.
- While working on these tasks, Mills gave regular updates to Burton, mostly by telephone. At no time did Burton express concerns about Mills's event preparations.
- On August 10, 2020, Mills received a phone call from Burton stating that Burton had decided to use another event planning company for Springfest 2021.
- Mills tried to line up a replacement event planning engagement for around the same time as Springfest 2021 but was unable to do so.

Initial Email Correspondence between Charlotte Mills and Kathryn Burton

From: Kathryn Burton <kburton@ramblefranklin.com>
To: Charlotte Mills <cmills@memfranklin.com>
Subject: Springfest 2021
Date: June 4, 2020

Charlotte, it was a pleasure talking with you yesterday! I like the concepts you have for Springfest 2021, including your idea of inviting gourmet food trucks to serve food in addition to traditional food/beverage booths. I think your ideas for marketing and branding strategies would significantly increase event attendance and enhance Ramble's visibility as the event's host. For the last two years, we have nearly doubled attendance, and I'd like to see that trend continue this year.

Can you send me a proposal outlining the event planning, coordination, and oversight services you provide? We can decide on the event date and location later—it needs to be either the first or second weekend in April 2021, preferably in or near downtown Garden Grove.

From: Charlotte Mills <cmills@memfranklin.com>
To: Kathryn Burton <kburton@ramblefranklin.com>
Subject: Springfest 2021
Date: June 4, 2020

Hi, Kathryn. I'm very excited about the possibility of working with Ramble Group to make Springfest 2021 the best Springfest ever! As to potential event dates, I don't currently have any events booked for the first and second weekends in April 2021, so either weekend would be fine.

Some options for the venue would be the Garden Grove Promenade (which has green space and more room for food trucks), the Old Town Waterfront (across the bridge from downtown Garden Grove), and Discovery Park (probably the best option if you want the event to be in the heart of the downtown). All three venues could accommodate an event of this size. They all have adjacent roadways for the five-kilometer run, so it shouldn't be a problem to get the city permits for the run and police department approvals for road closures along the racecourse.

I'm attaching my proposal. Please review it and let me know if you have any questions.

MILLS EVENT MANAGEMENT PROPOSAL
[attached to Mills's email of June 4, 2020]

Mills Event Management (MEM) is pleased to offer its professional management services for the Springfest 2021 event hosted by Ramble Group (Client). Services include event logistics, venue and course design, event consultation and guidance, and event marketing and branding. MEM will also oversee the hiring of necessary services, equipment rentals and deliveries, apparel ordering, and merchandise and awards if needed.

SCOPE OF WORK

MEM proposes to work alongside Client by providing professional event management services. This proposal outlines the pre-event and event-day services necessary to produce a smooth, safe, and professionally staged event.

RESPONSIBILITIES OF MILLS EVENT MANAGEMENT

<u>Pre-Event Logistics and Planning</u>

- Research and provide guidance on event date and location
- Prepare preliminary budget and master plan including venue and racecourse maps
- Reserve venue(s) and pay initial venue deposit(s) subject to reimbursement by Client
- Obtain necessary approvals and permits from the police department, city, and county
- Website assistance or design if needed
- Coordinate with city officials on necessary road closures, detours, parking areas, etc.
- Assist with selecting an emcee, DJ, and bands, if applicable

* * *

<u>Event-Day Site Logistics</u>

* * *

RESPONSIBILITIES OF CLIENT

- All financial obligations and expenses stemming from the event, including reimbursement of any expenses incurred by MEM. Such expenses may include but are not limited to (1) special event fees and permits, (2) facility rental fees, (3) website hosting, and (4) advertising and marketing.
- Solicitation and recruitment of all volunteers

- Acquisition and purchase of event insurance
- Neighborhood notification of residences and businesses as required by city
- Setup, breakdown, and removal of equipment rented or donated for event

EVENTS INCLUDED IN AGREEMENT

NAME	VENUE	DATE
Springfest 2021	To Be Determined	To Be Determined

It is understood that any event not yet determined or outlined with name, venue, and date will be scheduled according to the availability of MEM.

PAYMENT

Client shall pay MEM $15,000 for up to the first 1,000 registrations or tickets sold and $2 per additional registration or ticket sold. Client shall pay $2,000 of this fee as a nonrefundable deposit before commencement of services.

Client shall reimburse MEM for any event-related expenses incurred by MEM.
All payments and reimbursements are due to MEM no later than seven days following completion of the event.

Should the event be canceled, a minimum payment of $2,500 will be due at cancellation, plus reimbursement of any event-related expenses incurred by MEM. Work will begin after initial deposit is received. Please make checks payable to Mills Event Management.

ACCEPTANCE OF TERMS

We the undersigned accept the terms of payment and scope of work outlined in this agreement.

______________________	______________________
Ramble Group	Mills Event Management
Name/Title:	Name/Title:
Date: ______________	Date: ______________

Additional Email Correspondence between Charlotte Mills and Kathryn Burton

From: Kathryn Burton <kburton@ramblefranklin.com>
To: Charlotte Mills <cmills@memfranklin.com>
Subject: Springfest 2021
Date: June 7, 2020

I've reviewed your proposal—everything looks good. One question about your fees. Your fees include a lump sum of $15,000 for the first 1,000 registrations or tickets sold plus $2 for every ticket or registration sale above 1,000. Last year we had general admission ticket sales of about 2,500. However, we also generated about 500 registration fees from people who participated only in the 5K fun run and did not buy tickets for the festival. Does the $2 per ticket fee in your proposal apply only to general admission tickets or would it also include fun-run-only registrations?

From: Charlotte Mills <cmills@memfranklin.com>
To: Kathryn Burton <kburton@ramblefranklin.com>
Subject: Springfest 2021
Date: June 7, 2020

Good question! Most festivals I handle have general admission ticketing—attendees pay a set price and receive a wristband allowing access to all areas of the event. Since Springfest is a combination festival and run, with some attendees participating only in the run, I'm willing to reduce the fee for fun-run registrations to $1 per registration. So, if you had 2,500 general admission ticket purchasers and 500 fun-run participants, the first 1,000 general admission tickets would be included in my $15,000 base fee, the remaining 1,500 general admission tickets would be charged at a rate of $2 per ticket, and the 500 fun-run-only registrations would be billed at $1 per ticket.

From: Kathryn Burton <kburton@ramblefranklin.com>
To: Charlotte Mills <cmills@memfranklin.com>
Subject: Springfest 2021
Date: June 8, 2020

That sounds fair. Are you still available the first weekend in April? That's the date we've chosen.

From: Charlotte Mills <cmills@memfranklin.com>
To: Kathryn Burton <kburton@ramblefranklin.com>
Subject: Springfest 2021
Date: June 8, 2020

Yes, I don't have anything booked for that weekend, but I am already getting inquiries about other events that month, so please let me know as soon as possible if you want me to move forward with

planning the event. If so, we should probably lock in a venue soon because they tend to book up quickly, especially for spring and summer events. I think our best bets are Discovery Park and the Garden Grove Promenade, which have the most flexibility in terms of the number of attendees they can accommodate as well as more space for vendor booths and a stage for the bands. I'd suggest submitting a reservation fee to hold both venues until you're ready to make a final decision.

From: Kathryn Burton <kburton@ramblefranklin.com>
To: Charlotte Mills <cmills@memfranklin.com>
Subject: Springfest 2021
Date: June 9, 2020

I agree that we really need to get going on this. Can you please check on the availability of both sites? Also, I think it's important to freshen up the Springfest website and give it a real facelift this year. Is that something you can help with?

From: Charlotte Mills <cmills@memfranklin.com>
To: Kathryn Burton <kburton@ramblefranklin.com>
Subject: Springfest 2021
Date: June 9, 2020

Absolutely! I've got some great ideas for the website.

From: Kathryn Burton <kburton@ramblefranklin.com>
To: Charlotte Mills <cmills@memfranklin.com>
Subject: Springfest 2021
Date: June 9, 2020

Fantastic! Please get started on the website design. I'll get you Ramble's initial deposit by the end of this week. I'm looking forward to working with you to make Springfest 2021 a huge success!

From: Charlotte Mills <cmills@memfranklin.com>
To: Kathryn Burton <kburton@ramblefranklin.com>
Subject: Springfest 2021
Date: June 9, 2020

Sounds great! Once I receive your deposit, I'll take care of securing the two potential venues and you can reimburse me later, per our agreement.

Daniels v. Smith
Franklin Court of Appeal (2011)

Plaintiff Sam Daniels sued defendant Angela Smith for breach of an oral agreement to construct a warehouse for Smith. The trial court entered judgment for Daniels in the amount of $57,500. Smith appealed on two grounds—first, the parties' agreement was never reduced to writing and hence no binding agreement resulted, and second, the trial court erred in calculating the amount of damages. We affirm.

In August 2009, Smith sought Daniels's advice regarding the demolition of certain structures on Smith's land where she wanted to build a warehouse. Thereafter, Smith delivered to Daniels a set of plans and specifications, together with an "Invitation to Bid" that contained a "Bid Form." The "Invitation to Bid" included the following sentence: "Selected bidder shall execute a contract for construction of the work within five days of notice of selection."

On September 1, 2009, Daniels delivered his Bid Form to Smith. At meetings on various dates in September and early October, Daniels and Smith discussed proposed changes to the plans and specifications for the warehouse, and Daniels submitted a revised Bid Form on October 5. On October 9, Daniels and Smith met and agreed that there would be no further changes to the plans set forth in the revised Bid Form, which were complete and specific as to the type and grade of materials. The parties also agreed on the method of compensating Daniels and agreed that construction would begin no later than November 1 and be completed within 60 days thereafter.

The next morning, October 10, Smith telephoned Daniels. It is undisputed that during the call, Daniels stated that he could build the warehouse for $227,000 and Smith replied, "If you can do the job for $220,000, you have it." Daniels responded: "I accept your offer, and I thank you very much for the job." Smith then told Daniels to proceed, saying: "Let's get this thing rolling." Daniels replied: "Fine, I will get right on the phone now and start." Immediately thereafter, Daniels began ordering supplies for the project and lining up plumbing and electrical subcontractors. Daniels also sent an email to Smith that day stating, in relevant part, "I am pleased to be awarded this work and hope to produce a warehouse we can both be proud of."

The next day, October 11, Smith emailed Daniels an unsigned, standard form construction contract containing all the terms and conditions reached at previous meetings. Daniels signed the contract and emailed it back to Smith, requesting that Smith execute the agreement as well. Smith, however, did not reply. After trying unsuccessfully to reach Smith for more than a week, Daniels

drove by the site and saw a warehouse under construction by a different contractor. The warehouse was eventually completed at a cost of $205,000 by the other contractor.

DISCUSSION

At the outset, we note that the statute of frauds does not apply here. Under Franklin Civil Code § 20, an agreement that by its terms is not to be performed within one year from the date of its making is invalid unless it is memorialized in writing and executed by the party to be charged. Smith and Daniels agreed that the warehouse contract would be completed in less than three months after the parties made their contract. Clearly, the parties intended the agreement to be completed in less than one year. Even if they had not agreed on a specific completion date, a reasonable amount of time would be inferred. Thus, there was no statutory requirement that the contract be in writing.

Contract Formation

We now turn to whether the evidence establishes the formation of a contract. The essential elements for formation of a contract are (1) offer, (2) acceptance, (3) the intention to create a legal relationship, and (4) consideration. Here, it is undisputed that an offer was made—specifically, Daniels's revised Bid Form, which was submitted to Smith on October 5, 2009. Nor is it disputed that the alleged contract contained adequate consideration—namely, the construction of a warehouse in exchange for payment of $220,000, which was Smith's counteroffer. However, Smith claims that there was no acceptance (element #2) or intention to create a legal relationship (element #3).

In support of her contention that there was no binding contract, Smith erroneously relies upon *Green v. Colimon* (Fr. Ct. App. 2005), which stated the well-settled rule that "if the parties intend to reduce their proposed agreement to writing before it can be considered complete, there is no contract until the formal agreement is signed." However, in *Green*, there was evidence that the parties intended to be bound only by a written contract, and the preliminary negotiations never reached the point where there was a meeting of the minds on all material matters. As the court noted in *Green*, "[t]here is no meeting of the minds while the parties are merely negotiating as to the terms of the agreement to be entered into. To be final, the agreement must extend to all terms that the parties intend to introduce, and material terms cannot be left for future settlement." Smith's brief fails to identify any further negotiations that might have been necessary to effect a mutual understanding of the parties. Instead, Smith merely argues that the parties intended that neither party would be bound until both signed the written contract.

In *Alexander v. Gilligan* (Fr. Sup. Ct. 2008), we rejected a similar argument in circumstances closely analogous to those here. The parties in *Alexander* finally (through email exchanges) agreed upon the terms of a six-month business consulting agreement after several meetings. But when the plaintiff presented a written contract for the defendant's signature, the latter refused to sign. The *Alexander* court held that the formal written contract was not *the agreement* of the parties but only *evidence of that agreement*. The court cited numerous cases to the effect that when parties agree, either orally or via email, upon all the terms and conditions of an agreement with the mutual intention that it shall thereupon become binding, the mere fact that a formal written agreement has yet to be prepared and signed does not alter the binding validity of the agreement. Whether parties intend that an oral or email-based agreement should be binding is to be determined by the trier of fact from the surrounding circumstances, giving effect to the mutual intention of the parties as it existed at the time of contracting. *Alexander*.

Here, the agreement between Smith and Daniels for the construction of a warehouse is not the type of contract that by its very nature indicates that the parties intended to be legally bound only if a formal written contract was executed. *See* 1 CORBIN ON CONTRACTS § 2.9, at 152 (rev. ed. 1993) ("[t]he greater the complexity and importance of the transaction, the more likely it is that the informal communications are intended to be preliminary only"); *Haviland v. Magnolia Sec. Inc.* (Fr. Ct. App. 2009) (parties did not intend oral agreement for creation of multi-million-dollar venture capital fund to be legally enforceable given unusual complexity and size of transaction).

Justice and fair dealing also support the above principle. Otherwise, a party who has entered into a contract through a combination of telephone conversations, in-person discussions, and email correspondence would be able to avoid the contract by claiming that the contract had not been reduced to another written form. Contracts would never be enforceable if parties could avoid the obligations by refusing to sign a written document memorializing the terms of an oral or email-based agreement and thereby evade obligations incurred in the ordinary course of business.

When Daniels submitted his revised Bid Form, Smith counteroffered by stating that she would accept the revised Bid Form if Daniels could do the work for $220,000 instead of $227,000. When Daniels stated, "I accept your offer, and I thank you very much for the job," acceptance occurred, despite Smith's argument to the contrary. In addition, Smith's statement "Let's get this thing rolling" made clear that both parties intended to be legally bound by their agreement, again despite Smith's argument to the contrary. Accordingly, we find that all four elements required for

formation of a contract exist in this case, including specifically Daniels's acceptance of Smith's counteroffer and statements by both parties that evidence an intention to be bound.

Damages

Smith claims that the $57,500 damages award was erroneous due to uncertainty as to Daniels's cost of performance. Statutory damages for breach of contract include damages for all detriment "proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom." Fr. Civil Code § 100. Unascertainable damages cannot be recovered for breach of contract. *Id.* However, § 100 has been liberally construed to prevent defendants from avoiding the consequences of their actions. Thus, it has been repeatedly held that where there is no uncertainty as to the *fact* of damage (i.e., as to its nature, existence, or cause), the same certainty as to its *amount* is not required. *See, e.g., Alexander* (although parties had not identified a specific fee, no uncertainty existed on whether fees would be paid). One whose wrongful conduct has made it difficult to ascertain damages cannot complain because the amount of damages must be estimated, provided that the estimate is reasonable. *Id.* If damages can be calculated with reasonable certainty, they will be upheld.

Here, Daniels sought to recover the expenses he incurred prior to Smith's breach, as well as the benefit of the bargain or the profit that he would have made had Smith not breached the contract and Daniels had been allowed to build the warehouse. Daniels submitted receipts for $7,500 in expenses and a cost breakdown showing lost profits of $50,000, both of which were received into evidence at trial. Because not all the items in the cost analysis breakdown were supported by subcontractor bids, Smith claims that the lost profit damages were uncertain. Daniels testified, as a contractor with 13 years of experience, that the difference between the contract price and his cost of construction was $50,000. It was for the trier of fact to determine whether Daniels's valuation of the items unsupported by bids was fair and reasonable. Daniels's testimony and documentation were uncontradicted and appear to have been the best evidence available. Thus, the trial court did not err in awarding damages of $57,500.

Affirmed.

Jasper Construction Co. v. Park-Central Inc.
Franklin Court of Appeal (2014)

Defendant Jasper Construction Co. (Jasper) appeals from a trial court judgment finding that Jasper breached a contract to construct and lease a parking garage to Park-Central Inc., which leases and operates public parking garages. We hold that the contract is sufficiently specific to be enforceable and that the trial court properly awarded damages for breach of contract.

In March 2008, Jasper and Park-Central signed a standard commercial lease (Lease) under which Jasper agreed to construct a parking garage on property it owned and to then lease the garage to Park-Central for 20 years. Under the terms of the Lease, Jasper would "proceed diligently" with the construction of the parking garage and give Park-Central the right to terminate the Lease if construction was not completed by July 1, 2010. The Lease set forth the monthly rent to be paid by Park-Central to Jasper and specified the square footage, numbers of floors and parking spaces, and locations of entrances and exits for the parking garage. The Lease further provided that the parking garage "shall be constructed in accordance with certain plans and specifications (Plans) to be prepared and approved by the parties" and gave Jasper the right to terminate the Lease if the Plans were not approved by January 1, 2009. Plans were prepared by Jasper's architect and approved by both parties before the January deadline. When Jasper subsequently refused to construct the parking garage, Park-Central sued.

Jasper contends that the parties' failure to incorporate the Plans into the Lease means that, as a matter of law, the Lease was not sufficiently definite and certain to give rise to a legal obligation. That contention is without merit. Case law does not support the notion that specifications are an essential condition of an enforceable contract. To the contrary, the specificity required for an enforceable contract depends upon the circumstances. Thus, in *Stark v. Huntington* (Fr. Ct. App. 2003), a contract was enforced notwithstanding the defendant's assertion that "neither design specifications, nor price, nor time of performance have been agreed upon." Jasper places great weight on the fact that the parking garage was not to be built until the parties had approved plans and specifications. There is, of course, nothing unusual in a contract containing a right of prior approval, which is construed as implying a covenant of reasonableness.

Jasper also challenges the damages award. We conclude that the trial court's finding of damages is supported by the evidence.

Affirmed.

Thompson v. Alamo Paper Products Inc.
Franklin Court of Appeal (2017)

This appeal involves an employment contract. The trial court granted summary judgment to defendant Alamo Paper Products Inc. (Alamo). Plaintiff Marie Thompson appeals, contending that her alleged oral contract with Alamo is not barred by the parol evidence rule. We affirm.

The parties entered into a written employment agreement whereby Alamo hired Thompson to serve as its chief financial officer at an annual salary of $150,000. The agreement was silent as to any salary increases or bonuses. When Thompson did not receive a bonus, she sued Alamo, alleging that the parties had orally agreed before executing the written contract that after a six-month probationary period, Alamo would increase Thompson's salary and pay her a bonus.

Thompson argues that the parol evidence rule does not bar her claim based on Alamo's alleged breach of the oral contract. We disagree. When contracting parties have entered into a valid written agreement dealing with the particular subject matter, and the evidence indicates that the parties intended that written agreement to be the final expression of their agreement (as by both parties having signed it), the written contract supersedes all negotiations concerning its matter that preceded or accompanied the execution of the contract.

The parol evidence rule prevents a court from considering prior or contemporaneous agreements that are inconsistent with the terms in the written agreement. *Bradley v. Ortiz* (Fr. Sup. Ct. 1998). Thus, when the parties intend to reduce the entire agreement to writing, the terms of the agreement are to be ascertained from the writing alone, if possible. In such a case, extrinsic evidence is admissible only to interpret contract terms that are ambiguous or uncertain. *Id.* In contrast, when the parties do not intend to reduce the entire agreement to writing, both written and oral communication may be relevant to prove the terms of the contract. *Id.*

The alleged oral agreement between Thompson and Alamo concerns exactly the same subject matter as the underlying written employment contract, and it directly contradicts a specific provision in the agreement (i.e., Thompson's salary) and would add a material term that the parties did not reduce to writing (i.e., Thompson's eligibility for a bonus). The written employment agreement contains no ambiguous or uncertain terms. Because the alleged oral agreement is inconsistent with the written employment agreement and the written agreement contains no ambiguous or uncertain terms, the alleged oral agreement is unenforceable.

Affirmed.

1)

To: Isabel Banks

From: [redacted]

Date: February 23, 2021

Re: Charlotte Mills Matter

Introduction

The first issue that must be discussed is whether there is an enforceable contract between Mills and Ramble. It is likely that the parties had an enforceable contract based on their conduct and current Franklin precedent concerning contract formation as discussed below. Also, due to Burton's breach of the contract Mills will be entitled to damages of $19,500.

Issue 1: Is there and enforceable contract between Mills and Ramble?

The **first issue** is whether this type of contract must be in writing in order to be enforceable. Under Franklin Code, "an agreement that by its terms is not to be performed within one year from the date of its making is invalid unless it is memorialized in writing and executed by the party to be charged." If the parties do not specify a completion date, a reasonable amount of time will be inferred as to its completion.

Under our facts this contract will not be required to be in writing to be enforceable because it will be completed within a year as specified by the parties agreement. Here, the parties are bartering about the event in question in the beginning of June 2020 and the event is to be held in April 2021 as stated in the "Proposal." This is a time span of at the most 10 months so the contract does not need to be evidenced by a writing to be enforceable.

Because the contract does not need to be evidenced by a writing to be enforceable, the **second issue** is whether Mills and Ramble have an enforceable contract. It is likely that they have an enforceable contract under Franklin Law.

Daniels lays out the essential elements for formation of a contract, they are: 1) an offer, 2), acceptance, 3) the intention to create a legal relationship, and 4) consideration. The two that are most at issue here are acceptance and an intent to be bound.

When determining whether there was an intent to be bound, "if the parties intend to reduce their proposed agreement to writing before it can be considered complete, there is no contract until the formal agreement is signed." *Green.* Also, a court will look to whether "there is no meeting of the minds while the parties are merely negotiating as to the terms of the agreement to be entered into. To be final, the agreement must extend to all terms that the parties intend to introduce, and material terms cannot be left for future settlement." *Id.* When looking at this factor, the Court will consider whether the parties had any further

negotiations that might have been necessary to effect a mutual understanding of the parties. *Daniels*.

When there is a formal written contract but one or more parties does not sign, the court will not find this conclusive of their lacking of an intent to be bound, in *Alexander* the court held that "the formal written contract was not the agreement of the parties but only evidence of that agreement." This arose when the parties agreed upon the terms of a consulting agreement after several meetings, but when the plaintiff presented a contract for the defendant's signature, the defendant refused to sign. Instead the court will look to all of the parties communication and that "when parties agree, either orally or via email, upon all the terms and conditions of an agreement with the mutual intention that it shall thereupon become binding, the mere fact that a formal written agreement has yet to be prepared and signed does not alter the binding validity of the agreement." *Alexander*. The intent to be bound should be determined by the trier of fact from the surrounding circumstances.

However, the courts have a tendency to look at the complexity of the type of contract to determine whether the parties intended to be legally bound only if a formal written contract is executed. *Corbin*. In *Haviland*, the Court held that the parties did not intend an oral agreement for the creation of a multi-million-dollar venture capital fund to be enforceable given the complexity and size of the transaction.

When looking at the specific conduct in *Daniels*, the court found there to be an enforceable contract. First, the court said there was an offer when one party proposed a bid and second there was consideration when the contract stated that the warehouse for $220,000. In regards to acceptance there was an acceptance when Daniels, the builder, stated "I accept your offer, and I thank you very much for the job," after the Defendant had negotiated the price down. On the matter of intent to be bound, the Defendant showed he had the intent to have an enforceable agreement when he stated "Let's get this thing rolling" in regards to getting the construction on the warehouse started.

In *Jasper,* the defendant was appealing the trial court's ruling that there was an enforceable contract. The Court held that the contract is sufficiently specific to be enforceable. *Id.* In *Jasper*, the parties had entered into a lease under which the defendant would build a parking garage on his land and lease it to the plaintiff. In the lease the parties set forth the rent to be paid, the square footage, the numbers of floors and parking spaces, and other construction specifics. The Lease also specified that the structure "shall be constructed in accordance with certain plans and specifications to be prepared an approved by the parties," the Plans were later approved by both parties before their set deadline. The Defendant argued that the parties' failure to incorporate the Plans in the Lease meant that the Lease was not definite and certain enough to give rise to a legal obligation. The Court noted that the specificity required for an enforceable contract depends on the circumstances. The Court also noted that there is

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nothing unusual in a contract containing a right of prior approval, hence there was an enforceable contract.

Finally, the courts will consider justice and fair dealing to determine whether there is an enforceable contract. *Daniels*. The Court's goal here is to not lead another party on by negotiating and bartering with the other party orally or through email, then coming to an enforceable agreement and then for one party to attempt to nullify the agreement because it did not meet the mere technicalities.

When looking at our case we must first determine whether the elements for formation of a contract are met.

When looking to whether there was an **offer**, there was an offer in the June 4, 2020 email between Mills and Burton. Here, our client discussed talked about what future action would need to be taken in order to set up the event. Our client also attached a proposal which was essentially the contract between the parties. This is also an offer under *Daniels*, there the court found there was an offer when the Plaintiff sent a bid form to the plaintiff. The fact that there was a valid offer cannot be denied here.

The next element which will be easy to prove is that there was **adequate consideration**. The purported agreement states that Mills is to set up and manage an event for Burton, and for doing this Burton is going to pay Mills and

Burton actually paid a deposit to Mills for $2,000 so there was adequate consideration.

Next, we must determine whether there was an **acceptance**. The acceptance likely occurred on June 9, 2020. Both parties had been emailing that day and were discussing the availability of sites to host the event and discussing revamping Burton's website. In Burton's email to Mills she states "Fantastic! Please get started on the website design. I'll get you [our] initial deposit by the end of this week. I'm looking forward to working with you..." This is likely an acceptance because Burton asks Mills to begin work on the project and even states that she will be sending an initial deposit. This shows that they had come to an agreement on the terms and scope of work to be done and is similar to Daniels. The Court in Daniels stated that acceptance occurred when among other statements, the Defendant said "Let's get this thing rolling." This is similar to the language here when Burton asks for work on the website to begin and states that she is looking forward to working together. For these reasons there is likely acceptance.

The final issue under contract formation is whether there was an **intent to be bound**. The best argument Burton has is that the parties intended to reduce their proposed agreement to writing before it could be enforceable. However she will fail on this argument. This argument only works when the parties are still negotiating on material terms not specifics in performance of the contract. Here,

the parties had negotiated on the price and Mills even lowered her price to which Burton accepted. The parties also agreed on the scope of work because they agreed that Mills would plan the whole event and revamp Burton's website. There were no material terms of the contract left to be negotiated only the performance so she cannot use this as a defense. Burton cannot show that there are any further negotiations left to take place.

Also, with how the parties were dealing they did not intend for their final agreement to be in writing. They had be conversing over email and coming to agreements over email. The parties mutually intended for those emails to be part of the contract and not the proposal that Mills sent. The proposal that was sent is simply evidence of the agreement as stated in *Alexander*.

Next, this is also not the type of contract that is so complex that the parties both intended that it would not be enforceable until it was in writing. Here, the contract is for at most $30,000 and is a simple contract. It is not a multi-million-dollar venture capital fund to which it is unusually complex so this defense will fail because of how small it is.

The most damning fact for Burton to show that the parties mutually intended to be bound was the fact that Burton paid a $2,000 nonrefundable deposit so that Mills would begin work. One party would not make a down payment without the intent to bind themselves to the contract and bind the other. For this reason there is mutual intent to be bound.

Also, **justice and fair dealing** will not allow Burton to attempt to void this contract. Here, both parties had been negotiating through email and it would be bad faith if Burton attempted to void this contract because it did not meet the formalities. Burton could have put all of these terms in writing to comply but she continued neogtiating with Mills in this manner so she cannot use this as a defense.

The final argument that Burton may have is that the contract did not have enough **specifics for it to be enforceable**. However, as discussed above in *Jasper*, this will fail. In Jasper the Lease stated numerous specifics like the square footage and a condition that both parties must approve the plan. This is similar here because the parties had specifics in the Proposal like when the event would be and what the obligations of each party were. While the venue and exact date were not specified this is ordinary course for an event like this because these are the things that Mills is hired to do after she is paid.

For these reasons there is an enforceable contract that does not have to be in writing.

Issue 2: If there is an enforceable contract, what damages is Mills entitled to if Ramble breached the contract?

Daniels, states that damages for breach of contract include damages for all detriment "proximately caused thereby, or which, in the ordinary course of

things, would likely to result therefrom." Unascertainable damages cannot be recovered. However, this has been liberally construed to prevent defendants from avoiding the consequences of their actions; where there is no uncertainty as to the fact of damage, the same certainty as to its amount is not required. *Id.* One whose wrongful conduct has made it difficult to ascertain damages cannot complain because the amount of damages must be estimated, provided that the estimate is reasonable. *Id.*

In *Daniels*, the Plaintiff sought to recover the expenses he incurred as well as his lost profit that he would have made had Defendant not breached. Defendant submitted receipts and a cost breakdown showing lost profits of $50,000. The Court gave heavy weight as to Daniels estimates of his lost profits because he had 13 years experience. The court stated that it was for the trier of fact to determine whether the valuation of the items that did not have support were fair and reasonable. The court said that the jury was right in finding that they were because his evidence was uncontradicted.

First, Mills will get to keep the initial $2,000 deposit because she is in possession of it and has already undertaken action on the planning of the event by preparing a budget, contacting city officials and reserving venues among other things. Next, Mills has already spent $3,000 doing these things. Part of this $3,000 should be taken out of the $2,000 already paid because that is what the

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deposit is for under the Proposal. At this point Burton will be liable for $1,000 in damages.

Finally, Mills will be able to recover her lost profits. While Smith may argue that the damages are unascertainable, and therefore not recoverable this will fail. As stated above it is liberally construed that to prevent a defendant (Burton) from avoiding the consequences of their actions; where there is no uncertainty as to the fact of damage, the same certainty as to its amount is not required. Also it is Burton's breach that made it difficult to ascertain the damages therefore she cannot complain how they are estimated.

One issue is that Mills has the experience of running events like the Plaintiff had experience in Daniels. Therefore, Burton cannot argue that her estimation is not valid if she offers proper proof because the Court will give great weight to her experience. Because the event did not occur and Mills has not done this event before it would be unfair to hold Burton to unrealistic numbers so the Court should use the attendance from the prior events to calculate profits.

Here, the facts tell us that there is a $15,000 base fee for the first 1,000 general admission tickets, Mills is entitled to this because it is ascertainable. Burton told Mills that last year there were 2,500 general admission ticket sales. The parties agreed that above 1,000 general admission Mills would receive $2 per ticket, due to this Mills is entitled to the value of the additional 1,500 tickets and is entitled to an additional 3,000. Finally the parties agreed that Mills would get $1

for every running ticket sold and last year they had 500 runners. Due to this Mills is entitled to $500 for the runners. In total lost profits Mills is entitled to $18,500 based on the ticket sales.

When you add Mills expenses and her lost profits both which can be proved by Mills receipts and the attendance at last years event Mills will be entitled to a total of $19,500 in damages.

END OF EXAM