Of the interpretation of contracts

The fundamental rule of interpreting a contract is that the parties' expectations must, to the extent possible, be identified and preserved. Courts will err on the side of preserving the parties' intention, even if such an intention contradicts judicial interpretation of similar or identical contract terms in other cases (2016 SCC 37, para. 38).

Contract interpretation is only necessary if the terms of a contract are ambiguous (2017 SCC 7, para. 12).

If ambiguity exists, a court will turn its attention to establishing the parties' intention at the time of entering into the contract ([1980] 1 S.C.R. 888). Courts discuss intention as a set of reasonable expectations exchanged between parties to a contract:

> It must be understood therefore that the search for the parties' intentions is conducted on an objective basis, meaning that the focus is on what a reasonable person would infer from the words used. This interpretive exercise must be undertaken with due regard to the entire contract. One cannot simply pick and choose clauses - or parts of clauses - without considering the contract as a whole. It also means being alive to the relevant background against which the contract was concluded, the purpose of the exercise being to ascribe to the written text the most appropriate meaning which the words can properly bear. (2004 ABCA 215, para. 77)

The Ontario Court of Appeal endorsed the elements of this description of contract interpretation (2017 ONCA 1007 and 2019 SCC 60 , para. 73 et seq).

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Last update: **2024/07/24 03:15**