



# CONTRACT INTERPRETATION

Determining Intent  
Statute of Frauds  
Conditions Precedent

May 19, 2021



# DETERMINING INTENT & AMBIGUITY IN A CONTRACT

Fundamental Minnesota Cases

Jeffrey C. O'Brien

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# Contract Interpretation in General

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- The court makes the threshold determination whether a contract is ambiguous.
- If the contract is ambiguous, the court may examine other sources of information to determine the intent of the parties. The parties' intent is a jury question, unless all evidence points toward a certain interpretation.
- If a contract is not ambiguous, the question of its construction is for the court.
- In some (rare) circumstances, the duty of good faith and fair dealing can avoid the clear and unambiguous terms of a contract.

# How a Contract Should Be Interpreted

*Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281 (Minn. 1967)

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## FACTS:

- Plaintiff physician's employment contract provided complex, uniform rules regarding what share of the partnership's revenue an employee would receive, but was silent as to whether an employee could receive increases to the share of the partnership's revenue sooner than the schedule provided in the contract. The contract did not expressly indicate whether other employees would be limited to the same pay schedule.
  - When Plaintiff began employment with the clinic, he was told that all employees' share of the partnership's revenue increased at the same rate depending on their years of service with the employer.
- When another physician was provided accelerated rights to the payment, Plaintiff sued the partnership for breach of contract, seeking reformation and rescission.

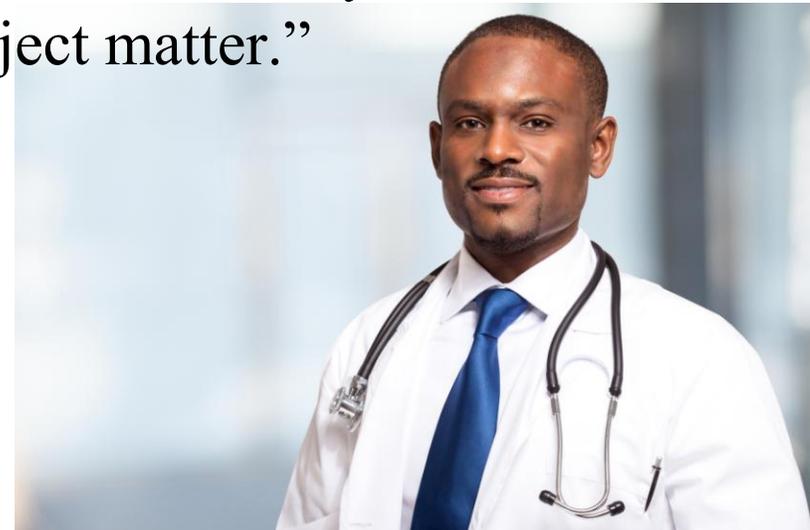
# How a Contract Should Be Interpreted

*Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281 (Minn. 1967)

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## **HOLDING:**

- The court concluded that because the contract provided for a fixed progression for all employees, providing some employees with additional rights was a breach of the contract.
- Interpreting a contract requires more than just determining “what [the] words mean literally, but how they are intended to operate practically on the subject matter.”



# How a Contract Should Be Interpreted

*Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281 (Minn. 1967)

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## **HOLDING:**

- If the language of a contract is ambiguous, the court may examine other sources of information to determine the intent of the parties.
  - The intent of the parties is a jury question, except
  - If all evidence points toward a certain interpretation, then the contract's meaning (and its application) is for the court.
- Where one party drafts a contract, all ambiguities are interpreted against the drafter.

# How a Contract Should Be Interpreted

*Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281 (Minn. 1967)

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## COMMENTS:

- This case highlights the basic rules for how a contract should be interpreted.
- The court—not the jury—first determines whether a contract is ambiguous.
  - This determination is often dispositive.
  - Unless there is a claim that the contract was inaccurately drafted or there was a mutual mistake of fact, no external evidence should be consulted to make this determination.
- If the contract is ambiguous, the facts and circumstances are usually evaluated to determine what the parties intended at the time the contract was adopted.
  - Other “canons” of contractual interpretation can be considered to determine the correct interpretation of the contract.

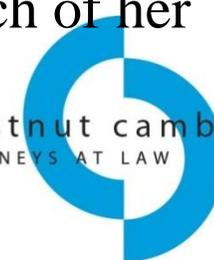
# Unambiguous Contracts

*Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339 (Minn. 2003)



## FACTS:

- Plaintiff had an IRA with a local bank that earned 12.25% interest.
- When she purchased the IRA, Plaintiff was told that the interest rate was permanent, even though the contract specifically provided that the bank could change the interest rate with 15 days' notice.
- When the bank became part of Wells Fargo, Plaintiff was told that her interest rate would be changing.
- Plaintiff sued for breach of her “fixed rate” contract.



# Unambiguous Contracts

*Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339 (Minn. 2003)

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## **HOLDING:**

- The court again noted the general rule that a contract's terms must be ambiguous before factual questions must be resolved. If it is not ambiguous, the question of the construction of a contract is for the court.

# Unambiguous Contracts

*Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339 (Minn. 2003)

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## **HOLDING:**

- The court recognized the certificate of deposit allowed Wells Fargo to change the interest rate with notice to the participant, but the question, the court concluded, was whether the notice was clear enough to achieve that purpose.
  - The court first noted that Wells Fargo's actions complied with applicable federal regulations, which were (in effect) implicit terms of the contract.
  - Further, the various notices sent to Plaintiff informed her that the contract had changed and provided her with instructions to find out how it had changed. Thus, since the notice was sufficient, Wells Fargo had appropriately modified the contract.

# Unambiguous Contracts

*Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339 (Minn. 2003)

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## COMMENT:

- Unlike *Marso* (which suggests that many contracts have fluid meanings that must be decided by juries after a trial), *Denelsbeck* emphasizes that clear contractual language can be interpreted and applied by a court.
- This means that unambiguous contracts can often be decided on a summary judgment motion; no trial is required.
- Note also the court's conclusion that applicable federal regulations become implicit terms of a contract, even though the plaintiff (likely) does not have any right to sue under those regulations.

# Good Faith and Fair Dealing

*White Stone Partners, LP v. Piper Jaffray Co. Inc.*, 978

F.Supp.878, 881 (D.Minn.1997)

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## **FACTS:**

- Plaintiff sought financing from Defendant to purchase a trailer park.
- The contract allowed Defendant to terminate the commitment for any reason (in its discretion) prior to the final closing date, in contemplation of the need to do environmental assessments.
- Defendant exercised this right, even though the assessments did not reveal any significant problems with the property.

# Good Faith and Fair Dealing

*White Stone Partners, LP v. Piper Jaffray Co. Inc.*, 978 F.Supp.878, 881 (D.Minn.1997)

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## **HOLDING:**

- Although the contract gave Defendant the sole discretion to terminate the contract, that discretion was limited by the duty of good faith and fair dealing.
- Thus, Defendant could not exercise this “discretion . . . for reasons unrelated to the grant of discretion.”
- The complaint supported an inference that Defendants terminated the contract in bad faith—not because they were concerned about the environmental issues, but because they no longer liked the contract.

# Good Faith and Fair Dealing

*White Stone Partners, LP v. Piper Jaffray Co. Inc.*, 978

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## COMMENT:

- Good faith and fair dealing: another ingredient in the soup of contractual interpretation. A hard doctrine to rely upon, but one that can nevertheless (in fairly rare circumstances) avoid the clear and unambiguous terms of a contract.
- Also note the court's implicit recognition that clear contractual language can be interpreted and resolved on a Rule 12 motion to dismiss.

# *Contract Interpretation: Statute of Frauds*

Arleen Nand | [nanda@gtlaw.com](mailto:nanda@gtlaw.com) | 612.259.9711

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[www.gtlaw.com](http://www.gtlaw.com)

# Rationale for Statute of Frauds

Jurists and legislators have stated several reasons for requiring certain contracts to be in writing:

- to prevent perjury;
- to discourage litigation where each of the contracting parties recollects differing oral terms;
- to create greater certainty where third parties will be involved in carrying out contract terms; and
- to create greater deliberation by the parties in choosing and negotiating contract terms.

# Contracts Subject to Minnesota Statute of Frauds

The Minnesota legislature has made a limited group of transactions subject to the writing requirement, including:

- an agreement that by its terms is not to be preformed within one year from the making thereof (Minn. Stat. §513.01(1));
- an agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry (Minn. Stat. §513.01(3)); an antenuptial or postnuptial agreement (Minn. Stat. §519.11);
- a special promise to answer for the debt, default or doings of another (Minn. Stat. §513.01(2));
- an agreement, promise, or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings (Minn. Stat. §513.01(4));

# Contracts Subject to Minnesota Statute of Frauds (Continued)

- the grant or assignment of a trust (Minn. Stat. §513.03);
- an agreement concerning the transfer of an interest in land (Minn. Stat. §513.04 & §513.05 *et. seq.*), including a brokerage agreement, Minn. Stat. § 82.85, subd. 1;
- a credit agreement (Minn. Stat. §513.33);
- a security agreement, unless the secured party takes possession of the collateral (Minn. Stat. §336.9-203);
- a sale of goods in a transaction involving \$500 or more (Minn. Stat. §513.33);
- a lease of goods with total payments of \$1,000 or more (Minn. Stat. §336.2A-201(1));

# Contracts Subject to Minnesota Statute of Frauds (Continued)

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- an agreement for the payment of interest in excess of the statutory amount (Minn. Stat. §334.01);
- a cohabitation agreement (Minn. Stat. §513.075); and
- a contract with the State of Minnesota (Minn. Stat. §16C.05).

# Satisfying the Written Requirement

The statutes governing contracts within Minnesota statute of frauds usually require the written contract clearly express and include:

- the agreed consideration;
- the identity of the parties;
- the subject matter (including, in contacts dealing with land, a description of the land);
- the material terms to be enforced; and
- the signature of the party against whom the contract is being enforced.

# Satisfying the Writing Requirement

Usually, the writing requirement is satisfied by referring to a single contract document.

- However, several papers may be deemed a sufficient writing to satisfy the statute of frauds if, taken together and **without the need of parol evidence** to connect them, they provide the essential terms of the agreement. *In re Petroleum Carriers*, 121 F. Supp. 520 (D. Minn. 1954).
- Whether parties have satisfied the statute of frauds is a question of law for the court. *Melford Olson Honey, Inc. v. Adeo*, 452 F.3d 956 (8<sup>th</sup> Cir. 2006).

# Statute of Frauds is an Affirmative Defense

Under the Minnesota Rules of Civil Procedure 8.03, the statute of frauds is an **affirmative defense** that may be waived if not asserted in the defendant's initial pleading to a contract claim.

The defense may also be **waived by the defendant's failure to object at trial** to oral evidence to prove the contract, or **by the defendant's admission of the contract**. *Borchardt v. Kulick*, 48 N.W.2d 318 (Minn. 1951) (no objection); *Radke v. Brenon*, 134 N.W.2d 887 (Minn. 1965) (admission).

Plaintiffs making claims based on a contract within the statute of frauds should anticipate application of the defense to the claims, and address any exceptions to the defense in the complaint.

Failure to allege facts sufficient to except claims from the defense leaves the complaint subject to dismissal under the Minnesota Rules of Civil Procedure 12. *Michel v. Vogelpohl*, No. A05-1263, 2006 WL 1073191 (Minn. Ct. App. Apr. 25, 2006).

# Admission Exception

The admission exception to Minnesota's statute of frauds is found in Minn. Stat. § 336.2-201(3)(b).

- It provides that even when there is no signed writing sufficient to satisfy the writing requirement, the statute of frauds will not act to abolish the contract, “*if the party against whom enforcement is sought admits in pleading, testimony or otherwise in court that a contract for sale was made.*”

# Electronic Signatures Generally

- Every state permits electronic signatures. The federal ESIGN Act of 2000 applies nationwide and permits electronic signatures in interstate or foreign commerce for the vast majority of contracts and transactions, including the types of agreements listed in your email below (with the possible exception of “banking facility documents,” which may in part be covered by the Uniform Commercial Code).
- Consistent with federal law, nearly all states have adopted the Uniform Electronic Transactions Act (the “**UETA**”), which is largely coextensive with the ESIGN Act in permitting electronic signatures. The few non-UETA states (New York and Illinois) have their own laws permitting and recognizing electronic signatures.
- The Uniform Commercial Code (“**UCC**”) as adopted nationwide also permits electronic signatures for various types of transactions.

# Electronic Signatures - Statute of Frauds

- When faced with an electronic signature, consult Minnesota Statutes Chapter 325L (The Uniform Electronic Transactions Act), to ascertain whether the signature is valid.
- For an electronic signature to satisfy the statute of frauds' signature requirement, the parties must have first agreed to electronically subscribe to the agreement. *SN4, LLC v. Anchor Bank*, 824 N.W.2d 559, 566-68 (Minn. Ct. App. 2014). (A signature block in an email, with the subject agreement attached, is not sufficient to meet the writing requirement unless the circumstances demonstrate the parties' intent.)

# Documents Requiring Original, Physical Signatures under the ESIGN Act and UETA

- Wills, codicils or testamentary trusts.
- Adoption, divorce or other matters of family law.
- Notices of cancellation of utility services (*e.g.*, water, heat, electricity).
- Notices of default, acceleration, repossession or foreclosure or eviction, or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.
- Notices of cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).
- Notices of recall of a product, or material failure of a product, that risks health or safety.

# Documents Requiring Original, Physical Signatures under the ESIGN Act and UETA (Continued)

- Instruments of title (*e.g.*, promissory notes, certificated securities, tangible chattel paper) where possession of the instrument is deemed to confer title, unless an electronic version is created, stored or transferred in manner that allows for the existence of only one unique, identifiable and unalterable version that cannot be copied except in a form that is readily identifiable as a copy.

# Electronic Signatures Under the Uniform Commercial Code

- Article 2 (Transactions for the Sale of Goods): Electronic signatures are permitted in accordance with the ESIGN Act and the UETA.
- Article 5 (Letters of Credit): Electronic signatures are permitted.
- Article 7 (Documents of Title): Electronic signatures are permitted.
- Article 8 (Investment Securities): Electronic signatures are permitted. Securities (other than certificated securities) may be transferred electronically, and contracts for their sale or purchase do not have to be in a physical writing.

# Electronic Signatures Under the Uniform Commercial Code (Continued)

- Articles 3 and 9 (Negotiable Instrument and Secured Transactions): Electronic signatures and records can be used to create a security interest in personal property. If electronically signed mortgage notes and other promissory notes are maintained in a secure electronic vault having authoritative copies and certain other features, the ESIGN Act and the UETA give rights equivalent to physical holders under UCC Articles 3 and 9.
- The key requirements for electronic notes are:
  - To be a “transferable record,” there must be “a single authoritative copy” of the note, and each copy must be readily identifiable as a copy.
  - The holder must maintain control of the authoritative copy of the transferable record.
  - The note must include language along these lines: “This note is a ‘transferrable record’ under the UETA and/or ESIGN or other equivalent, applicable law.”

# Electronic Signatures Record Retention Requirements Under the ESIGN Act and UETA

An electronically signed document must be in the form of an electronic record capable of retention by the recipient at the time of receipt. The recipient must be able to print or store the electronic record. The sender can satisfy this requirement by providing a fully executed copy to the signer or allowing the signer to download a copy of the agreement.

# Electronic Signatures – Practice Pointers

- Digital signatures, especially with the Covid-19 pandemic, are becoming the default method of executing various business contracts. As long as the party is not executing a contract where electronic signatures are expressly excluded, it should be enforceable in any court in the United States.
- As a practical matter, it is advisable when drafting a contract to specify in the agreement that e-signatures are valid. Additionally, it is preferable to use a secure digital signature platform such as DocuSign to execute contracts, as opposed to merely collecting an e-signature via email.
- Sample clause.

*Electronic Signatures. Each party agrees that the Electronic Signatures, whether digital or encrypted, of the parties included in this Agreement are secure and are intended to authenticate this writing and to have the same force and effect as manual signatures. For purposes of the foregoing, “Electronic Signature” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures pursuant to applicable federal and state law*

# Failure to Comply with the Statute of Frauds

- In most cases, a contract not complying with the statute of frauds is unenforceable against the party claiming the statute of frauds as a defense, **but is generally not void.**
- Exceptions to this rule include the grant of trusts (Minn. Stat. §513.03) and leases longer than one year (Minn. Stat. §513.05), which void a noncomplying contract.

# Limitations to the Statute of Frauds Defense

**Equitable** or **promissory estoppel** can limit or override the statute of fraud defense. *Starry Constr. Co. v. Murphy Oil USA, Inc.*, 785 F. Supp. 1356 (D. Minn. 1992).

- Estoppel can allow enforcement of an oral contract when the complaining party justifiably relied on a representation or concealment of fact by the party claiming the statute of frauds defense. *W.H. Barber Co. v. McNamara-Vivant Contracting Co.*, 293 N.W.2d 351 (Minn. 1979).

# Limitations to the Statute of Frauds Defense (Continued)

**Part performance.** A party that materially changes position on the basis of an oral contract should be equitably protected from the defense that the oral contract was subject to the statute of frauds.

The part performance doctrine requires proof that either:

- the claimed material change in position was made only because of the claimed oral contract and for no other reason, *Hecht v. Anthony*, 283 N.W. 753 (Minn. 1939); or
- the party changing position performed in such a matter that the party cannot properly be compensated through money damages, such as when the party has performed personal services that are difficult to measure monetarily. *In re Deppe*, 215 B.R. 743 (Bankr. D. Minn. 1997).



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## Precedents on Conditions precedent

Kevin S. Sandstrom



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## Conditions Generally

- “An event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.” Restatement (Second) of Contracts § 224 (1979)
- Generally is something other than an act or obligation to be performed by a party.
- “Conditions must be literally met or exactly fulfilled, or no liability can arise on the promise qualified by the condition.”
- “If the event required by the condition does not occur, there is no breach of contract.”
- Condition precedent: an act or event which must occur before a duty to perform a promise in an agreement arises.
- Condition subsequent: an event, which if it occurs, extinguishes or discharges a party’s existing contractual obligation to perform under the contract.



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## Conditions Generally, continued

- “When a contract contains a condition precedent, a party to the contract does not acquire any rights under the contract unless the condition occurs.”
  - *Nat'l Union Fire Ins. v. Schwing Am., Inc.*, 446 N.W.2d 410, 412 (Minn. App. 1989).
- “When a contractual duty is subject to a condition precedent, whether that condition is **express, implied, or constructive**, there is no duty of immediate performance and there can be no breach of that contractual duty by mere nonperformance, unless the condition precedent is neither performed nor excused. If such a condition precedent is neither performed nor excused within the time that is required, such failure now makes it impossible for a breach of contract to occur. Nonperformance of the primary contractual duty can now never operate as a breach of it; and no remedy for enforcement will ever be available.”
  - 6 Arthur L. Corbin, *Corbin on Contracts* § 1252 at 2 (1962).



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## Carl Bolander & Sons v. United Stockyards Corp., 215 N.W.2d 473 (Minn.1974)

- Excavation contractor agreed upon a firm not to exceed the figure of \$107,000 “assuming that no extreme depth pockets of unsuitable material exists that do not show up in your soil borings.”
- Seminal case often cited for its definition of condition precedent being “any fact except mere lapse of time which must exist or occur before a duty of immediate performance by the promisor can arise.”
- Conditions are strictly construed.
- No particular language or “code words” are needed to create a condition.
- Discusses this condition as a “condition precedent,” but it may be more like a “condition subsequent.”



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## Minnwest Bank Cent. v. Flagship Props., LLC, 689 N.W.2d 295 (Minn. App. 2004)

- Minnwest “intends to participate with the Small Business Administration 504 Loan Program whereby \$300,000 of the loan amount would be sold on the secondary market after project completion at the then prevailing rate. The remaining balance will be finance by the bank.”
- If a party prevents the occurrence of a condition, the condition will be waived and performance under the contract remains due
- Party may be “justified” in preventing the occurrence of a condition in some circumstances (i.e. honest disclosure of factual information to third parties upon which the performance of condition is dependent)



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## Crossroad Church of Prior Lake v. County of Dakota, 800 N.W.2d 608 (Minn. 2011)

- Real estate purchase agreement contained five express conditions precedent.
- Undisputed that several of the conditions were not satisfied.
- Contract is unenforceable, and no contractual rights accrue to the parties, until the conditions are satisfied.
- The unenforceability of the contract apparently can be used to the benefit of nonparties to the contract
  - Dakota County used the existence of unsatisfied conditions precedent, and thus an unenforceable real estate contract, to impose real estate taxes upon the church, which was otherwise an exempt organization



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## 451 Corp. v. Pension Sys. For Policemen & Firemen of City of Detroit, 310 N.W.2d 922 (Minn. 1981)

- “Said mortgage loan is subject to approval of the documents as to legality and form by the Office of the Corporation Counsel.”
- “The requirement of loan approval by the Office of Corporation Counsel can be considered either as a condition precedent to formation of a contract, or as a condition subsequent to a contract already formed. We need not decide which it should be, since whichever way the condition is characterized, if the event required by the condition does not occur, there can be no breach of contract.”
- Note: Corporate Counsel had a valid reason for non-approval of the loan, namely an opinion from the Michigan Attorney General that the loan terms were illegal.
- “Office of Corporation Counsel was required to exercise its best judgment in a reasonable manner, in good faith and with honest intent as to whether the loan agreement is legal. This was done. Corporation Counsel could, reasonably and in good faith, be of the opinion a balloon payment was not authorized.”



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## Space Center Inc. v. 451 Corp, 298 N.W.2d 443 (Minn. 1980)

- “If the title to the premises is not marketable and is not made so within 120 days after the date of making written objections thereto as herein provided for in paragraph 3, this Agreement shall be null and void and neither party shall be liable for damages hereunder...”
- Property owner encountered financial difficulty and the property went into foreclosure, thus making it impossible for owner to convey marketable title.
- Court held contract was enforceable and owner was liable for breach of contract.
- **Party cannot cause its own voluntary default to defeat a condition precedent.**



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## Capistrant v. Lifetouch Nat. School Studios, Inc., 916 N.W.2d 23 (Minn. 2018)

- At the end of the Term, Territory Manager shall immediately deliver to Lifetouch all ...property..., products, merchandise, ... business forms, ... and any and all other written or printed material in Territory Manager's possession or control and belonging to Lifetouch.
- If at any time Territory Manager breaches the provisions of Paragraph 11 of the Agreement, ... Lifetouch shall be entitled to terminate Lifetouch's obligation to make any payments of Residual Commission that have not yet been paid by giving Territory Manager written notice of such termination. (Note: Para. 11 contained both non-compete term and return-of-property clause)
- Court held return of property was condition precedent to Lifetouch's obligation to pay residual commission.
- Court also noted forfeiting \$2.6M in commissions for failure to return property upon retirement may result in "disproportionate forfeiture" and held forfeiture clause may be unenforceable under **Restatement Sect. 229** unless condition was a **material** term, and considering **proportionality** of the importance of the particular condition in relation to the amount of the forfeiture/penalty.
- Supreme Court remanded for determination of whether return-of-property clause was "material."



ECKBERG  
LAMMERS  
ATTORNEYS AT LAW

Kevin S. Sandstrom  
[ksandstrom@eckbergglammers.com](mailto:ksandstrom@eckbergglammers.com)

Stillwater Office

1809 Northwestern Avenue

Stillwater, MN 55082

Phone: 651-439-2878

Fax: 651-439-2923

Hudson Office

430 Second Street

Hudson, WI 54016

Phone: 715-386-3733

Fax: 715-386-6456

[www.eckbergglammers.com](http://www.eckbergglammers.com)