

Contractual Remedies Act 1979

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An Act to reform the law relating to remedies for misrepresentation and breach of contract

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title and commencement

(1) This Act may be cited as the Contractual Remedies Act 1979.

Note

This Act is administered in the Ministry of Justice.

- (2) This Act shall come into force on the 1st day of April 1980.

2 Interpretation

In this Act, unless the context otherwise requires,—

Cancel, in relation to a contract, means cancel in accordance with section 7 of this Act; and **cancelled** and **cancellation** have corresponding meanings

Court means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined.

Court: Paragraph (c) of this definition was substituted, as from 1 March 1989, by section 66 Disputes Tribunals Act 1988 (1988 No 110).

Court: this definition was substituted, as from 19 December 2002, by section 3 Contractual Remedies Amendment Act 2002 (2002 No 79).

3 Act to bind the Crown

This Act shall bind the Crown.

4 Statements during negotiations for a contract

- (1) If a contract, or any other document, contains a provision purporting to preclude a Court from inquiring into or determining the question—
- (a) Whether a statement, promise, or undertaking was made or given, either in words or by conduct, in connection with or in the course of negotiations leading to the making of the contract; or
 - (b) Whether, if it was so made or given, it constituted a representation or a term of the contract; or
 - (c) Whether, if it was a representation, it was relied on—
the Court shall not, in any proceedings in relation to the contract, be precluded by that provision from inquiring into and determining any such question unless the Court considers that it is fair and reasonable that the provision should be conclusive between the parties, having regard to all the circumstances of the case, including the subject-matter and value of the transaction, the respective bargaining strengths of the parties, and the question whether any party was represented or advised by a solicitor at the time of the negotiations or at any other relevant time.

- (2) If a contract, or any other document, contains a provision purporting to preclude a Court from inquiring into or determining the question whether, in respect of any statement, promise, or undertaking made or given by any person, that person had the actual or ostensible authority of a party to make or give it, the Court shall not, in any proceedings in relation to the contract, be precluded by that provision from inquiring into and determining that question.
- (3) Notwithstanding anything in section 56 or section 60(2) of the Sale of Goods Act 1908, this section shall apply to contracts for the sale of goods.
- (4) In any proceedings properly before a Disputes Tribunal, this section shall not limit the powers of the Tribunal under section 18(7) of the Disputes Tribunals Act 1988.

Subsection (4) was substituted, as from 1 March 1989, by section 67 Disputes Tribunals Act 1988 (1988 No 110).

5 Remedy provided in contract

If a contract expressly provides for a remedy in respect of misrepresentation or repudiation or breach of contract or makes express provision for any of the other matters to which sections 6 to 10 of this Act relate, those sections shall have effect subject to that provision.

6 Damages for misrepresentation

- (1) If a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made to him by or on behalf of another party to that contract—
 - (a) He shall be entitled to damages from that other party in the same manner and to the same extent as if the representation were a term of the contract that has been broken; and
 - (b) He shall not, in the case of a fraudulent misrepresentation, or of an innocent misrepresentation made negligently, be entitled to damages from that other party for deceit or negligence in respect of that misrepresentation.
- (2) Notwithstanding anything in section 56 or section 60(2) of the Sale of Goods Act 1908, but subject to section 5 of this Act,

subsection (1) of this section shall apply to contracts for the sale of goods.

7 Cancellation of contract

- (1) Except as otherwise expressly provided in this Act, this section shall have effect in place of the rules of the common law and of equity governing the circumstances in which a party to a contract may rescind it, or treat it as discharged, for misrepresentation or repudiation or breach.
- (2) Subject to this Act, a party to a contract may cancel it if, by words or conduct, another party repudiates the contract by making it clear that he does not intend to perform his obligations under it or, as the case may be, to complete such performance.
- (3) Subject to this Act, but without prejudice to subsection (2) of this section, a party to a contract may cancel it if—
 - (a) He has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made by or on behalf of another party to that contract; or
 - (b) A term in the contract is broken by another party to that contract; or
 - (c) It is clear that a term in the contract will be broken by another party to that contract.
- (4) Where subsection (3)(a) or subsection (3)(b) or subsection (3)(c) of this section applies, a party may exercise the right to cancel if, and only if,—
 - (a) The parties have expressly or impliedly agreed that the truth of the representation or, as the case may require, the performance of the term is essential to him; or
 - (b) The effect of the misrepresentation or breach is, or, in the case of an anticipated breach, will be,—
 - (i) Substantially to reduce the benefit of the contract to the cancelling party; or
 - (ii) Substantially to increase the burden of the cancelling party under the contract; or
 - (iii) In relation to the cancelling party, to make the benefit or burden of the contract substantially different from that represented or contracted for.

- (5) A party shall not be entitled to cancel the contract if, with full knowledge of the repudiation or misrepresentation or breach, he has affirmed the contract.
- (6) A party who has substantially the same interest under the contract as the party whose act constitutes the repudiation, misrepresentation, or breach may cancel the contract only with the leave of the Court.
- (7) The Court may, in its discretion, on application made for the purpose, grant leave under subsection (6) of this section, subject to such terms and conditions as the Court thinks fit, if it is satisfied that the granting of such leave is in the interests of justice.

Subsections (3)(b), (3)(c), and (4)(a) were amended, as from 19 December 2002, by section 4 Contractual Remedies Amendment Act 2002 (2002 No 79) by substituting the word “term” for the word “stipulation” wherever it occurs.

8 Rules applying to cancellation

- (1) The cancellation of a contract by a party shall not take effect—
 - (a) Before the time at which the cancellation is made known to the other party; or
 - (b) before the time at which the party cancelling the contract evinces, by some overt means reasonable in the circumstances, an intention to cancel the contract, if—
 - (i) it is not reasonably practicable for the cancelling party to communicate with the other party; or
 - (ii) the other party cannot reasonably expect to receive notice of the cancellation because of that party’s conduct in relation to the contract.
- (2) The cancellation may be made known by words, or by conduct evincing an intention to cancel, or both. It shall not be necessary to use any particular form of words, so long as the intention to cancel is made known.
- (3) Subject to this Act, when a contract is cancelled the following provisions shall apply:
 - (a) So far as the contract remains unperformed at the time of the cancellation, no party shall be obliged or entitled to perform it further:
 - (b) So far as the contract has been performed at the time of the cancellation, no party shall, by reason only of the

cancellation, be divested of any property transferred or money paid pursuant to the contract.

- (4) Nothing in subsection (3) of this section shall affect the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of the contract by another party.

Subsection (1)(b) was substituted, as from 19 December 2002, by section 5 Contractual Remedies Amendment Act 2002 (2002 No 79).

9 Power of Court to grant relief

- (1) When a contract is cancelled by any party, the Court, in any proceedings or on application made for the purpose, may from time to time if it is just and practicable to do so, make an order or orders granting relief under this section.
- (2) An order under this section may—
- (a) Vest in any party to the proceedings, or direct any such party to transfer or assign to any other such party or to deliver to him the possession of, the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it;
 - (b) Subject to section 6 of this Act, direct any party to the proceedings to pay to any other such party such sum as the Court thinks just;
 - (c) Direct any party to the proceedings to do or refrain from doing in relation to any other party any act or thing as the Court thinks just.
- (3) Any such order, or any provision of it, may be made upon and subject to such terms and conditions as the Court thinks fit, not being in any case a term or condition that would have the effect of preventing a claim for damages by any party.
- (4) In considering whether to make an order under this section, and in considering the terms of any order it proposes to make, the Court shall have regard to—
- (a) The terms of the contract; and
 - (b) The extent to which any party to the contract was or would have been able to perform it in whole or in part; and
 - (c) Any expenditure incurred by a party in or for the purpose of the performance of the contract; and

- (d) The value, in its opinion, of any work or services performed by a party in or for the purpose of the performance of the contract; and
 - (e) Any benefit or advantage obtained by a party by reason of anything done by another party in or for the purpose of the performance of the contract; and
 - (f) Such other matters as it thinks proper.
- (5) No order shall be made under subsection (2)(a) of this section that would have the effect of depriving a person, not being a party to the contract, of the possession of or any estate or interest in any property acquired by him in good faith and for valuable consideration.
- (6) No order shall be made under this section in respect of any property, if any party to the contract has so altered his position in relation to the property, whether before or after the cancellation of the contract, that, having regard to all relevant circumstances, it would in the opinion of the Court be inequitable to any party to make such an order.
- (7) An application for an order under this section may be made by—
- (a) Any party to the contract; or
 - (b) Any person claiming through or under any such party; or
 - (c) Any other person if it is material for him to know whether relief under this section will be granted.

10 Recovery of damages

- (1) Subject to sections 4 to 6 of this Act, a party to a contract shall not be precluded by the cancellation of the contract, or by the granting of relief under section 9 of this Act, from recovering damages in respect of a misrepresentation or the repudiation or breach of the contract by another party; but the value of any relief granted under section 9 of this Act shall be taken into account in assessing any such damages.
- (2) Any sum ordered to be paid by any party to the contract to any other such party under section 9(2) of this Act may be set off against any damages payable by him to that other party.

11 Assignees

- (1) Subject to this section, if a contract, or the benefit or burden of a contract, is assigned, the remedies of damages and cancellation shall, except to the extent that it is otherwise provided in the assigned contract, be enforceable by or against the assignee.
- (2) Except to the extent that it is otherwise agreed by the assignee or provided in the assigned contract, the assignee shall not be liable in damages, whether by way of set-off, counterclaim, or otherwise, in a sum exceeding the value of the performance of the assigned contract to which he is entitled by virtue of the assignment.
- (3) Unless it is otherwise agreed between the assignor and the assignee, the assignee shall be entitled to be indemnified by the assignor against any loss suffered by the assignee and arising out of—
 - (a) Any term of the assigned contract that was not disclosed to him before or at the time of the assignment; or
 - (b) Any misrepresentation that was not so disclosed.
- (4) This section shall be read subject—
 - (a) In the case of a mortgage of land, to section 104 of the Property Law Act 1952:
 - (b)
 - (c) In the case of a contract for the supply of goods or services to a consumer, to section 46 of the Consumer Guarantees Act 1993.
- (5) Nothing in this section shall affect the law relating to negotiable instruments.

Subsection (4)(b) was repealed, as from 1 April 2005, by section 139 Credit Contracts and Consumer Finance Act 2003 (2003 No 52). *See* sections 141 to 143 of that Act as to the transitional provisions.

Subsection (4)(c) was inserted, as from 1 April 1994, by section 53 Consumer Guarantees Act 1993 (1993 No 91).

12 Jurisdiction of District Courts

[Repealed]

Subsection (1)(b) was amended, as from 1 April 1980, by section 16(1) District Courts Amendment Act 1979 (1979 No 125) by substituting the expression “\$12,000” for the expression “\$3,000”.

Subsection (1)(b) was amended, as from 13 November 1989, by section 10(1) District Courts Amendment Act 1989 (1989 No 107) by substituting the expression “\$50,000” for the expression “\$12,000”.

Subsection (1)(b) was amended, as from 1 October 1991, by section 19(1) District Courts Amendment Act 1991 (1991 No 61) by substituting the expression “\$200,000” for the expression “\$50,000”.

The references to the “District Courts Act 1947” and “District Court” replaced, as from 1 April 1980, earlier references to Magistrate’s Courts Act 1947 and “Magistrate’s Court” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

Sections 12 and 13 were repealed, as from 19 December 2002, by section 6 Contractual Remedies Amendment Act 2002 (2002 No 79).

13 Jurisdiction of Disputes Tribunals

[Repealed]

Section 13 was substituted, as from 1 March 1989, by section 68 Disputes Tribunals Act 1988 (1988 No 110).

Section 13 was amended, as from 3 July 1998, by section 10 Disputes Tribunals Amendment Act 1998 (1998 No 84) by substituting the expression “\$7,500” for the expression “\$3,000”. Subsection (3) was amended by section 10 of that Act by substituting the expression “\$12,000” for the expression “\$5,000”.

Sections 12 and 13 were repealed, as from 19 December 2002, by section 6 Contractual Remedies Amendment Act 2002 (2002 No 79).

14 Amendments and repeals

- (1) The Sale of Goods Act 1908 is hereby amended—
 - (a) By omitting from section 13(3) the words “or where the contract is for specific goods the property in which has passed to the buyer”:
 - (b) By inserting in section 37, after the words “that he has accepted them, or”, the words “(except where section 36 of this Act otherwise provides)”.
- (2)
- (3)
- (4) Section 66 of the Real Estate Agents Act 1976 is hereby repealed.

Subsection (2) was repealed, as from 1 July 1997, by section 18 Arbitration Act 1996 (1996 No 99).

Subsection (3) was repealed, as from 1 April 2005, by section 139 Credit Contracts and Consumer Finance Act 2003 (2003 No 52). See sections 141 to 143 of that Act as to the transitional provisions.

14A Act does not apply to contracts governed by foreign law

This Act does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Section 14A was inserted, as from 19 December 2002, by section 7 Contractual Remedies Amendment Act 2002 (2002 No 79).

15 Savings

Except as provided in sections 4(3), 6(2), and 14 of this Act, nothing in this Act shall affect—

- (a) The law relating to specific performance or injunction:
- (b) The law relating to mistake, duress, or undue influence:
- (c) The doctrine of *non est factum*:
- (d) The Sale of Goods Act 1908:
- (e) The Frustrated Contracts Act 1944:
- (f) The Limitation Act 1950:
- (g) Sections 117 to 119 of the Property Law Act 1952 (which relate to relief against forfeiture under leases):
- (ga) The Consumer Guarantees Act 1993:
- (h) Any other enactment so far as it prescribes or governs terms of contracts or remedies available in respect of contracts, or governs the enforcement of contracts.

Paragraph (ga) was inserted, as from 1 April 1994, by section 54 Consumer Guarantees Act 1993 (1993 No 91).

16 Application of Act

This Act shall not apply to any contract made before the commencement of this Act.