



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

July, 2009

What Every Employer Should Know

ABOUT MISTAKES IN TRANSACTIONS

Although every business tries to avoid mistakes in the course of documenting a transaction, accidents sometimes happen and the parties may have a different perspective after the fact as to how the mistake should be resolved. Wisconsin courts are frequently asked to resolve disputes regarding transaction mistakes and one recent instance is the case of Manternach v. Lake Arrowhead Associates, Inc., Appeal No. 2007AP2519 (June 4, 2009) found at: <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=36692>. This case involved a real estate transaction in which a buyer, Development Associates, purchased a lot for which the metes and bounds description included “all land lying between the meander line and the water-edge of Lake Arrowhead.” However, a new survey plat created at least two months prior to the sale excluded two sections of land that had been within the boundaries of the metes and bounds description. One of the two outlots included all land running along Lake Arrowhead and extending inland 100 feet from the water’s edge. When the property was subsequently sold by Development Associates to a couple who intended to build a home near the waterfront, the issue of ownership of the outlots surfaced and a lawsuit was commenced asking the court to rule on the parties’ interests. The original seller of the property asked the court to reform the deed to exclude the two outlots on the grounds of mutual mistake. The circuit court agreed that this was a case involving mutual mistake and modified the deed to exclude the outlots. This ruling was affirmed by the Court of Appeals. It noted

that the doctrine of mutual mistake may be applied to reform a written agreement when the writing that embodies the agreement in whole or in part fails to express the agreement because of a mistake of both parties as to the contents or effect of the writing. *Id.*, ¶ 8. However, the party seeking reformation on grounds of mutual mistake must prove by clear and convincing evidence that the written agreement does not set forth the intention of the parties. In this case, the court rejected the testimony of Development Associates witnesses who claimed that they intended to acquire the outlots, when that testimony was contradicted by their attorney at the time and by documentary evidence which established that Development Associates principals were aware of the existence of the outlots and that they were not intended to be included in the transaction. *Id.*, ¶ 16-17. This case illustrates several important points. First, parties should make sure that any agreements they enter into clearly and unambiguously reflect the parties’ intentions as to the terms of the agreement. Second, if a document fails to properly reflect the parties’ intentions, a party may still ask a court to intervene and reform the agreement to reflect the parties’ intentions, although the moving party would need to establish that the mistake was mutual by clear and convincing evidence.

Kay & Andersen, S.C. routinely assists businesses in drafting contract documents and in litigating contract disputes. Feel free to call us with any of your legal needs.

Kay & Andersen, S.C.

One Point Place, Suite 201
Madison, WI 53719

Phone: (608) 833-0077

Fax: (608) 833-3901

Web Site: www.kayandandersen.com

E-mail: law@kayandandersen.com

Robert J. Kay

Randall J. Andersen

Robert A. Mich, Jr.

LAW NOTES is published quarterly. If you have a special legal issue you would like to see covered in a future LAW NOTES by Kay & Andersen, S.C., feel free to contact us.