



**BERMUDA
1977 : 53**

**LAW REFORM (MISREPRESENTATION AND FRUSTRATED
CONTRACTS) ACT 1977**

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[29 December 1977]

[preamble and words of enactment omitted]

Interpretation

1 In this Act—

"contract" includes a contract to which the Crown is a party;

"court" means the court or arbitrator by or before whom a matter is brought to be determined;

"discharged" means relieved from further performance of the contract.

Removal of certain bars to rescission for innocent misrepresentation

2 Where a person has entered into a contract after a misrepresentation has been made to him, and—

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- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).

Damages for misrepresentation

3 (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the representation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded the court may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

Avoidance of certain provisions excluding liability for misrepresentation

4 If any agreement (whether made before or after 29 December 1977) contains a provision which would exclude or restrict—

- (a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or
- (b) any remedy available to another party to the contract by reason of such a misrepresentation,

that provision shall be of no effect except to the extent (if any) that, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case.

Application of section 6

5 (1) Section 6 shall apply to a contract that has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

(2) The aforementioned section does not apply—

(a) to a charter-party or to a contract for the carriage of goods by sea, except a time charter-party or a charter-party by way of demise; or

(b) to a contract of insurance; or

(c) to a contract for the sale of specific goods where the goods—

(i) without the knowledge of the seller, have perished at the time when the contract is made; or

(ii) without any fault on the part of the seller or buyer, perish before the risk passes to the buyer.

Sums payable before parties discharged

6 (1) The sums paid or payable to a party, in pursuance of a contract before the parties were discharged—

(a) in the case of sums paid, are recoverable from that party as money received by him for the use of the party by whom the sums were paid; and

(b) in the case of sums payable, cease to be payable.

(2) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow him to retain or to recover, as the case may be, the whole or a part of the sums paid or payable not exceeding the amount of the expenses.

(3) Without restricting the generality of subsection (2), the court, in estimating the amount of the expenses, may include such sum as appears to be reasonable in respect of overhead expenses and in respect of work or services performed personally by the party incurring the expenses.

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(4) If, before the parties were discharged, any of them has, by reason of anything done by another party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or a part of the value of the benefit.

(5) Where a party has assumed an obligation under the contract in consideration of the conferring of a benefit by another party to the contract upon another person, whether a party to the contract or not, the court if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection (4) treat a benefit so conferred as a benefit obtained by the party who has assumed the obligation.

(6) In considering whether a sum ought to be recovered or retained under this section by a party to the contract, the court shall not take in account a sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under a contract of insurance, unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under an enactment.

(7) Where the contract contains a provision that upon the true construction of the contract is intended to have effect—

(a) in the event of circumstances that operate, or but for that provision would operate, to frustrate the contract; or

(b) whether such circumstances arise or not,

the court shall give effect to the provision and shall give effect to this section only to such extent, if any, as appears to the court to be consistent with that provision.

(8) Where it appears to the court that part of the contract can be severed properly from the remainder of the contract, being a part—

(a) wholly performed before the parties were discharged; or

(b) wholly performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract,

the court shall treat that part of the contract as if it were a separate contract that had not been frustrated and shall treat this section as applicable only to the remainder of the contract.

Saving for transactions before 29 December 1977

7 Subject to the provisions of section 4 nothing in this Act shall apply to any contract made before 29 December 1977.

