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Judge in Israel has Ruled that Emoji can Prove Intent in a Landlord/Tenant Case

BY [CARLY BEN-YISHAY](#) / ON FEBRUARY 10, 2019



Emojis have become ubiquitous in modern digital communication by individuals all over the world. The crux of the issue is that emojis can have a profound impact on the way we communicate. The inclusion of a single emoji can alter the meaning of the accompanying text.^[1] Alexandre Loktonov, an expert on hieroglyphics at the Kluge Center, likens emojis to what are known as “determinatives” in Egyptian hieroglyphics, or “signs, which without having a phonetic value on their own, can ‘color’ the meaning of the preceding work of phrase.”^[2] In recent years, the nature of emojis has been addressed in several lawsuits, indicating that courts may be recognizing the importance these characters have with respect to language and communication.^[3]

In the case of *Dahan v. Haim*, Yaniv Dahan placed an online ad on Yad2, an Israeli classified ads site, about his available apartment.^[4] The issue that came before Judge Amir Weizebluth of the Herzliya Small Claims Court in Israel was whether or not emojis could prove intent in this landlord tenant case.^[5] A prospective tenant, Yarden Rosen, reached out and communicated with the landlord about said apartment.^[6] The prospective tenant’s text messages expressed enthusiasm for renting the apartment and included numerous emojis. The text messages from the prospective tenant stated: “Good Morning (smiley emoji) interested in the house (dancer emoji) (women with bunny ears emoji) (peace sign emoji) (comet emoji) (chipmunk emoji) (champagne emoji) just need to discuss the details...When’s a good time for you?”^[7] In reliance on the positive messages, the landlord believed the tenant would rent the apartment and took it off the market.^[8] The parties, along with Rosen’s partner Nir Haim Saharoff, started negotiating a lease. In their exchanges, Dahan texted Rosen asking for the couple’s corrections on the apartment contract so it could be signed the following week. Rosen replied (originally in Hebrew): “It’s just that we’re moving the entire house to storage on Tuesday so were a little busy...No worries! I will update NirJ.”^[9] Four days

later, Dahan inquired by text if the contract may be signed on Tuesday. Rosen replied (originally in Hebrew): "Tuesday we're moving the apartment. Maybe Wednesday? By then Nir will have the corrected contract J."[\[10\]](#) The prospective renters then disappeared after a few days. They did not show up to the meeting and fell out of touch, almost as if they "never existed."[\[11\]](#) As a result, the landlord sued the prospective renters claiming reliance.[\[12\]](#) Reliance is a general principle of contract law, in Israel and internationally, that a party acting in reliance on another's expressed and sometimes implied intent to agree to a deal may file suit for damages when the other party does not follow through with their part of the bargain.[\[13\]](#)

In awarding the landlord \$2,200 in damages and trial expenses, Judge Amir Weizebluth explained that this is the place to refer to the graphic symbols sent by Defendant 2 to Plaintiff.[\[14\]](#) The Judge stated that the graphic symbols do not, under the circumstances, indicate that the negotiations between the parties matured into a binding agreement.[\[15\]](#) However, the Judge believed that the sent symbols support the conclusion that the defendants acted in bad faith.[\[16\]](#) The Judge explained that the use of the emoji icons may give a meaning that indicates the good faith on the side of the negotiations, since ways of expression take on different forms in present day.[\[17\]](#) The Judge believed that the emoji icons included in the text messages between the parties conveyed great optimism.[\[18\]](#) Although this message did not constitute a binding contract between the parties, this message led to the plaintiff's reliance on the defendants' desire to rent his apartment.[\[19\]](#) The Judge explained Defendant 2's use of the "smiley" symbols, which convey to the other side that everything is in order, were misleading since the defendants already had great doubts as to their desire to rent the apartment. The Judge believes "[t]he combination of these – the festive icons at the beginning of the negotiations, which created much reliance with the prosecutor, and those smileys at the end of the negotiations, which misled the Plaintiff to think the defendants were still interested in his apartment – support the conclusion that the defendants acted in bad faith in the negotiations."[\[20\]](#) The Judge concluded that the defendants "dragged" the Plaintiff and "lulled" him until he found himself close to the beginning of the lease period without having found a renter." [\[21\]](#)

Language interpretation is rarely simple upon close examination.[\[22\]](#) Pictures, such as emoticons, give lawyers a lot of room for language interpretation.[\[23\]](#) Eric Goldman, a law professor at Santa Clara University, told *The Recorder* in May of 2017 that he imagines the emoji interpretation issues will only get more common and could get very difficult after the ruling in this case.[\[24\]](#) The images look different to each of us, and parties can have different understandings of an image used in an exchange between two people.[\[25\]](#) Hypothetically, there could be a legal distinction between an open smile emoji and a closed smile emoji depending on the context. Furthermore, it must be acknowledged that emojis develop geographically regional meanings. Therefore, it is possible that Israeli's assign different meanings to these emojis than we assign them in the United States.[\[26\]](#) Even within the same geography, different subcommunities assign different meanings to individual

emojis as well.^[27] The women with bunny ears emoji, also known as the dancing girl's emoji, for example, has several meanings.^[28] According to Emojipedia, the "two-person version of this emoji is often used a display of friendship, fun, or 'let's party.'" ^[29]

When looking to parse the emoji together for meaning, courts also have to consider the meaning of all the emojis individually. The Court in *Dahan* stated that the six emojis together signaled positive intent.^[30] When looking to the individual emojis, specifically the chipmunk and comet emoji, how does one assume they have positive intent? The chipmunk and comet emojis do not have any clear meaning in the context they were used in the text messages within this case. We currently lack consistent grammar rules for emoji sequences. Did the prospective tenant mean for each subsequent emoji to modify the preceding emojis meaning, and if so, how does that affect the overall sequences meaning? Perhaps the court treats the chipmunk and comet emojis as positive expressions because they are surrounded by other emojis that might have positive connotations. However, we don't know what percentage of people would assign negative valences to these symbols.^[31]

Given that this was a small claims court where justice is often driven by equity more than formal legal rules, the low dollar stakes, some argue, meant that neither the Judge nor the litigants were going to invest in experts to explain the nuances of emojis.^[32] Although the ruling in this case are not from a higher court, it is still a good reminder that courts should anticipate seeing lots of emoji issues. Unfortunately, the courts may not be fully prepared for that onslaught.^[33]

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^[1]Caleb Segrest, *Legal Implications of Emoji Use*, Norton Rose Fulbright (Aug. 17, 2017), <https://www.socialmedialawbulletin.com/2017/08/legal-implications-emoji-use/>.

^[2] *Id.*

^[3] *Id.*

^[4] Ido Kenan, *Show Intention to Rent Apartment, Says Judge*, Room 404 (May 17, 2017), <http://room404.net/eng/%F0%9F%92%83%F0%9F%8F%BB%F0%9F%91%AF%E2%80%8D%E2%9C%8C%EF%B8%8F%E2%98%84%EF%B8%8F%F0%9F%90%BF%EF%B8%8F%F0%9F%8D%BE-show-intention-to-rent-apartment-says-judge/>.

[5] Gabriella Ziccarelli and Eric Goldman, *How a Chipmunk Emoji Cost an Israeli Texter \$2,200*, Tech. & Marketing L. Blog (May 25, 2017), <https://blog.ericgoldman.org/archives/2017/05/how-a-chipmunk-emoji-cost-an-israeli-texter-2200.htm>.

[6] *Id.*

[7] Raisa Bruner, *Judge Rules Couple Owes Money After Using These 'Misleading' Optimistic Emoji*, TIME (May 22, 2017), <http://time.com/4788547/emoji-court-ruling/>.

[8] *Id.*

[9] *Supra* note 4.

[10] *Id.*

[11] *Id.*

[12] Ephrat Livni, *Emojis Prove Intent, a Judge in Israel Ruled*, Quartz (May 19, 2017), <https://qz.com/987032/emojis-prove-intent-a-judge-in-israel-ruled/>.

[13] *Id.*

[14] *Supra* note 5.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Supra* note 12.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Supra* note 5.

[27] *Id.*

[28] *Id.*

[29] *People With Bunny Ears*, Emojipedia, <https://emojipedia.org/woman-with-bunny-ears/>.

[30] *Supra* note 1.

[31] *Id.*

[32] *Id.*

[33] *Id.*