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is found to exist against the component part manufacturer, *Lambert* and *Hector Supply* may be rendered nugatory, and would allow purchasers a right of recovery against the previously non-liable retailer. In so doing balance will be added to the law of implied warranty in Florida.

STANLEY L. LESTER

RESCISSION OF CONTRACTS—UNILATERAL MISTAKE IN FLORIDA

The defendant-insurance company gave a check to the plaintiff in exchange for a release, following an automobile accident between the plaintiff and the defendant's insured. After this transaction the defendant learned that its insured had allowed its policy to lapse, and that it was not in force at the time of the accident. Therefore, the defendant returned the release to the plaintiff and stopped payment on its check. In this suit on the check, the defendant raised two defenses. First, that there was no consideration for the check. This defense was held to be without merit. The second defense was that the company was entitled to cancel the transaction because of its unilateral mistake of fact. On the plaintiff's motion for summary judgment, the lower court held for the defendant-insurance company. On appeal, *held*, reversed: unilateral mistake is not a ground for equitable relief in Florida. *Krasnek v. Maryland Cas. Co.*, 158 So.2d 580 (Fla. 3d Dist. 1963).

Florida's law with respect to unilateral mistake of fact is rather confused.[1] Cases concerned with such mistakes have occurred in three areas: cancellation of deeds, rescission of contracts, and rescission of bids. Since Florida courts have disregarded the factual distinctions between these types of cases, this paper will treat them together in chronological order.

The leading case on this subject in Florida is *Crosby v. Andrews*,[2] wherein it was held that a deed may be rescinded for a negligently made unilateral mistake of fact, where the negligence is not a breach of legal duty;[3] the mistake is material; and it is inequitable for the other party to benefit from the error.

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1. The confusion is not confined to the state of Florida. "The law of mistake as it actually works, as it is demonstrated in decisions, is not capable of being reduced to any broad single doctrine." 3 CORBIN, CONTRACTS 672 (1960).

2. 61 Fla. 554, 55 So. 57 (1911).

3. Concerning the negligence that caused the mistake in *Crosby*, Justice Shackleford, in his dissent, said:

> The alleged mistake would clearly seem to be not only unilateral, but entirely due to the culpable negligence and inexcusable carelessness of the complainants. If any one of them had only taken the necessary time and trouble to read the deed before executing it, the mistake . . . would have been at once discovered. All the facts were within reach of the complainants, and they had but to open

Sixteen years later, the *Crosby* rule was followed in the rescinding of another deed, even though it was recognized that in most states, rescission would not be permitted:

> In 4 Ruling Case Law, p. 506, it is said: . . . "Although it has been held that relief by way of cancellation will be granted for unilateral mistake of fact even though it be due to the negligence of the complainant, so long as the lack of due care on the latter's part does not amount to the breach of a legal duty, the authorities are practically unanimous in holding that the mistake must not result from the want of that degree of care and diligence which would be exercised by persons of reasonable prudence under the same circumstances . . . ."[4]

One year later, the Florida Supreme Court permitted rescission of a *contract* because of a unilateral mistake. This was apparently a case of first impression in Florida, since the court relied on cases from other states for the following proposition:

> In the absence of fraud, relief will be granted in equity on the ground of unilateral mistake, where the mistaken party offers to put the other party in *satus quo* [*sic*]; the theory being that the minds of the parties have never met in consummation of a trade under the actual existing conditions.[5]

This case was the basis of an annotation wherein it is stated that as a general rule, equity will grant relief from a unilateral mistake of fact by rescission of the contract when:

(1) the mistake relates to a material feature of the contract,
(2) the parties can be put in status quo,
(3) enforcement of the contract would be unconscionable,
(4) the mistake was not negligently made.[6]

The annotation mentions Florida's *Crosby* decision as an exception to the general rule which denies relief in the case of a negligent mistake.[7]

Crosby was relied on again to allow cancellation of a satisfaction of a mortgage, which had been given in the mistaken belief that the mortgage had been fully paid for. The Florida Supreme Court said:

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their eyes to see them. Could grosser carelessness or more culpable negligence be well imagined? Crosby v. Andrews, 61 Fla. 554, 585, 55 So. 57, 67 (1911).

The negligence in the instant case was no greater, and yet, relief was denied.

4. Langley v. Irons Land & Dev. Co., 94 Fla. 1010, 1018, 114 So. 769, 771 (1927). Today, this case seems to stand only for the proposition that a mistake, based upon a misrepresentation by the other party, will be relieved against. *E.g.*, Peace River Phosphate Mining Co. v. Thomas A. Green, Inc., 102 Fla. 370, 135 So. 828 (1931). A careful study of *Langley*, however, would seem to indicate that its holding is as broad as the holding in *Crosby*.

5. Hurst v. National Bond & Inv. Co., 96 Fla. 148, 150, 117 So. 792 (1928).

6. Annot., 59 A.L.R. 809 (1929).

7. *Id.* at 822.

> We are conscious of the rule that a mistake arising solely from the complaining party's negligence will not be relieved against in a court of equity, but this rule is qualified by the doctrine that the mistake must be wholly caused by the want of that care and diligence in the transaction which should be used by every person of reasonable prudence, and the absence of which would be a violation of legal duty . . . .[8]

After this decision, Florida began to recede from its position in *Crosby*. In a series of five cases, all but the first refused to allow rescission for unilateral mistakes, and yet, *Crosby* was never expressly overruled. Instead, it simply withered, as the general rule crept into opinions, sometimes disguised as dicta, sometimes as public policy, and sometimes as a new rule restricting the granting of rescission.

The first of these cases was *Moore v. Wesley E. Garrison, Inc.*,[9] where a tax deed was cancelled because of an error in the legal description of the property. The mistake was not made by one of the parties to the suit, as in previous cases, but by a public official. The facts clearly called for equitable relief, and it was granted, based upon the precedents already discussed. Then, in dictum, the court alluded to an encyclopedia's reference to the general rule denying rescission for negligent unilateral mistakes. This general rule was copied into the opinion,[10] and consequently, appeared in a headnote to the case. From this inconspicuous beginning arose the present confusion in the area with which this article is concerned.

In the next case, *Robertson v. Capital Fin. Corp.*,[11] cancellation of a deed was denied, and *Moore* was among the cases cited as precedent. The grantor thought his deed conveyed only twenty feet, while in reality it conveyed much more. The court refused to follow the Florida precedents for cancelling a deed in such circumstances, because the plaintiff had failed to point out exactly which twenty feet he believed he was conveying. Thus, specificity became a new requirement for relief from a negligently made unilateral mistake.

Robertson was followed by *Johnson v. Green*,[12] which denied cancellation because the plaintiff was held to have ratified the contract after discovering his error, and because he had an adequate remedy at law. Whether or not the mistake was negligently made was not a factor in the decision.

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8. Chappell v. Nalle, 119 Fla. 711, 714, 160 So. 867, 868 (1935).

9. 148 Fla. 653, 5 So.2d 259 (1942). The instant case cites this as precedent for the general rule in Florida.

10. *Id.* at 661, 5 So.2d at 262.

11. 40 So.2d 771 (Fla. 1949).

12. 54 So.2d 44 (Fla. 1951). The instant case relied on this decision as precedent for the rule that negligent unilateral mistakes will not be relieved against in Florida.

Public policy was the major factor in *Graham v. Clyde*,[13] the next case that denied rescission. This was the first of a series of cases involving public bids. In *Graham*, because of an error in manipulating his adding machine, a contractor submitted a bid lower than the one intended. The court said: "If the relief prayed for in this case is granted, then any clerical error, or error in calculation can be relieved against. We do not think this is the law. Unilateral errors are not generally relieved against."[14] As authority for this proposition, the court cited *Crosby* (which, however, held that the opposite was true).[15] The only way that the *Graham* decision can be rationalized is on the public policy principle that contractors should be held to a high degree of care in cases of public bidding. Also, the court noted, the plaintiff had failed to allege that his mistake concerned a material fact. Nevertheless, this decision represents a clear refusal of the court to relieve against a negligent unilateral mistake, in spite of compelling precedent to the contrary.

The next case[16] in the trend away from *Crosby* denied rescission for two reasons. The first reason was that the plaintiff had waived his right to equitable relief by not alleging that he had promptly acted to set the contract aside after learning of his error. The second reason was based on the dictum in *Moore*,[17] which, as already pointed out, was not the Florida rule, but nevertheless, was unfortunately included in the opinion.

At this point, just as the *Crosby* rule seemed to be totally eclipsed, the Florida Supreme Court, in *Wicker v. Board of Pub. Instruction of Dade County*,[18] which is a perfect parallel to the instant case, breathed new life into *Crosby*. A deed had been given in exchange for a prejudicial dismissal of two suits against the grantor (in the instant case, it was a check in exchange for a release), but because the grantor had failed to check the public records, he gave away more than he had intended. It was alleged that the transaction was made without adequate consideration and under a unilateral mistake of fact. These were the same points that were raised by the defendant in the instant case, but the results were quite different. In *Wicker*, despite the plaintiff's obvious negligence, rescission was granted in accordance with Florida's traditional position.[19]

Unfortunately, this case never has been, and probably never will be, used as a precedent. It is dead and buried—its tombstone reads, "Schools and School Districts ⚷ 65."

After this decision, the only cases concerning unilateral mistakes

13. 61 So.2d 656 (Fla. 1952).
14. *Id.* at 658.
15. See note 2 *supra* and accompanying text.
16. Rood Co. v. Board of Pub. Instruction, 102 So.2d 139 (Fla. 1958).
17. See text accompanying note 9 *supra*.
18. 106 So.2d 550 (Fla. 1958).
19. See discussion in text following note 2 *supra*.

have been decided by Florida's district courts of appeal. The First District has decided two cases dealing with errors in public bidding. The first of these expanded the rule in the *Graham* case and declared that such bids should be considered irrevocable because of public policy.[20] In the second case,[21] decided a year later, the same court receded from its earlier opinion and expressed dissatisfaction with the rule in *Graham* (which was a difficult case to accept in the first place). Thus, in the First District at least, relief will still be afforded for unilateral mistakes, even when negligently made.

The Second District seems to be floundering in the sea of confused rules that make up the law of mistake. In *O'Neill v. Broadview, Inc.*,[22] the court looked outside of Florida for a rule to apply, and refused to grant rescission of a contract to buy a house when the mistake complained of related to the direction that the house would face when completed. In a later case,[23] the court refused to cancel a deed when the mistake alleged was that the grantor did not think she was selling as much land as the deed conveyed. The decision stressed the fact that the land was sold in bulk with no mention of quantity being the essence of the contract. However, the court quoted from *Graham* to the effect that negligence was a bar to relief.[24]

The Third District has taken no firm stand on the issue, for while it has granted relief from a general release of liability because of a mistake of fact,[25] it denied that such a remedy existed in the instant case.

Thus, on the issue of unilateral mistake, Florida's courts are lined up as follows:

Supreme Court: for rescission
First District: for rescission
Second District: against rescission
Third District: for and against rescission

With the law in such a confused state, it is not surprising that the court in the instant case reached the wrong conclusion. The court's statement that unilateral mistake is not a ground for relief in Florida was

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20. Hotel China & Glass Co. v. Board of Pub. Instruction, 130 So.2d 78 (Fla. 1st Dist. 1961).

21. State Bd. of Control v. Clutter Constr. Corp., 139 So.2d 153 (Fla. 1st Dist. 1962).

22. 112 So.2d 280 (Fla. 2d Dist. 1959). It is primarily upon this case that the decision in the instant case is based.

23. Bridges v. Thomas, 118 So.2d 549 (Fla. 2d Dist. 1960).

24. "If one's mistake is due to his own negligence and lack of foresight and caution, in the absence of fraud or imposition, equity will not grant relief." *Id.* at 553. When decisions like this one are contrasted with *Crosby* (see text accompanying note 3 *supra*), the shift in the Florida position appears most dramatic.

25. Ormsby v. Ginolfi, 105 So.2d 272 (Fla. 3d Dist. 1958).

based upon the *O'Neill* case.[26] *O'Neill*, however, was based upon a legal encyclopedia and not upon Florida law.

The court also cited the *Moore*[27] and *Johnson*[28] cases, and was misled by the fact that the general rule denying relief for negligent mistakes has been allowed to entrench itself in our case law, in spite of the several decisions by the Florida Supreme Court which grant relief from negligent mistakes.

The court's decision was an unfortunate one since all of the elements of rescission were present. The parties had been put in status quo; the mistake related to a material matter; retention of the money by the plaintiff was unconscionable. Although the defendant's mistake was due to its negligence, that should have been no bar to relief in Florida.[29]

Had the defendant brought an action for restitution of the payment, perhaps the result would have been different.[30] Instead, it chose to do nothing until it had to defend itself in a suit on the check.

There seems to be sufficient conflict in this area among the districts for the supreme court to once again deal with the issue. A strong pronouncement as to exactly what the law in Florida is, with respect to unilateral mistakes, would be most welcome.

WARREN M. SALOMON

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26. O'Neill v. Broadview, Inc., *supra* note 22.
27. Moore v. Wesley E. Garrison, Inc., *supra* note 9.
28. Johnson v. Green, *supra* note 12.
29. See note 19 *supra* and accompanying text.
30. The court in the instant case said: "[W]e are not here concerned with a suit for restitution upon equitable principles. In such an action the determinative issue might well be whether after the receipt of the payment, circumstances so changed as to make it inequitable to require the payee to make full restitution." Krasnek v. Maryland Cas. Co., 158 So.2d 580, 582 (Fla. 3d Dist. 1963).