

LITTLE MISTAKES CAN CAUSE BIG PROBLEMS

By Judith I. Johannsen

It's a fact of life – people make mistakes. Sometimes mistakes of fact cause crankiness and inconvenience, like when the weatherman gets a forecast wrong and you find yourself shoveling 10 inches of partly cloudy off your driveway. Sometimes, however, little mistakes can topple big plans and be costly. And here's just such a story.

In 2001, Buyer found two parcels of undeveloped, residentially-zoned land and offered to buy them. Seller said he was waiting for survey work and appraisals on the two parcels to be completed before he could offer them for sale. When the survey work and appraisals were done, Seller agreed to sell one of the lots to Buyer and so they entered into a Purchase and Sale Agreement.

At the time they signed the agreement in spring 2002, both parties had been told by the town's Zoning Enforcement Officer ("ZEO") that this particular parcel of land could be divided into two buildable residential lots without the town's Planning and Zoning Commission's approval. However, shortly after Buyer and Seller signed the agreement, the town's ZEO informed Buyer that subdivision approval would be necessary, after all, to divide the parcel. Buyer still wished to buy the land, but when he contacted Seller's attorney to confirm the closing date, he was told that due to an error in the parcel's appraisal, there would be no closing.

Buyer was not happy. Mistakes had been made and they were costing him the parcel of land he wanted to buy, dividable or not. For that reason, Buyer filed suit requesting specific performance – a contract remedy that would compel Seller to sell the land to him pursuant to their Purchase and Sale Agreement.

Seller responded by asking the court to dismiss Buyer's lawsuit on the grounds that the Purchase and Sale Agreement was legally unenforceable because it was based on two mutual mistakes of fact - that the parcel could be legally divided into two parcels without approval from the Planning and Zoning Commission and that the appraiser's estimate of the parcel's fair market value, which value was the basis for establishing the purchase price, was calculated using 3.0 acres and not the actual 3.7 acres.

Buyer stated that while the size of the property would be an important fact as to whether or not it could be subdivided, there was no possibility of *mutual* mistake regarding the size of the property because only the Seller knew the contents of the appraisal as he had never discussed it with or showed it to Buyer. If Buyer didn't know of the mistake and only the Seller was aware of it, how could there be *mutual* mistake?

Whether claiming mutual mistake as a reason to void the Purchase and Sale Agreement was simply a legally permissible strategy to get out of a contract now deemed less lucrative is unknown, but the court, in its 2005 holding, acknowledged that mutual mistake occurs when both parties are mistaken about the same material fact (not simply disagreeing on the meaning of the contract) and the mistake brings about a result neither party intended.

Almost four and a half years after Buyer first contacted Seller about buying the parcel, a court determined that even though Buyer was willing to proceed with the contract, mutual mistakes existed at the time the parties signed the agreement, that these two mistakes induced the parties to enter into the Purchase and Sale Agreement, causing unintended results which worked to the detriment of both parties.

At trial's conclusion, the court found in favor of the Seller (he didn't have to sell), dismissed Buyer's suit for specific performance (he couldn't force Seller to sell), declared the Purchase and Sale Agreement void and of no effect, and found no evidence to support Buyer's claim for money damages and/or attorneys fees.

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