

# Contract law case between millisoft and the city of waterloo



## Contract Law Case between MilliSoft and the City of Waterloo

MilliSoft Programmers was in a contract with the City of Waterloo to design software to control traffic lights at street intersections. A member of the city staff requested the CEO of MilliSoft to obtain a letter certifying the components of the library being used due to safety concerns. However, MilliSoft did not obtain the letter and terminated the contract due to non-payment by the city. Whether MilliSoft was entitled or not to terminate the contract depends on the particular circumstances of this case and application of precedents. One contract law in question for this case is *equitable estoppel* and its application as the CEO enforced the strict terms of the contract, particularly the 10-day payment deadline, after non-payment by the city due to an assumed extension to the payment deadline. The CEO essentially made a *gratuitous promise* to obtain the letter, which the city staff member relied upon to certify the work for a reasonable guarantee of safety but failed to do so. The relationship between a giver of a gratuitous promise and the application of equitable estoppel is important to this case and further analysis is needed to understand its implications and to determine if its application is justified. Another point to consider is the city managers' acknowledgement of MilliSoft's significant loss, approximately \$150 000, due to underbidding and whether it constitutes fraudulent action or not. MilliSoft's significant loss as a result of underbidding could be interpreted as a unilateral mistake in which one party makes a mistake and the other is aware [1, p. 3]. The unilateral mistake could have been in a factor in MilliSoft terminating the contract. Application of a precedent case and further analysis is needed to determine if MilliSoft's action is fraudulent,

thereby proving whether MilliSoft was right to terminate the contract or not. As a final point, the city staff member's failure to clearly state changes to the contract, particularly an extension to the payment deadline, and failure to consult with city managers brings conduct into question. As stated in [2, p. 12], a contract can be changed after it is in effect by mutual agreement and with a requirement for the changes to be within the scope of the original contract. The change in the payment deadline was not mutually agreed upon, which raises questions about the legal implications of the assumed extension and whether MilliSoft was right to enforce the strict deadline.

*Equitable estoppel* is a concept in contract law that can be applied in certain circumstances to prevent a party in a contract from enforcing the strict terms of a contract, which would result in an unfair and inequitable outcome [3, p. 7]. In other words, equitable estoppel is a concept which prevents a party from taking advantage of another party or parties through conduct or false language [3, p. 7]. This particular case between MilliSoft and the City of Waterloo strongly resembles an actual construction contract case by the name, Owen Sound Public Library Board v. Mial Developments Ltd. from 1979 [4, pp. 95-96], in which *equitability* was in question. In the Owen case, the owner was required to make payments to the contractor within 5 days of receiving an architect's certificate and failure to do so would allow the contractor to terminate the contract. The owner requested for a corporate seal of the subcontractor to be attached for one certificate, while assuming an extension on the payment deadline. The contractor agreed, but failed to obtain the seal after the payment date passed and attempted to terminate the contract. The Ontario Court of Appeal stated that the owner's assumption

was reasonable and that the deadline for the payment would be extended until receipt of the seal. As a result, the court estopped the contractor from enforcing the strict terms of the contract as it would lead to an inequitable outcome and declared that the contractor tried to take advantage of the owner's contractual default. Similar to the previous case, the Conwest Exploration Co. Ltd. et al. v. Letain case from 1963 [4, pp. 92-93], concerns the application of equitable estoppel. There was a time limit in an option agreement that pertained to mining claims owned by the optionor. The optionee had to take certain steps in order to exercise the options and the optionor implied the date was extended. Afterward, the optionor attempted to revert to the strict date in the contract and was later estopped from enforcing the date on the basis of equitability. Similar to the Owen case, the City of Waterloo was required to send an agreed payment amount within 10 days of receiving each certificate of progress and failure to do so would allow MilliSoft to repudiate the contract. The CEO agreed to obtain the letter, but failed to do so, similar to the contractor. As per the court's decision in regard to the assumed payment deadline extension in the Owen case, the city staff member's assumed deadline extension would also be considered reasonable and the deadline would have been extended until receipt of the letter. Normally, a contract is enforceable with respect to the terms of the contract, but given the fact that there was a negotiation between the city staff member and CEO to obtain a letter, it led the city staff member to assume an extension to the payment deadline until receipt of the letter. By direct application of the Owen case, the CEO was not entitled to terminate the contract as enforcing the strict terms, the payment deadline, of the contract would result in an inequitable outcome. In other words, the court would issue <https://assignbuster.com/contract-law-case-between-millisoft-and-the-city-of-waterloo/>

an estoppel against the CEO from enforcing the terms under the strict wording of the contract. Moreover, there is a possibility that the CEO was attempting to take advantage of the owner's contractual default, which was induced by the CEO's conduct. That is, by enforcing the strict deadline to put the city at fault despite circumstances that demanded for an extended deadline. The Conwest case in 1963 made it clear that cases in which terms of a contract are amended without consideration provide relief for the party that relies on the gratuitous promise [4, p. 93], In particular, the courts issue an estoppel against the giver of a gratuitous promise as seen in the previous precedent cases [5]. A gratuitous promise lacks consideration and does not constitute a legally binding contract, but constitutes a moral obligation [4, p. 93]. The CEO made a gratuitous promise to obtain the letter, which the city staff member relied upon to certify the work for a reasonable guarantee of safety, but failed to do so. The city staff member's reliance on the letter was legally detrimental in the sense that failure to provide the letter would constitute inadequate work. Similar to the Owen and Conwest case, the court would issue an estoppel against the CEO, the giver of a gratuitous promise, thereby providing relief to the city staff member, who relied on the gratuitous promise. All in all, equitable estoppel plays a significant role in this case and the estoppel would be against the CEO, thereby relieving the city staff member. Thus, the CEO was not entitled to terminate the contract as equitable estoppel would prevent the CEO from terminating the contract on the basis of equitability.

The notion of a unilateral mistake is possible in this case and analysis of the case from this window is required to determine if the city staff committed

fraudulent activity. MilliSoft's significant loss as a result of underbidding could be interpreted as a unilateral mistake in which one party makes a mistake and the other is aware [1, p. 3]. The city managers' acknowledgement of MilliSoft's significant loss, approximately \$150 000, due to underbidding raises questions about whether their acknowledgement constitutes fraudulent action or not. Although not explicitly stated, financial tensions due to the significant loss could have led to the CEO's failure to obtain the letter as an attempt to discharge the contract. With these factors into consideration, one may state that the city is at fault for taking advantage of MilliSoft, thus justifying their termination of the contract. A precedent case about by the name Imperial Glass Ltd. v. Consolidated Supplies Ltd [4, p. 116] concerns the implications of a unilateral mistake. To be specific, a contractor (offeror) had made a mistake in calculating the price at which to supply items to the owner (offeree). The offeree was aware of the mistake, but had no role in the mistake. In other words, the offeror's mistake was independent of the actions of the offeree. The court determined that the offeree's conduct was not fraudulent despite it being questionable in regard to moral and ethics and did not relieve the contractor from the mistake. In short, the offeree's actions were not fraudulent despite being aware of the offeror's mistake. Likewise, the city was aware of MilliSoft's underbidding, but failed to state it to MilliSoft. Regardless of the latter action, the city's conduct would not be considered fraudulent with respect to the precedent mentioned. The city's actions did not contribute to MilliSoft's underbidding and the potential mistake was independent of the city's actions, thus their acknowledgement of the underbidding would not be considered fraudulent.

Moreover, the court would not relieve MilliSoft from the consequences of <https://assignbuster.com/contract-law-case-between-millisoft-and-the-city-of-waterloo/>

their mistake. Since the city's acknowledgment of the underbidding does not constitute fraudulent activity, the city's actions do not justify MilliSoft's termination of the contract. That is, if the unilateral mistake was a factor in terminating the contract, the city would hold no responsibility as the mistake was a result of MilliSoft's actions. Hence, MilliSoft was not entitled to terminate the contract with a potential unilateral mistake as a factor.

As a final point, the city staff member's conduct is in question as the city staff member failed to clearly state the extension to the payment deadline to the CEO of MilliSoft and requested a letter without consulting city managers. As stated in [2, p. 12], a contract can be changed after it is in effect by mutual agreement and with a requirement for the changes to be within the scope of the original contract. By assuming an extension on the payment deadline, the city staff member altered the contract as the strict payment schedule was an express term in the contract. The contract was altered as the deadline was changed, but not by mutual agreement as the CEO was not made aware of the change, which puts the city staff member at fault and raises questions about whether MilliSoft was right to enforce the strict deadline. Though contradictory to the notion of equitable estoppel discussed in a previous argument, the city staff member should have clearly mentioned the assumed change to the deadline to avoid problems. Based on the precedent cases mentioned earlier, the CEO made a gratuitous promise to obtain the letter and failed to do, which would allow equitable estoppel to be used against the CEO. However, the CEO was unaware of the changes to the deadline and possibly would not have made the gratuitous promise to obtain the letter if he had known about the changes to the contract. However,

equitable estoppel is applied in certain circumstances in which parties in a contract have negotiated terms which they may have not formally amended to the original contract [4, pg. 97]. The contradiction is that the two parties in this case did not discuss the change to the payment deadline, which further complicates the issue. Hence, the city staff member is at fault for not clearly stating his assumption, but by the precedent cases, this fact may be neglected in favour of equitable estoppel due to the gratuitous promise made by the CEO to obtain the letter. Furthermore, if the city staff member had consulted city staff managers about the request for the letter, formal changes to the contract may have been made, thus eliminating the need for equitable estoppel, which further implicates the city staff member. The city staff member's failure to consult with city managers resulted in a decision that may have been misinformed or lacked important details such as the payment deadline extension. All in all, the city staff member's failure to state the changes to the contract regarding an extension to the payment deadline and failure to consult with city staff managers puts a level of fault on the city staff members, thereby justifying MilliSoft's action to terminate the contract.

In conclusion, MilliSoft was not entitled to terminate the contract in the circumstances for several reasons. The most important reason is the notion of equitable estoppel, which is applied against the giver of a gratuitous promise to relieve the party that relies on the gratuitous promise. In other words, it is applied in cases to prevent an unequitable or unfair outcome by preventing a party from enforcing strict contractual terms. The CEO of MilliSoft made a gratuitous promise to obtain a letter certifying the components of the library being used but failed to do so. With the Owen and



Conwest case into consideration, it is clear that the CEO of MilliSoft's gratuitous promise led the city staff member to rely upon the promise and enforcing the strict contractual terms, in particular the payment deadline, would result in an unfair outcome. Additionally, there is a possibility that MilliSoft may have made a unilateral mistake in the bidding process resulting in losses foreseen by the city staff, leading one to believe the city is at fault as the losses may have been a factor in MilliSoft's termination of the contract. However, by application of the Imperial case precedent, it is clear that the city is not at fault as it did not influence nor represent MilliSoft by any means. Hence, the potential unilateral mistake does not shift the blame on the city and justify MilliSoft's termination of the contract. As a final point, the city staff member is at fault in regard to conduct for failing to state the change to the contract and not consulting with city managers regarding the letter. If the change had been stated clearly or if the idea of requesting a letter had been discussed with city managers, the final outcome may differ as the CEO of MilliSoft may not have made a gratuitous promise to obtain the letter. There is also a question of whether equitable estoppel can be applied as the payment deadline was not negotiated, but by precedent cases, it can be applied due to the CEO's gratuitous promise to obtain the letter. All in all, MilliSoft was not entitled to terminate the contract, but there is a level of responsibility and fault on both sides by the reasons explained above.

## References

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[2] J. D. Aplevich, Class Lecture, Topic: "Lecture 4: Contracts." ECE 290, Faculty of Engineering, University of Waterloo, Waterloo, Ontario, Feb. 9, 2019.

[3] J. D. Aplevich, Class Lecture, Topic: "Lecture 11: Breach of Contract." ECE 290, Faculty of Engineering, University of Waterloo, Waterloo, Ontario, Feb. 9, 2019.

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[5] D. W. Harder, "Equitable Estoppel," Equitable Estoppel. [Online]. Available: [https://ece.uwaterloo.ca/~dwharder/epel/Lecture\\_materials/Equitable\\_estoppel.pdf](https://ece.uwaterloo.ca/~dwharder/epel/Lecture_materials/Equitable_estoppel.pdf). [Accessed: Feb. 9, 2019].