

Don't Assume What a Court Will Assume About Your Contract

April 30, 2019 | [Eric D. Mulligan](#)

It's often difficult to predict how a court will interpret text, whether the text is part of a statute, a regulation, or a contract. Sure, courts have tools to aid their interpretations, but how a court will apply those tools in a specific case is anyone's guess.

Fortunately, if it's a contract, you can avoid questions of interpretation by making the terms clear and apparent from the face of the text. Judges can't read minds, so if the text of a contract doesn't reflect your intent, you risk trouble in the event of a dispute. The holder of a mobile home retail installment contract learned this lesson the hard way.

Deneige Kapor bought a mobile home from Cherry Creek Development, Inc., and financed the purchase with a retail installment contract. Cherry Creek assigned the contract to RJC Investment, Inc. Kapor defaulted and returned the mobile home to RJC with \$40,000 left on the contract. Kapor signed a release in which she gave up her right to the mobile home and to any refund of payments. RJC sold the mobile home for \$53,000 but did not return any surplus to Kapor.

Kapor sued RJC in Montana state court for violating Article 9 of Montana's Uniform Commercial Code. Kapor alleged that, under the UCC, RJC owed her the \$13,000 surplus that it realized from the sale of the mobile home. RJC moved for summary judgment. The trial court granted RJC's motion. Kapor appealed to the Montana Supreme Court.

The state high court reversed the grant of summary judgment to RJC, remanded the case (lawyer-talk for "sent it back to the court that made the decision"), and directed the trial court to determine what surplus RJC owed to Kapor. The high court found that Article 9 prohibited Kapor from waiving her right to a surplus. RJC argued that the UCC ceased to apply to the parties' agreement when the parties signed the release. However, as the high court explained, the terms of the release did not end the parties' debtor-creditor relationship under Article 9. As a result, Kapor retained the right to a surplus.

RJC also argued that the release was a strict foreclosure, under which Kapor waived her right to a surplus and RJC waived its right to a deficiency. The high court disagreed. As the court explained, strict foreclosure requires a secured creditor to accept the collateral in full satisfaction of the debtor's obligations. However, by the terms of the release, RJC did not waive its right to a deficiency or indicate that Kapor had satisfied her obligations. As a result, the release did not satisfy the requirements for strict foreclosure under Article 9.

RJC could have avoided this result with better drafting. If the release expressly waived RJC's rights as well as Kapor's, then the court would have dismissed Kapor's complaint. Similarly, if the release plainly

provided that Kapor waived her rights under the UCC, then Kapor may have had a more difficult case to prove.

Don't ask a court to read between the lines, like RJC did. Instead, make sure that each of your consumer-facing documents clearly expresses the terms of the deal and the intentions of the parties.

Kapor v. RJC Investment, Inc., 2019 Mont. LEXIS 60 (Mont. February 12, 2019).

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