27 Williston on Contracts § 70:9 (4th ed.)

Williston on Contracts | July 2018 Update
Chapter 70. Reformation and Rescission for Mistake
I. Definition and Nature of Mistake

§ 70:9. Mistake must be mutual

References

West's Key Number Digest

- West's Key Number Digest, Contracts 93(5)
- West's Key Number Digest, Reformation of Instruments 19(1), 19(2)

Legal Encyclopedias

- Am. Jur. 2d, Contracts § 202
- Am. Jur. 2d, Reformation of Instruments §§ 11, 20, 21
- C.J.S., Reformation of Instruments §§ 29, 30

Treatises and Practice Aids

- Lawrence's Anderson on the Uniform Commercial Code §§ 1-103:258(Rev), 1-103:261(Rev) (3d ed.)

Trial Strategy

- Mistake Warranting Reformation or Cancellation of Lease of Real Property, 77 Am. Jur. Proof of Facts 3d 169
- Sale by Acre or in Gross As Affecting Purchaser's Relief for Mistake in Quantity of Land Sold, 54 Am. Jur. Proof of Facts 3d 527

The law permits reformation of instruments to reflect the true intention of the parties when the erroneous part of the contract is shown to have occurred by a mutual mistake or, in other words, the party seeking relief is able to establish to the court's satisfaction that both parties intended something other than what is reflected in the instrument in question.[47]

Absent some element of fraud, a mistake must be mutual and common to both parties. Where the mistake is unilateral, the contract is not voidable. Moreover, a clear mistake by one party, coupled with ignorance by the other party, is not a mutual

mistake and will not be corrected. However, when the mistake of one party, with respect to the meaning of some material provision of the signed contract, is accompanied not only by the other party's knowledge but, also, by that other party's silence, this is treated as the equivalent of a mutual mistake and equity will reform that instrument.[48]

CUMULATIVE SUPPLEMENT

Cases:

According to general principles of Connecticut contract law, rescission based on a mistaken understanding of the terms of an agreement is available only where the mistake is mutual, or where one party's mistake has been caused by the other party's fraud. Omega Engineering, Inc. v. Omega, S.A., 432 F.3d 437 (2d Cir. 2005).

If the parties to a contract enter into that contract with a mutual misunderstanding concerning a basic assumption on which the contract was made, a trial court, upon application by an aggrieved party to the contract and the presentation of clear and convincing evidence of that mutual misunderstanding, may reform the contract to express the parties' true intent in entering into the contract. Code 1975, § 8-1-2. Har-Mar Collisions, Inc. v. Scottsdale Ins. Co., 2016 WL 3136189 (Ala. 2016).

A cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake. ARS Investors II 2012-1 HVB, LLC v. Crystal, LLC, 324 Conn. 680, 154 A.3d 518 (2017).

Reformation of a contract is appropriate, when an agreement has been made, or a transaction has been entered into or determined upon, as intended by all the parties interested, but in reducing such transaction to writing, either through the mistake of both parties, or through the mistake of the plaintiff accompanied by the fraudulent knowledge and procurement of the defendant, the written instrument fails to express the real agreement or transaction. Gabriel v. Island Pacific Academy, Inc., 140 Haw. 325, 400 P.3d 526, 346 Ed. Law Rep. 1133 (2017), cert. dismissed, 138 S. Ct. 499, 199 L. Ed. 2d 381 (2017).

To establish mutual mistake in an action for rescission of a contract, the mistake must be common to both parties. Bolognese v. Forte, 153 Idaho 857, 292 P.3d 248 (2012).

Mutual mistake of fact, as would support setting aside of contract, may apply to the nature of the contract, the identity of the person with whom it is made, or the identity or existence of the subject matter. White v. Cooke, 2009 WL 90642 (Miss. 2009).

Equity will reform an instrument which, through mutual mistake of the parties, does not accurately set forth the terms of the agreement actually made or which does not incorporate the true prior intentions of the parties. Hunter v. Moore, 486 S.W.3d 919 (Mo. 2016).

"Mutual mistake," which can justify rescission of contract, results when both parties to a contract share a common assumption about a vital existing fact upon which they based their bargain and that assumption is false, and because of the mistake, a quite different exchange of values occurs from the exchange of values the parties contemplated; mutual mistake of fact cannot lie against a future event, and mutual mistakes must concern past or present facts, not unexpected facts that occur after the document is executed. Kruzich v. Old Republic Ins. Co., 2008 MT 205, 344 Mont. 126, 188 P.3d 983 (2008).

When a mutual mistake is manifest in the agreement at the time it is entered into, the agreement fails in a material respect correctly to reflect the understanding of both parties. Merrimack Mut. Fire Ins. Co. v. Dufault, 958 A.2d 620 (R.I. 2008).

For mistake of fact to void a contract, the mistake of fact must be mutual. Admiral Ins. Co. v. Paper Converting Machine Co., 2012 WI 30, 339 Wis. 2d 291, 811 N.W.2d 351 (2012).

[END OF SUPPLEMENT]

Footnotes

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A graduate of Wayne State University Law School, Mr. Oehmke is a member of the State Bar of Michigan, associated with the law firm of Brovins & Oehmke, P.C., and is an author of 14 law-related books including commercial arbitration (West Group). He contributed to the research on two other volumes of Williston on Contracts (4th ed.), including labor arbitration (Vol. 20) and commercial arbitration (Vol. 21). Attorney Oehmke has also contributed articles to Am Jur Trials on arbitration, including Alternative Dispute Resolution: Commercial Arbitration, 44 Am. Jur. Trials 507; Arbitration Evidence: Putting Your Best Case Forward, 76 Am. Jur. Trials 1; Arbitrating International Claims—At Home and Abroad, 81 Am. Jur. Trials 1; and, Arbitration Avenues to the Courthouse—The Litigator's Search for Judicial Intervention, 81 Am. Jur. Trials 1. Along with attorney Joan M. Brovins, they are co-authors of the trial practice guide (American Bar Association) and computer software for the automation of legal documents.

[47] **Miss.**
Brown v. Chapman, 809 So. 2d 772 (Miss. Ct. App. 2002)

[48] **First Circuit**
In re New Commonwealth Pub. Co., Inc., 118 B.R. 155 (Bankr. D. Mass. 1990) (citing text)
Cal.
French v. Construction Laborers Pension Trust, 44 Cal. App. 3d 479, 118 Cal. Rptr. 731 (2d Dist. 1975) (citing text)
Del.
Kern v. NCD Industries, Inc., 316 A.2d 576 (Del. Ch. 1973)
Mass.
LaFleur v. C.C. Pierce Co., Inc., 398 Mass. 254, 496 N.E.2d 827 (1986) (citing text)