

## update

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## Friday Facts: How to fix a broken contract

*Often when parties execute a contract they become aware after the fact that the contract does not reflect the agreement they thought they had reached. When the party becomes aware of the discrepancy usually they seek legal advice as to what they can do to rectify the contract so the written document reflects the agreement that was made.*

In Taylor v Johnson, the High Court of Australia considered when it was appropriate for a contract to be rectified when one party was under a misapprehension as to the terms of the written contract. In that case Mrs Johnson granted an option to Mr Taylor to purchase two adjoining lots of vacant land of approximately five acres each for a total purchase price of \$15,000. Mr Taylor exercised the option and entered into a contract of sale with Mrs Johnson to purchase the two adjoining lots.

Mrs Johnson subsequently declined to perform the contract of sale in accordance with the terms claiming that at the time she granted the option she believed that the document she had signed provided for consideration of \$15,000 per acre of the land which represented about ten times the total purchase price. Mrs Johnson claimed she was therefore mistaken as to the terms of the written contract.

Mr and Mrs Taylor issued proceedings in the Supreme Court of New South Wales seeking specific performance of the contract of sale to purchase the whole of the land for the amount of \$15,000.

Mrs Johnson counterclaimed seeking an order that the contract of sale be set aside or alternatively rectified so that the total purchase price would be \$150,000.

The majority of the High Court stated that the following principle applied in determining whether it should order rectification of the contract of sale in circumstances where one party believed that an essential term of the contract was different to what was in the actual written contract:

*... a party who has entered into a written contract under a serious mistake about its contents in relation to a fundamental term will be entitled in equity to an order rescinding the contract if the other party is aware that circumstances exist which indicate that the first party is entering the contract under some serious mistake or misapprehension about either the content or subject matter of that term and deliberately sets out to ensure that the first party does not become aware of the existence of his mistake or*

*misapprehension... it is a principle which is best calculated to do justice between the parties to a contract in the situation which it contemplates.*

The Court in making its decision to rectify the contract gave consideration to evidence that had been adduced on Mrs Johnson's behalf that the subject land which was under proposed rezoning had a value in the vicinity of \$50,000 but if rezoning was completed would increase in value to around \$150,000.

The Court of Appeal took the view that based on the evidence Mr Taylor probably believed that Mrs Johnson was mistaken as to what the option and contract stipulated as to the price. It also drew an inference from evidence which had been adduced that Mr Taylor by refraining from again mentioning price and the manner in which he procured the execution by Mrs Johnson of the option suggested that Mr Taylor deliberately set out to ensure that Mrs Johnson was not disabused of the mistake or misapprehension under which he believed her to be acting.

Taylor makes it clear that in order for a Court to intervene to set aside a written contract or rectify a written contract which is otherwise valid there must be some serious mistake or misapprehension about the terms, knowledge on the part of the unmistaken party and unconscionability. Therefore it is not sufficient for the party seeking relief to simply show that he or she was mistaken.

## For more information

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