

BEWARE THE RISKS OF INTERPRETING CONTRACTS

Written by Mark Sullivan, PARTNER; Yezdi Karbhari, LAWYER

July 2018



Introduction

Do you know the principles the Courts apply when interpreting contracts? These principles were recently considered by the Court of Appeal in *GTV Holdings Ltd v Harris* [2018] NZCA 95, a case involving the sale of a business. The same principles apply to other contracts but are often misunderstood and lead to conflict. [Read more.](#)

The Issue

The dispute concerned the sale of Greenstone TV, a specialist reality TV production company that produced well known shows such as *Serious Crash Unit*, *Border Patrol* and *Highway Cops*. The agreement contemplated the retention of a significant portion of the purchase price after settlement and with an adjustment depending on whether Greenstone entered into an expected contract with Seven Network in Australia. If Greenstone did not secure the contract, or licenced less than the number of episodes produced, then there would be an adjustment to the purchase price. Alternatively, if Greenstone did licence the full series, there would be no adjustment and the full price was payable.

The “reasonable bystander”

The answer turned on the interpretation of the sale agreement. That may sound conceptually simple and a matter of just reading and understanding the relevant contractual words and clauses. In reality, parties often come to an issue with their own recollection and understanding of what they wanted, understood or

intended. This subjective intent can easily blur the vision of what a contract actually means. The current law also casts a much wider net as to what information can be taken into account when trying to find the meaning of a contract. Separately, or in combination, these factors can lead to confusion and conflict.

Historically, to find the meaning of a contract, the focus was confined to the contract document itself and to the exclusion of the pre-contractual communications. It required exceptional circumstances, such as an ambiguity in the contractual language, to look to the surrounding documents and discussions to find the meaning. The law evolves and the focus is the objective reading of the words of the contract interpreted in light of their context.¹ The “context” opens the door to the pre-contractual communications. The Court’s task is to ascertain the meaning of a contract from the position of a reasonable person/bystander with the same background knowledge as the parties possessed. In reality, the Court becomes the reasonable bystander. The subjective intentions of the parties that negotiated the contract are ignored. Many people struggle with this concept. The Court tries to find the most reasonable common expectation of the parties in the circumstances of the contract. It is an objective standard.

The Greenstone decisions at both High Court and Court of Appeal level drew upon this notion of what a reasonable bystander would understand the adjustment provision in the sale contract to mean. At both levels, the Courts agreed with the interpretation of the objective meaning advanced by the Vendor. The Court also agreed that the Vendor had met the requirements of the contract. As a result, the full contract price was payable.

How we can help

Jackson Russell’s Litigation and Dispute Resolution Team are experts in contractual disputes. We provide advice both at an early stage in the hope of avoiding a dispute developing or when a dispute escalates. We also guide clients through negotiation, mediation, Arbitration or the Courts.

If you would like to speak to us, we would love to hear from you.

Jackson Russell

¹ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147; [2015] 1 NZLR 432 at [60].

Disclaimer: The information contained in this publication is of a general nature and is not intended as legal advice. It is important that you seek legal advice that is specific to your circumstances.

