ANALYSIS

# The Limits of the Scrivener's Error Doctrine Regarding Lease Drafting Mistakes

Even with properly drafted written lease agreements, when one party is seeking to get out of the contract, claims of "mistake" will inevitably surface. Bu what are the limits of these efforts to rescind or reform an agreement based upon mistake?

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Landlord Tenant Law

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One of my earliest memories as a first-year law student was my professors' contentions that every case we analyzed, from Contracts to Trusts and Estates, originated from a poorly written contract or last will and testament. Put another way, well written leases, contracts, or wills never made for good teaching cases.

Years later, as a practitioner, I have come to learn that even with properly drafted written lease agreements, when one party is seeking to extricate itself therefrom, claims of "mistake" will inevitably surface. But what are the limits of these efforts to rescind or reform an agreement based upon a mistake? Specifically, can a mere "Scrivener's Error," during drafting, result in a wholesale extinguishing of a lease document?

## The Causes of Action To Reform or Rescind an Agreement

It is well settled that "[a] claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake." *Greater N. Y. Mut. Ins. Co. v. United States Underwriters Ins. Co.*, 36 A.D.3d 441, 443 (1st Dept. 2007). Further, under New York law, to plead a claim for reformation, the factual allegations must establish that both contracting parties shared the same erroneous belief as to a material fact, and that their acts do not, in fact, accomplish their mutual intent. *Simkin v. Blank*, 19 N.Y.3d 46, 54-55 (2013).

Importantly, to succeed on the reformation claim, the party asserting mistake must establish by "clear, positive and convincing evidence" that the agreement does not accurately express the parties' intentions or previous oral agreement. *313-315 W. 125th St. L.L.C. v. Arch Specialty Ins. Co.*, 138 A.D.3d 601, 602 (1st Dept. 2016) (quoting *Amend v. Hurley*, 293 N.Y. 587, 595 (1944) (emphasis omitted)).

In other words, the proponent of reformation must "show in no uncertain terms, not only that mistake or fraud exists, but exactly what was really agreed upon between the parties." *Chimart Associates v. Paul*, 66 N.Y.2d 570, 574 (1986) (citing *Backer Mgt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 219 (1978)).

Likewise, New York courts will rescind an agreement upon a showing of (1) one party's unilateral mistake resulting in the unjust enrichment of the other party. See *Cox v. Lehman Bros.*, 15 A.D.3d 239 (1st Dept. 2005); or (2) a bilateral mistake of a material fact; in other words, "the agreement as expressed, in some material respect, does not represent the 'meeting of the minds' of the parties." *Nowicki v. Espersen*, 63 A.D.3d 1696, 1697 (4th Dept. 2009) (quoting *Matter of Gould v. Board of Educ. of the Sewanhaka Cent. High Sch. Dist.*, 81 N.Y.2d 446, 453 (1993)); *Goldberg v. Manufacturers Life Ins. Co.*, 242 A.D.2d 175, 179 (1st Dept.), app. denied in part, dismissed in part, 92 N.Y.2d 1000 (1998). Unilateral mistakes can support a claim for rescission only if the specific mistake was coupled with some type of fraud and inequitable conduct. See *Brandwein v. Provident Mutual Life Ins. Co. of Philadelphia*, 3 N.Y.2d 491, 496 (1957).

Under either a cause of action for rescission or reformation, in order to plead the claim for mutual mistake, the factual allegations must establish that both contracting parties shared the same erroneous belief as to a material fact, and that their acts do not in fact accomplish their mutual intent. *FSP v. Societe Generale*, No. 02 Civ. 4786, 2005 U.S. Dist. LEXIS 3081, at **47-48 (S.D.N.Y. Feb. 28,

2015). Further, such a “mistake” by definition is not about a future contingency; it is a mistake about an existing fact at the time of the execution of the contract. See id.; *Simkin v. Blank*, supra.

Finally, for such causes of action to succeed, the claim predicated on mutual mistake must be pleaded with the requisite particularity necessitated under CPLR 3016(b). *Simkin v. Blank*, supra.

## The Doctrine of Scrivener’s Error

The “Scrivener’s Error” is an increasingly used example of a mutual mistake employed to support contract reformation. Traditionally, the doctrine of “Scrivener’s Error” was utilized to address unintentional ministerial or typographical errors that may alter the meaning of an agreement from the parties’ intentions. Thus, it is well settled that “courts may as a matter of interpretation carry out the intention of a contract by transposing, rejecting, or supplying words to make the meaning of the contract more clear.” *Wallace v. 600 Partners Co.*, 86 N.Y.2d 543, 547-48 (1995).

The case of *1414 APF v. Deer Stags*, 39 A.D.3d 329 (1st Dept. 2007), is particularly instructive in this regard. In *1414 APF*, the defendant was a commercial tenant in plaintiff’s building pursuant to a lease and amended lease entered into with plaintiff’s predecessors-in-interest. Plaintiff’s predecessor delivered the 17th floor to defendant immediately upon execution of the amended lease entered into in September 1999 and delivered the 16th floor to defendant on or about Jan. 1, 2000. Id.

Defendant began paying the increased rent of $251,280 on or about that date but refused to pay the increase to $265,240 in January 2005. Id. Defendant relied on paragraph 4(B) of the amended lease, which provided, in pertinent part, that rent of $265,240 becomes due “from the fifth (5th) anniversary of the rent adjustment date,” which is defined in the same paragraph as the fifth anniversary of the substitution space adjustment date (i.e., the date the 16th floor was delivered, Jan. 1, 2000). Id. at 330. Defendant thus argued that the increased rent is not yet due. Id.

Plaintiff noted that paragraph 4(A)(ii) of the lease required the increase in rent to be paid “from the rent adjustment date” and that the inclusion of the words “the fifth (5th) anniversary of the” rent adjustment date was a scrivener’s error. Id. at 329-30. Citing *Wallace*, supra, the court held that in those “limited instances where some absurdity has been identified or the contract would otherwise be unenforceable either in whole or in part,” courts may interpret a document to carry out the intention of the parties “by transposing, rejecting, or supplying words to make the meaning of the contract more clear.” Id. at 331. The court found irreconcilable ambiguities which would lead to an absurd result. Id.

The court concluded that since plaintiff’s remaining causes of action seek to enforce the terms of the lease and sound in breach of contract, the noted ambiguities are sufficient to require court intervention to determine the intent of the parties. Id.

Inevitably, parties to a lease, after a dispute surfaces as to the meaning of a particular written document or clause, may wind up battling the limits of the “Scrivener’s Error” doctrine. Specifically, at the heart of the case will be whether this cannon may be commissioned to reject an otherwise sensical clause, in its entirety, or even, an entire lease document, merely because it allegedly does not represent the intentions of the parties.

For example, in *Burnside Bargain Store v. Carmel*, 156 A.D.2d 248 (1st Dept. 1989), the landlord claimed the existence of a mistake in the final lease document. The landlord desired the clause from the first draft of the lease, which was entirely replaced in the two subsequent revisions with a clause favorable to the tenant. Id. As such, the landlord sued to reform the lease to reflect the first draft of the lease. Id.

Citing the Court of Appeals’ holdings in *Chimart Associates v. Paul* and *Backer Mgt. v. Acme Quilting Co.*, supra, the court rejected the landlord’s contentions and held that “the reformation that the landlord seeks involves the complete substitution of a clause favorable to the landlord, a substitution which cannot be countenanced on the theory of scrivener’s error. Reformation is a remedy to be afforded under only the most limited circumstances.” Id. at 249.

By way of contrast, in *Clifford v. Mont. Mills Bread Co.*, 263 A.D.2d 952 (4th Dept. 1999), the plaintiff commenced an action seeking reformation of the rent provision of a commercial lease agreement. Defendant moved to dismiss the complaint pursuant to CPLR§3211(a) (7) for failure to state a cause of action. Id. The court found that the facts alleged supported the conclusion that the rent provisions of the lease agreement do not reflect the agreement of the parties. Significantly, the Court held that, “[w]here there is no mistake about the agreement, and the only mistake alleged is in the reduction of that agreement to writing, *such mistake of the scrivener*, or of either party, no matter how it occurred, may be corrected.” Id. (emphasis added); *see also Harris v. Uhlendorf*, 24 N.Y.2d 463 (1969). In *Clifford*, the Appellate Division, Fourth Department, permitted the replacement of an entire clause based upon a “scrivener’s error.”

These two competing philosophies of the “Scrivener’s Error” doctrine may soon be resolved by the Appellate Division for the First Department in *Ralph Lauren Retail v. 888 Madison*, No. 652718/21, 2022 N.Y. Misc. LEXIS 2167 (N.Y. Sup. April 25, 2022), app. pending, N.Y. App. Div. Docket No. 2022-02382 (1st Dept.).

## ‘Ralph Lauren Retail v. 888 Madison’

In *Ralph Lauren Retail v. 888 Madison*, supra, a dispute arose regarding a lease renewal for a higher rent—the third lease modification agreement effective Dec. 1, 2020—which was signed at the height of the COVID-19 Pandemic. Id. at *1. The parties, however, had been negotiating a potential rent reduction during the pandemic. Id. at **1-2. The tenant sought rescission or, in the alternative, reformation of the modification agreement, alleging that the modification agreement did not reflect the parties’ meeting of the minds, intentions and the terms of any actual agreement. Id. at **1-2.

The landlord moved to dismiss the complaint, arguing, inter alia, that the tenant’s counsel drafted the modification agreement which was then signed by two of the company’s top executives. Id. The court denied the landlord’s motion to dismiss as to the First Cause of Action seeking rescission based on mistake or, in the alternative, reformation to reflect the terms of any actual agreement. Id. at *2. The court held that the complaint properly alleged “unilateral mistake resulting in the unjust enrichment of the defendant landlord at the expense of the tenant Ralph Lauren, or mutual mistake on the ground that the third modification agreement as written did not reflect the parties’ meeting of the minds.” Id.

The lower court’s denial of the motion to dismiss seems to support the approaches of the courts in *Harris v. Uhlendorf* and *Clifford v. Mont. Mills Bread Co.*, supra, stretching the limits of the “Scrivener’s Error” doctrine to excise entire clauses or extricate a party from an entire lease document. At the same time, the lower court’s conclusions seem inconsistent with the authority set forth in *Burnside Bargain Store*, which discourages reformation that involves the complete substitution of a clause or document. The landlord has appealed this decision, and the case is presently pending before the Appellate Division First Department. N.Y. App. Div. Docket No. 2022-02382 (1st Dept.) and is scheduled to be heard in the November term.

## Conclusion

As the foregoing cases illustrate, lease drafting that clearly reflects the parties’ intentions and the terms of the actual agreement is more crucial than ever. When one party regrets the executed agreement, it may try to reform the entirety of the agreement based upon an alleged mistake such as a scrivener’s error.

Depending upon the facts and circumstances of the case, there appears to be support for each side of such a dispute. Accordingly, guidance from the Appellate Division departments will chart the future course of the doctrine of the “Scrivener’s Error.”

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