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WHAT DO YOU DO AFTER CLOSING IF YOU FIND OUT THE DEAL WAS WRONG?

In the case of Hunt vs. Twisdale, Mr. and Mrs. Hunt ("Purchasers") bought the inventory and equipment of Ms. Twisdale's ("Seller") liquor store. The agreed upon price for the transaction was \$10,000 for the equipment, plus the cost of the inventory. The Seller took her own inventory and came up with an amount of \$60,000. The Purchasers did not independently verify the inventory, but accepted it and paid \$70,000 for the assets. Thereafter, the Purchasers employed a bookkeeper to balance their monthly books to make sure their bills were current and handle their tax returns. The Purchasers provided their accountant with a list of the inventory as provided to them by the Seller. The accountant determined when the store opened there was only \$30,000.00 in beginning inventory which was purchased from the Seller. The Purchasers filed a lawsuit seeking a reformation of the contract on the basis of a mutual mistake of fact between the parties, that the Seller had incorrectly calculated the cost of the inventory, and that the Purchasers incorrectly accepted such cost figures. The Purchasers asked the court to reform the contract to reflect the true amount of the agreement.

The Trial Court found that there was a mutual mistake of fact as to the inventory and ruled in favor of the purchasers and reformed the contract to change the purchase price to \$40,000. The Court of Appeals affirmed the Trial Court decision and sets forth several pronouncements as to when reformation of a contract would be an appropriate remedy. The Court of Appeals wrote that in order for relief to be granted on the grounds of mistake, the mistake must have been mutual or fraudulent, it must have been material to the transaction, it must not be due to the plaintiff's negligence, and the plaintiff must show injury. The Court further wrote that a "mistake" is an act that would not have been done, or an omission that would not have occurred, but for ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or oppression. A mistake must relate to a past or present fact, not an opinion as to the future result of a known fact.

MY RECOMMENDATION: After the deal has closed, if either side discovers some mistake, the mistake may be one that constitutes grounds for a contract reformation. In certain cases, Courts can reform contracts. However, it must be remembered that Courts do not concern themselves with the wisdom or folly of a contract and will not relieve parties from contractual obligations simply because they later proved to be burdensome or unwise. Reformation for mutual mistake of fact sometimes can be an available remedy when the purchaser finds out the deal is not what he or she thought it was going to be.

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