

Reprint
as at 3 December 2007

Contractual Mistakes Act 1977

Public Act 1977 No 54
Date of assent 21 November 1977

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Justice

An Act to reform the law relating to the effect of mistakes on contracts

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title

This Act may be cited as the Contractual Mistakes Act 1977.

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

Court means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined

Court: this definition was substituted, as from 1 March 1989, by section 64 Disputes Tribunals Act 1988 (1988 No 110).

Court: this definition was substituted, as from 19 December 2002, by section 3 Contractual Mistakes Amendment Act 2002 (2002 No 78).

Mistake means a mistake, whether of law or of fact.

(2) For the purposes of this Act, and without limiting the meaning of the term **mistake of law**, but subject to section 6(2)(a) of this Act, a mistake in the interpretation of a document is a mistake of law.

(3) There is a contract for the purposes of this Act where a contract would have come into existence but for circumstances of the kind described in section 6(1)(a) of this Act.

3 Act to bind the Crown

This Act shall bind the Crown.

4 Purpose of Act

(1) The purpose of this Act is to mitigate the arbitrary effects of mistakes on contracts by conferring on Courts appropriate

powers to grant relief in the circumstances mentioned in section 6 of this Act.

- (2) These powers are in addition to and not in substitution for existing powers to grant relief in respect of matters other than mistakes and are not to be exercised in such a way as to prejudice the general security of contractual relationships.

Subsection (1) was amended, as from 19 December 2002, by section 4 Contractual Mistakes Amendment Act 2002 (2002 No 78) by omitting the words “and arbitrators”.

5 Act to be a Code

- (1) Except as otherwise expressly provided in this Act, this Act shall have effect in place of the rules of the common law and of equity governing the circumstances in which relief may be granted, on the grounds of mistake, to a party to a contract or to a person claiming through or under any such party.

- (2) Nothing in this Act shall affect—

- (a) The doctrine of non est factum:
- (b) The law relating to the rectification of contracts:
- (c) The law relating to undue influence, fraud, breach of fiduciary duty, or misrepresentation, whether fraudulent or innocent:
- (d) The provisions of the Illegal Contracts Act 1970 or of sections 94A and 94B of the Judicature Act 1908:
- (e) The Frustrated Contracts Act 1944.

- (3) Nothing in this Act shall deprive a Court of the power to exercise its discretion to withhold a decree of specific performance in any case.

Subsection (3) was amended, as from 19 December 2002, by section 5(a) Contractual Mistakes Amendment Act 2002 (2002 No 78) by omitting the words “or an arbitrator”.

Subsection (3) was amended, as from 19 December 2002, by section 5(b) Contractual Mistakes Amendment Act 2002 (2002 No 78) by omitting the words “or his”.

6 Relief may be granted where mistake by one party is known to opposing party or is common or mutual

- (1) A Court may in the course of any proceedings or on application made for the purpose grant relief under section 7 of this Act to any party to a contract—

- (a) If in entering into that contract—
 - (i) That party was influenced in his decision to enter into the contract by a mistake that was material to him, and the existence of the mistake was known to the other party or one or more of the other parties to the contract (not being a party or parties having substantially the same interest under the contract as the party seeking relief); or
 - (ii) All the parties to the contract were influenced in their respective decisions to enter into the contract by the same mistake; or
 - (iii) That party and at least one other party (not being a party having substantially the same interest under the contract as the party seeking relief) were each influenced in their respective decisions to enter into the contract by a different mistake about the same matter of fact or of law; and
 - (b) The mistake or mistakes, as the case may be, resulted at the time of the contract—
 - (i) In a substantially unequal exchange of values; or
 - (ii) In the conferment of a benefit, or in the imposition or inclusion of an obligation, which was, in all the circumstances, a benefit or obligation substantially disproportionate to the consideration therefor; and
 - (c) Where the contract expressly or by implication makes provision for the risk of mistakes, the party seeking relief or the party through or under whom relief is sought, as the case may require, is not obliged by a term of the contract to assume the risk that his belief about the matter in question might be mistaken.
- (2) For the purposes of an application for relief under section 7 of this Act in respect of any contract,—
- (a) A mistake, in relation to that contract, does not include a mistake in its interpretation:
 - (b) The decision of a party to that contract to enter into it is not made under the influence of a mistake if, before he enters into it and at a time when he can elect not to

enter into it, he becomes aware of the mistake but elects to enter into the contract notwithstanding the mistake.

7 Nature of relief

- (1) Where by virtue of the provisions of section 6 of this Act the Court has power to grant relief to a party to a contract, it may grant relief not only to that party but also to any person claiming through or under that party.
- (2) The extent to which the party seeking relief, or the party through or under whom relief is sought, as the case may require, caused the mistake shall be one of the considerations to be taken into account by the Court in deciding whether to grant relief under this section.
- (3) The Court shall have a discretion to make such order as it thinks just and in particular, but not in limitation, it may do one or more of the following things:
 - (a) Declare the contract to be valid and subsisting in whole or in part or for any particular purpose:
 - (b) Cancel the contract:
 - (c) Grant relief by way of variation of the contract:
 - (d) Grant relief by way of restitution or compensation.
- (4) An application for relief under this section may be made by—
 - (a) Any person to whom the Court may grant that relief; or
 - (b) Any other person where it is material for that person to know whether relief under this section will be granted.
- (5) The Court may by any order made under this section vest any property that was the subject of the contract, or the whole or part of the consideration for the contract, in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.
- (6) Any order made under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

8 Rights of third persons not affected

- (1) Nothing in any order made under this Act shall invalidate—
 - (a) Any disposition of property by a party to a mistaken contract for valuable consideration; or

- (b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this subsection applies— if the person to whom the disposition was made was not a party to the mistaken contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, a mistaken contract and otherwise acts in good faith.
- (2) Nothing in any order made under this Act shall affect the operation of section 130 of the Property Law Act 1952.
- (3) In this section—
- disposition** means—
- (a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
 - (b) the creation of a trust:
 - (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:
 - (d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:
 - (e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
 - (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person's own estate and to increase the value of the estate of any other person

Mistaken contract means a contract entered into in the circumstances described in section 6(1)(a) of this Act.

Section 8(3) **disposition**: substituted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

9 Jurisdiction of District Courts

[Repealed]

Subsection (1)(b) was amended, as from 1 April 1980, by section 16(1) District Courts Amendment 1979 (1979 No 125) by substituting the expression “\$12,000” for the expression “\$3,000”. This value was further increased to “\$50,000”, as from 13 November 1989, by section 10(1) District Courts Amendment Act 1989 (1989 No 107), and to “\$200,000”, as from 1 July 1992, by section 19(1) District Courts Amendment Act 1991 (1991 No 61).

The words “District Court” were substituted for the words “Magistrate’s Court”, as from 1 April 1980, pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

Sections 9 and 10 were repealed, as from 19 December 2002, by section 6 Contractual Mistakes Amendment Act 2002 (2002 No 78).

10 Jurisdiction of Disputes Tribunals

[Repealed]

Section 10 was substituted, as from 1 March 1989, by section 65 Disputes Tribunals Act 1988 (1988 No 110).

Section 10 was amended, as from 3 July 1998, by section 10 Disputes Tribunals Amendment Act 1998 (1998 No 84) by substituting the expression “\$7,500” for the expression “\$3,000”. Subsection (3) was amended by section 10 of that Act by substituting the expression “\$12,000” for the expression “\$5,000”.

Sections 9 and 10 were repealed, as from 19 December 2002, by section 6 Contractual Mistakes Amendment Act 2002 (2002 No 78).

11 Amendment to Arbitration Act 1908

[Repealed]

Section 11 was repealed, as from 1 July 1997, by section 18 Arbitration Act 1996 (1996 No 99).

11A Act does not apply to contracts governed by foreign law

This Act does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Section 11A was inserted, as from 19 December 2002, by section 7 Contractual Mistakes Amendment Act 2002 (2002 No 78).

12 Application of Act

This Act shall not apply to contracts entered into before the commencement of this Act.

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Notes**1 General**

This is an eprint of the Contractual Mistakes Act 1977. It incorporates all the amendments to the Contractual Mistakes Act 1977 as at 3 December 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Insolvency Act 2006 (2006 No 55): section 445
