**CONTRACT MISTAKES-NOT ALL GET YOU OFF THE HOOK**

**BY: WILLIAM G. MORRIS, ESQ.**

A lot of people have second thoughts after signing a contract. What sounded good at signing time does not sound so good with the passage of time. These cases often end up in court with the unhappy party judge explaining it is not the court’s job to relieve someone from a bad deal.

A bad deal is one thing, but a document that does not really reflect agreement of the parties is another. Judges are reluctant to set contracts aside or change the terms. Documents speak much louder than testimony and someone asking a court to change their contract has to convince the trier of fact that there is a really good reason. A contract that appears reasonable and enforceable on its face is hard to change.

Getting a contract set aside starts as an uphill battle. The burden of proof is clear and convincing evidence. That is somewhere between the usual civil case burden of greater weight of the evidence and the burden in criminal cases of beyond a reasonable doubt.

Mistakes that might be sufficient to get a contract thrown out can be one sided (unilateral) or mutual.

Unilateral mistake is probably the most frequent basis for seeking court help as one party claims the contract is wrong or fails to incorporate what that party agreed to. When both parties agree the contract is wrong, they usually also agree to either correct it or end it.

Not every mistake will be sufficient to change a contract. The mistake must be material. In other words, the mistake must be substantial and affect an important part or parts of the transaction. Courts also generally require that the other party not have changed position in reliance on the contract. It would not be fair to unravel a contract based on mistake by one party when that unravelling would damage the other due to change in position.

The mistake must not be due to carelessness or failure of the mistaken party to act reasonably. Again, it would not be fair to undo a contract when the problem is really due to failure to pay attention.

The last factor courts look at in unilateral mistake cases is whether the mistake was induced by the other party. If it was, the court may not find fraud but the added element of wrongdoing makes it much more likely relief will be granted.

In a case for unilateral mistake, the court can either reform the contract to correct the mistake or rescind it. Reformation is preferred by the courts because that does the least amount of damage to the deal. Reformation merely corrects the contract to contain the agreement of the parties.

DePrince v. Starboard Cruise Services, Inc. is a good example of a case involving unilateral mistake. In that case, a savvy buyer asked for a quote from a jewelry store for a 20-carat diamond. The store had to contact its vendor and mistakenly quoted the per carat cost as cost of the diamond. The result was a contract to sell the diamond for millions of dollars less than its actual value. The court let the jewelry store off the hook, likely in part because the buyer knows the quoted price had to be wrong.

When both parties make a mistake, the contract can also be rescinded or reformed to reflect the true agreement. A mutual mistake must affect a substantial matter so that the contract does not match the true agreement of the parties.

Mutual mistake can be based on a scrivener’s error by the person writing the contract. It can also be based on a mistake of fact. Good example of a mistake of fact is when the seller believes one parcel is being sold and the buyer believes a different parcel is involved.

Negligence is not much of a factor in mutual mistake cases. When the mistake is mutual, there is less reason to find one person’s carelessness caused the problem. As with unilateral mistake courts can reform the contract to reflect the true agreement or can rescind it. To rescind based on mutual mistake, the court must find there was no agreement between the parties and not that the contract only fails to reflect their agreement

When mutual mistake is alleged, the party seeking to change the contract must establish that party did not bear the risk of mistake. A party bears the risk of mistake if that party is aware at time of signing that the party only has limited knowledge of important aspects and later finds that knowledge insufficient. The contract itself can also allocate risk of mistake to one of the parties.

Failing to read or understand a contract is generally not basis for rescission or modification. An exception may be made where the other party is guilty of some wrongdoing, but the success rate for getting out of a contract because a party did not bother to read or understand it is practically zero.

It is much easier to avoid problems than to try and get out of a contract after it is signed. Many people pinch pennies by avoiding lawyers until they are in trouble. In contract situations, insurance of a good attorney during contract drafting can be priceless.

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