



# Kolchins v. Evolution Markets Case Brief Summary

Case Brief Summary  
128 AD3d 47 (2015).

## Facts

This is an appeal of an action arising out of an alleged breach of contract.

It concerns plaintiff Andrew Kolchins's employment with defendant Evolutions Markets, Inc., an international finance firm structures transactions and provides brokerage and advisory services in the global environmental and energy commodities marketplace. Plaintiff joined defendant in 2005.

The most recent employment agreement between defendant and plaintiff commenced on September 1, 2009 and ended on August 31, 2012. Before its expiration, the parties engaged in correspondence with regard to an extension of the agreement.

## Issue:

The question the court determined was whether the parties' emails and other correspondence can be viewed as constituting a binding offer and acceptance of an extension of the 2009 employment agreement, such that in the absence of a formal contract, they created a legally enforceable employment contract.

## Holding and Rule

(Opinion written by Appellate Division Justice Dianne *Renwick*)

The court found that the documentary evidence in the case did not utterly refute plaintiff's factual allegations that the parties reached an agreement on the material terms of a contract renewal, it concluded that Supreme Court properly denied defendant's motion, pursuant to CPLR 3211 (a) (1), to dismiss the first cause of action for breach of contract.

The court further held that:

- When viewed in light of contract law principles that an offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it;
- That as a general rule, in order for an acceptance to be effective, it must comply with the terms of the offer and be clear, unambiguous and unequivocal, and that plaintiff's subsequent purported acceptance by his July 16, 2012 email stating that "I accept [please] send [the] contract," must be interpreted as an acceptance of the offer;
- That the law is clear, that although the parties may intend to enter into a contract, if essential terms are omitted from their agreement, or if some of the terms included are too indefinite, no legally enforceable contract will result, but it is also plain that all the terms contemplated by the agreement need not be fixed with complete and perfect certainty for a contract to have legal efficacy;
- That in this case, it appears that all of the terms essential to the agreement were specified in the June 15, 2012 email intended to be an offer, and which plaintiff accepted;
- That the initial proposed changes appeared to be simple clarifications and modifications that would not necessarily indicate a lack of meeting of the minds on the essential terms;
- That although no contract can come into existence without "a manifestation of mutual assent to its essential terms", all the essential terms of this contract were agreed to by the parties.