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Equitable Remedies for Contract Actions: Massachusetts

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A Q&A guide to understanding key equitable remedies in contract actions under Massachusetts common law. Specifically, this guide addresses injunctions, reformation, rescission, and specific performance.

Injunctions

1. What types of injunctions are available in your jurisdiction for breach of contract?

Under Massachusetts law, there are three types of injunctions that a party can seek for breach of contract. These are:

- A permanent injunction, which is a form of final equitable relief granted after a hearing on the merits. It restrains or mandates conduct permanently unless it is modified or dissolved. (See *Harris v. Comm'r of Correction*, 567 N.E.2d 906, 908-09 (Mass. 1991); *Great Woods, Inc. v. Clemmey*, 55 N.E.3d 425, 430 (Mass. 2016).)
- A preliminary injunction, which is a form of temporary equitable relief that preserves the status quo between parties pending resolution of the merits of the underlying action (Mass. R. Civ. P. 65(b); *A.R.S. Servs., Inc. v. Morse*, 2013 WL 2152181, at *9 (Mass. Super. Apr. 5, 2013)). A preliminary injunction lasts until the court orders, final judgment enters, or an appellate court modifies or vacates it in an interlocutory appeal (*Carlson v. Lawrence H. Oppenheim Co.*, 136 N.E.2d 205, 207 (Mass. 1956); *Judge Rotenberg Educ. Ctr. v. Comm'r of the Dep't of Mental Retardation*, 677 N.E.2d 153, 154 (Mass. 1997)).
- A temporary restraining order (TRO), which is a form of temporary equitable relief typically sought ex parte to maintain the status quo between parties pending a preliminary injunction hearing. An ex parte TRO lasts no more than ten days (subject to a court-ordered extension of at most ten days or an extension agreed to by the parties). During the ex parte TRO period, the applicant must apply for and have a hearing on a preliminary injunction. If the applicant does not proceed with its application for a preliminary injunction, the court dissolves the TRO. (Mass. R. Civ. P. 65(a); *Nogeiro v. Comm'r of Dep't of Transitional Assistance*, 893 N.E.2d 62, 65 (Mass. App. Ct. 2008).)

2. Please identify the legal standards that courts in your jurisdiction use in deciding whether to grant:

- Permanent injunctions.
- Preliminary injunctions.
- Temporary restraining orders.

Permanent Injunctions

When deciding whether to grant a permanent injunction under Massachusetts law, the court must determine that:

- The applicant prevailed on the merits.
- The applicant would suffer irreparable injury without the injunction.
- The balance of the harms favors the injunction.
- The injunction does not adversely affect the public interest.

(*Inner-Tite Corp. v. Brozowski*, 2010 WL 3038330, at *20 (Mass. Super. Apr. 14, 2010).)

Preliminary Injunctions

When deciding whether to grant a preliminary injunction under Massachusetts law, the applicant must show:

- A likelihood of success on the merits of the underlying action.

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- That it faces a substantial risk of suffering immediate and irreparable harm without the injunction.
- That, considering its likelihood of success on the merits, its risk of suffering irreparable harm outweighs any potential harm to the defendant caused by the injunction.

(*LeClair v. Town of Norwell*,719 N.E.2d 464, 468 (Mass. 1999); *Packaging Indus. Grp., Inc. v. Cheney*, 405 N.E.2d 106, 111-12 (Mass. 1980); *BNY Mellon, N.A. v. Schauer*, 2010 WL 3326965, at *7 (Mass. Super. May 14, 2010).)

When the government or a citizen acting as a private attorney general requests a preliminary injunction to enforce a statute or a declared policy of the legislature, the applicant need not show a risk of irreparable harm (*LeClair*, 719 N.E.2d at 468).

If the applicant seeks to enjoin governmental action, it must show that the injunction promotes public interest or, conversely, does not adversely affect the public (*Tri-Nel Mgmt., Inc. v. Bd. of Health of Barnstable*, 741 N.E.2d 37, 40, 46 (Mass. 2001); *Corr. Med. Servs., Inc. v. Dep't of Corr.*, 2007 WL 1977772, at *4 (Mass. Super. June 29, 2007)).

Temporary Restraining Orders

When deciding whether to grant a TRO under Massachusetts law, courts consider the same factors as when deciding a preliminary injunction (*G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health*, 2017 WL 3573659, at *4 (Mass. Super. July 25, 2017)).

When seeking an ex parte TRO, which is most common, the applicant must also clearly show by affidavit or verified complaint that **immediate** and irreparable injury will occur before the court can hear from the defendant in opposition (Mass. R. Civ. P. 65(a)).

Rescission

3. What are the elements of a rescission claim in your jurisdiction?

Rescission is an equitable remedy awarded at the discretion of the court. When a Massachusetts court considers rescission based on mistake, it applies a clear and convincing standard of proof. (*Browning-Ferris Indus., Inc. v. Casella Waste Mgmt. of Mass., Inc.*, 945 N.E.2d 964, 975 (Mass. App. Ct. 2011); *Covich v. Chambers*, 397 N.E.2d 1115, 1120 (Mass. App. Ct. 1979); *Keating v. Pappalardo*, 903 N.E.2d 607 (Mass. App. Ct. 2009) (unpublished opinion under Mass. App. Ct. Rule 1:28).)

Rescission requires a party to show that:

- A legally valid contract exists (*May v. SunTrust Mortg., Inc.*, 7 N.E.3d 1036, 1042 (Mass. 2014)).
- The defendant materially breached the contract by a complete failure of consideration or a repudiation that either amounts to an abrogation, goes to the essence, or takes away the foundation of the contract (*De Angelis v. Palladino*, 61 N.E.2d 117, 120 (Mass. 1945); *Worcester Heritage Soc., Inc. v. Trussell*, 577 N.E.2d 1009, 1010 (Mass. App. Ct. 1991); *Vincent v. Torrey*, 417 N.E.2d 41, 43 (Mass. App. Ct. 1981)).
- The defendant induced the plaintiff to enter the contract by fraud or misrepresentation regarding a material fact (*Kannavos v. Annino*, 247 N.E.2d 708, 713 (Mass. 1969); *Yorke v. Taylor*, 124 N.E.2d 912, 915 (Mass. 1955); *Lang v. Giraudo*, 40 N.E.2d 707, 710 (Mass. 1942); *McGrath v. C.T. Sherer Co.*, 195 N.E. 913, 925 (Mass. 1935); *Hills v. Chambers*, 2000 WL 1532335, at *9 (Mass. Super. Aug. 18, 2000), aff'd, 795 N.E.2d 615 (Mass. App. Ct. 2003)).
- The parties entered into the contract based on a mutual mistake of fact regarding a basic assumption underlying the contract that existed at the time of execution (*Covich v. Chambers*, 397 N.E.2d 1115, 1121 (Mass. App. Ct. 1979); but see *LaFleur v. C.C. Pierce Co.*, 496 N.E.2d 827, 831 (Mass. 1986) (holding no rescission based on mutual mistake if one party knowingly lacked knowledge of essential facts but still assumed the risk)).
- The contract must be set aside for some other reason to avoid injustice or grossly inequitable conduct (see *Howe v. Palmer*, 956 N.E.2d 249, 251 (Mass. App. Ct. 2011); *P.L.A.Y., Inc. v. NIKE, Inc.*, 1 F. Supp. 2d 60, 65 (D. Mass. 1998) (applying Massachusetts law)).
- The parties are in the status quo *ante* (that is, not retaining benefits received under the contract without restoring them to the other party) or the status quo *ante* can be restored (see *May*, 7 N.E.3d at 1042). If a party received benefits under a contract and later seeks rescission, it must return those benefits (see *Cherry v. Crispin*, 190 N.E.2d 93, 95 (Mass. 1963)). If restoration of the status quo *ante* cannot occur, the court can grant other equitable conditions to protect the parties' rights (see *May*, 7 N.E.3d at 1042).

The party seeking rescission bears the burden of pleading factual circumstances meriting relief (see *P.L.A.Y., Inc.*, 1 F. Supp. 2d at 65). For most rescission claims, the ordinary pleading standard stated in Mass. R. Civ. P. 8(a) applies and for claims based on fraud, the party must state with particularity the circumstances constituting fraud as required by Mass. R. Civ. P. 9(b).

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A party must bring an action for rescission with reasonable promptness (*Hills v. Chambers*, 2000 WL 1532335, at *9 (Mass. Super. Aug. 18, 2000), aff'd, 795 N.E.2d 615 (Mass. App. 2003)).

A party generally may not rescind a contract when a contract has been substantially performed (*Solomon v. Birger*, 477 N.E.2d 137, 141 (Mass. App. Ct. 1985); *P.L.A.Y., Inc.*, 1 F. Supp. 2d at 65).

4. How, if at all, does bringing a rescission claim affect a party's ability to bring a breach of contract claim in your jurisdiction?

Under Massachusetts law, a plaintiff suing for breach of contract may seek rescission as a remedy as an alternative to monetary damages (Mass. R. Civ. P. 8(a), (e)(2); *Damasceno v. Sampaio*, 132 N.E.3d 554, at *2 (Mass. App. Ct. 2019) (unpublished opinion under Mass. App. Ct. Rule 1:28); *Ann & Hope, Inc. v. Muratore*, 676 N.E.2d 478, 482 (Mass. App. Ct. 1997); see *Rosen v. Mayer*, 113 N.E. 217, 218 (Mass. 1916) (holding the plaintiff may waive the right to equitable relief by way of rescission and seek damages instead)).

5. How does a party rescind a contract in your jurisdiction?

Under Massachusetts law, parties can rescind their contract by agreement (*Puma v. Gordon*, 402 N.E.2d 110, 115 (Mass. App. Ct. 1980)). The parties should generally return or offer to return the property or value received under the contract (*Ann & Hope, Inc.*, 676 N.E.2d at 483). If a party refuses to rescind the contract, the other party may file suit if an appropriate cause of action exists (such as fraud or breach of contract) and seek rescission as the remedy (*Shepard v. Fin. Assocs. of Auburn, Inc.*, 316 N.E.2d 597, 605-06 (Mass. 1974).)

Parties can also rescind a contract by inference when their actions demonstrate a clear, positive, and unequivocal intent to rescind (*Martin v. Martin*, 2019 WL 4546584, at *5 (Mass. Super. Apr. 18, 2019)).

A plaintiff need not notify the other party of its intent to rescind the contract to remedy a wrong. It may give the defendant notice of its intention to rescind the contract by filing a complaint within a reasonable time after it discovers the grounds for rescission (*Limoli*, 265 N.E.2d at 95; *Hills*, 2000 WL 1532335 at *9). The plaintiff must typically:

- Restore or offer to restore the status quo *ante* (that is, restore or offer to restore all consideration and value received under the contract) (*Ann & Hope, Inc.*, 676 N.E.2d at 483). If restoration is not possible, a court can grant rescission under equitable conditions designed to protect the rights of the non-rescinding party (*Walsh v. Chestnut Hill Bank & Tr. Co.*, 607 N.E.2d 737, 741 (1993)).
- Have clean hands, meaning that the plaintiff did not engage in its own inequitable conduct (*Turner v. Guy*, 311 N.E.2d 921, 924 (Mass. App. Ct. 1974)).

6. What is the primary relief available to a party seeking rescission in your jurisdiction?

The primary relief available for rescission under Massachusetts law is restoration of the status quo *ante*. A court restores the status quo *ante* by placing the parties, as best as possible, in their positions before the contract. This typically occurs by restoring the property or consideration exchanged. (*Cherry*, 190 N.E.2d at 95; *Ann & Hope, Inc.*, 676 N.E.2d at 483; *Zimmerman v. Kent*, 575 N.E.2d 70, 77 (Mass. App. Ct. 1991).)

7. What damages, if any, are available when a party seeks rescission in your jurisdiction?

Under Massachusetts law, a plaintiff suing for a breach of contract may generally obtain legal damages (also called actual damages) or rescission, but not both (*Coggins*, 492 N.E.2d at 1121; *Roche v. Gryzmish*, 179 N.E. 215, 216 (Mass. 1931)).

When complete restoration of the status quo *ante* under rescission is impossible, the court can allow rescission damages, which are equitable in nature and constitute the value of property or consideration under the contract lost or not capable of restoration. (*Ann & Hope, Inc.*, 676 N.E.2d at 482; see *May*, 7 N.E.3d at 1042 (holding when complete restoration is not feasible, the court may order rescission using other equitable conditions)).

A party seeking rescission, however, may also obtain legal damages for losses suffered when the interruption in the status quo *ante* is caused by the circumstances giving rise to the rescission (see *Schwartz v. Rose*, 634 N.E.2d 105, 109 (Mass. 1994) (holding legal damages award for the loss of use of purchase money proper in an action for rescission based on violation of M.G.L. c. 93A, § 2)).

8. What happens to the contract after the court grants rescission in your jurisdiction?

Under Massachusetts law, rescission:

- Renders the contract void and releases the parties from all associated rights and liabilities.

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- Restores the parties to their respective positions as they were before the contract.

(See *Schwartz*, 634 N.E.2d at 109; *Walsh*, 607 N.E.2d at 741; *Bellefeuille v. Medeiros*, 139 N.E.2d 413, 415 (Mass. 1957).)

9. What are the most common defenses to a rescission claim in your jurisdiction?

Common defenses to a rescission claim under Massachusetts law include:

- Rescission is improper because the plaintiff failed to seek rescission with reasonable promptness (see *McNulty v. Whitney*, 174 N.E. 121, 124 (Mass. 1930); *Solomon,* 477 N.E.2d at 141; *Elias Bros. Rests v. Acorn Enterprises, Inc.*, 831 F. Supp. 920, 927 (D. Mass. 1993) (applying Massachusetts law)).
- The plaintiff waived the right to rescission by continuing to retain benefits or consideration received under the contract (*Walsh*, 607 N.E.2d at 741; *Labagnara v. Kane Furniture Co.*, 193 N.E. 578, 580 (Mass. 1935)).
- The plaintiff's conduct was inequitable (*Turner*, 311 N.E.2d at 924).
- The contract was valid and defendant's conduct under it was not inequitable and any harm to the party seeking rescission did not upset the basis for the contract (*Browning-Ferris Indus., Inc.*, 945 N.E.2d at 975); *Richman v. Seaberg*, 231 N.E.2d 380, 381 (Mass. 1967)).
- Other, more appropriate remedies exist to make the plaintiff whole, such as money damages (*Budryk v. Barros*, 838 N.E.2d 622, at *2 (Mass. App. Ct. 2005) (unpublished opinion under Mass. App. Ct. Rule 1:28) (holding the court in its discretion may decline rescission and award money damages if they adequately address defendant's wrong)).
- The property that is the subject of the contract was sold to a bona fide purchaser (*Demoulas v. Demoulas*, 703 N.E.2d 1149, 1169 (Mass. 1998); *Brown v. Accredited Home Lenders, Inc.*, 2009 WL 6297594, at *3 (Mass. Super. Oct. 20, 2009)).

10. How, if at all, can a defendant assert rescission in your jurisdiction?

Under Massachusetts law, a defendant responding to a breach of contract action may assert rescission as a counterclaim or as an affirmative defense (*Lao v. C.R.T.R., Inc.*, 2016 WL 5596104, at *1 (Mass. App. Ct. Sept. 29, 2016) (unpublished opinion under Mass. App. Ct. Rule 1:28) (acknowledging that rescission can be raised as an affirmative defense); see *O'Marah v. Walkey*, 927 N.E.2d 530, at *1 (Mass. App. Ct. 2010) (unpublished opinion under Mass. App. Ct. Rule 1:28); *Levy v. Bendetson*, 379 N.E.2d 1121, 1122 (Mass. App. Ct. 1978)).

When asserting rescission as an affirmative defense, a defendant must specifically plead it in writing, otherwise the defendant may waive the defense (Mass. R. Civ. P. 12(b); *Lao*, 2016 WL 5596104, at *1 (holding party's failure to plead rescission as an affirmative defense at any time before trial was a waiver of the defense)).

11. What is the statute of limitations for a rescission claim and when does the statute of limitations begin to run in your jurisdiction?

Under Massachusetts law and unless a statute provides otherwise:

- A six-year statute of limitations period typically applies to claims for rescission arising out of a contract claim. The period begins to run at the time of breach. (M.G.L. c. 260, § 2; *City of New Bedford v. Lloyd Inv. Assocs., Inc.*, 292 N.E.2d 688, 691-92 (Mass. 1973) (holding equitable remedies for breach of contract are governed by the same statute of limitations as remedies at law).)
- A three-year statute of limitations typically applies to claims for rescission based on an underlying claim sounding in tort, such as misrepresentation, and generally begins to run at the time of injury (*Selig v. Tribe*, 2012 WL 2913517, at *2 (Mass. Super. July 3, 2012); *Greater Bos. Legal Servs. v. Haddad*, 2000 WL 1474516, at *29 n.51 (Mass. Super. June 28, 2000); M.G.L. c. 260, §2A).

(See *Passatempo v. McMenimen*, 960 N.E.2d 275, 292 (Mass. 2012) (holding general statute of limitations must yield to statute of limitations specified by statute).)

In cases when the plaintiff did not know and could not reasonably have known that the defendant harmed it, the discovery rule can apply. Under the discovery rule, the statute of limitations does not begin to run for a cause of action based on an inherently unknowable wrong until the plaintiff discovers or with reasonable diligence should have discovered that it suffered or may have suffered harm by the defendant's conduct. (*Int'l Mobiles Corp. v. Corroon & Black/Fairfield & Ellis, Inc.*, 560 N.E.2d 122, 126 (Mass. App. Ct. 1990) (holding discovery rule applies to a breach of contract action); see *Dep't of Revenue of Com. v. Mailhouse, Inc.*, 1997 WL 573212, at *4 (Mass. Super.

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Aug. 5, 1997) (considering discovery rule for fraudulent misrepresentation claim seeking rescission of settlement agreement).)

If the defendant's breach of its fiduciary duty to the plaintiff serves as the basis for the plaintiff's claim, the statute of limitations tolls to the time when the plaintiff had actual knowledge of the harm (*Demoulas v. Demoulas Super Markets, Inc.*, 677 N.E.2d 159, 174 (Mass. 1997)).

Reformation

12. What are the elements of a reformation claim in your jurisdiction?

A party seeking to reform a contract under Massachusetts law must typically show that:

- The parties reached an agreement with clear and explicit terms.
- The parties reduced the agreement to writing.
- The writing does not express the actual understanding reached by and the intent of the parties concerning a material fact because of, for example:
  - a fraud;
  - a mutual mistake in reducing the agreement to writing;
  - a unilateral mistake by one party that the other party knew of or had reason to know of;
  - a scrivener's error;
  - an accident;
  - an illegality; or
  - an inequitable wrongdoing.

(*Beaton v. Land Court*, 326 N.E.2d 302, 307 (Mass. 1975); *Mates v. Penn Mut. Life Ins. Co.*, 55 N.E.2d 770, 771 (Mass. 1944); *Demoulas*, 703 N.E.2d at 1169; *Nissan Autos. Of Marlborough, Inc. v. Glick*, 816 N.E.2d 161, 165 (Mass. App. Ct. 2004); *Torrao v. Cox*, 525 N.E.2d 1349, 1352 (Mass. App. Ct. 1988); see *Winston v. City of Pittsfield*, 108 N.E. 1038, 1040 (Mass. 1915) (holding that, to reform a written instrument based on mistake, the parties must clearly establish their intent).)

A defendant pleading reformation based on fraud, mistake, duress, or undue influence, must plead with particularity the facts underlying the claim (Mass. R. Civ. P 9(b); *Polaroid Corp. v. Travelers Indem. Co.*, 610 N.E.2d 912, 917 (Mass. 1993); *Glick*, 816 N.E.2d at 165).

A party seeking reformation of a contract based on mistake must ultimately present full, clear, and decisive proof that a mistake occurred (*Polaroid Corp.*, 610 N.E.2d at 917; *McGovern v. McGovern*, 933 N.E.2d 980, 989 (Mass. App. Ct. 2010)).

13. How, if at all, does bringing a reformation claim affect a party's ability to bring a breach of contract claim in your jurisdiction?

Under Massachusetts law, the plaintiff suing for breach of contract may seek reformation as a remedy in the alternative to monetary damages (Mass. R. Civ. P. 8(a), (e)(2); see *Aquino v. United Prop. & Cas. Co.*, 143 N.E.3d 379, 385 (Mass. 2020); *Colony v. McMann*, 909 N.E.2d 60 (Mass. App. Ct. 2009) (unpublished opinion under Mass. App. Ct. Rule 1:28)).

14. What relief is available to a party seeking reformation in your jurisdiction?

Under Massachusetts law, the relief available to a party seeking reformation is a corrected contract that restates the terms of the written contract to align with the parties' actual agreement (*Pond v. Pond*, 678 N.E.2d 1321, 1323 (Mass. 1997); *Torrao*, 525 N.E.2d at 1352). However, a court may not reform a contract if doing so would harm an innocent party, such as a bona fide purchaser (*Buk Lhu v. Dignoti*, 727 N.E.2d 73, 75 (Mass. 2000)).

15. What damages, if any, are available when a party seeks reformation in your jurisdiction?

Under Massachusetts law, damages are not typically available to a party that seeks only to reform a contract. However, a party seeking damages for breach of contract as well as reformation may obtain both under certain circumstances, such as when contract damages may flow from an insurer's breach. (See *Germinara v. People's Comprehensive Mortg., LLC*, 157 N.E.3d 111, at *1 (2020) (unpublished opinion under M.A.C. Rule 23.0) (upholding reformation of loan and award of damages for breach of that loan agreement); see also *McGrew v. Kraft Patriots, Inc.*, 1995 WL 810346, at *2 (Mass. Super. Jan. 20, 1995).)

16. What happens to a contract after it is reformed in your jurisdiction?

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If a Massachusetts court orders reformation, the contract remains in effect, but in modified form to accurately reflect the parties' intended agreement (*Polaroid Corp.*, 610 N.E.2d at 917-19; *Caron v. Horace Mann Ins. Co.*, 993 N.E.2d 708, 711 (Mass. 2013)).

17. What are the most common defenses to a reformation claim in your jurisdiction?

The most common defenses to a reformation under Massachusetts law are that:

- The contract at issue is unenforceable because of a technical defect, fraud, mutual mistake, duress, or undue influence and should be rescinded or voided instead (*Spencer v. Slavin*, 2011 WL 285147, at *10 (Mass. Land Ct. Jan. 18, 2011)).
- The contract violates the statute of frauds (*Wareham Sav. Bank v. Partridge*, 56 N.E.2d 867, 868 (Mass. 1944); *CAB Realty, LLC v. Early*, 2018 WL 1915972, at *5 n.18 (Mass. Land Ct. Apr. 23, 2018)).
- The contract accurately reflects the agreement of the parties (see *Ward v. Ward*, 874 N.E.2d 433, 437 (Mass. App. Ct. 2007) (holding parties are bound to the legal effects of what they have agreed and cannot set the agreement aside because they did not understand the legal effect of its language)).
- The mistake is unilateral and the other party did not know or have reason to know of the mistake (*Glick*, 816 N.E.2d at 165-66).
- The property that is the subject of the contract was conveyed to a bona fide purchaser (*Dignoti*, 727 N.E.2d at 75).
- The claim is barred by the doctrine of laches (*Polaroid Corp.*, 610 N.E.2d at 919 (holding a party may assert laches as affirmative defense to reformation if undue delay in bringing claim caused injury to the other party)).

18. How, if at all, can a defendant assert reformation in your jurisdiction?

Under Massachusetts law, a defendant can assert reformation as a counterclaim (see *Polaroid Corp.*, 610 N.E.2d at 917). Defendants often plead reformation as a counterclaim to argue that the contractual provision that the defendant allegedly breached was never intended by the parties and, that if the court reforms the contract to reflect the parties' true intent, the defendant is not in breach of the contract (*Franz v. Franz*, 32 N.E.2d 205, 208 (Mass. 1941); *Bd. Of Managers of Sea Pines Condo. 1 Ass'n v. Mostyn*, 2008 WL 191280, at *10-11 (Mass. Land Ct. Jan. 24, 2008)).

19. What is the statute of limitations for a reformation claim and when does it begin to run in your jurisdiction?

A six-year statute of limitations period typically applies to contract-based causes of action, beginning from the time of breach, unless a statute provides otherwise (M.G.L. c. 260, § 2; *City of New Bedford*, 292 N.E.2d at 692 (holding equitable remedies are governed by the same statute of limitations as remedies at law); *CBK Brook Ltd. P'ship v. Berlin*, 2004 WL 870122, at *20 (Mass. Land Ct. Apr. 23, 2004), *aff'd sub nom. CBK Brook House I Ltd. P'ship v. Berlin*, 834 N.E.2d 1251 (Mass. App. Ct. 2005)).

A three-year statute of limitations period typically applies to tort-based underlying causes of action, beginning from the time of injury, unless a statute provides otherwise. *Benotti v. Gill*, 1996 WL 1186956, at *5 (Mass. Super. Nov. 18, 1996) (ruling plaintiff was unable to obtain the six-year contract limitations period for fraud claims by seeking reformation of deed because reformation is the remedy not the cause of action).

In cases when the plaintiff did not know and could not reasonably have known that the defendant harmed it, the discovery rule can apply. Under the discovery rule, the statute of limitations does not begin to run for a cause of action based on an inherently unknowable wrong until the plaintiff discovers or with reasonable diligence should have discovered that it suffered or may have suffered harm by the defendant's conduct. (*Int'l Mobiles Corp.*, 560 N.E.2d at 126 (holding discovery rule applies to a breach of contract action).)

For example, the statute of limitations on a claim seeking reformation based on a mistake begins to run when a party discovers or in the exercise of reasonable care should have discovered the mistake (*City of New Bedford*, 292 N.E.2d at 692-93; *Stoneham Five Cents Sav. Bank v. Johnson*, 3 N.E.2d 730, 732 (Mass. 1936); *CBK Brook Ltd. P'ship*, 2004 WL 870122, at *20).

If the defendant's breach of its fiduciary duty to the plaintiff serves as the basis for the plaintiff's claim, the statute of limitations tolls to the time when the plaintiff had actual knowledge of the harm (*Demoulas*, 677 N.E.2d at 174).

A 20-year statute of limitations period applies for an action seeking reformation related to the recovery of land (M.G.L. c. 260, § 21; *Ambrosini v. Cawley*, 2008 WL 8719454, at *3 (Mass. Land Ct. July 3, 2008)).

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Specific Performance

20. What are the elements of a specific performance claim in your jurisdiction?

The elements of specific performance under Massachusetts law are:

- The plaintiff and defendant have an enforceable contract.
- Performance under the contract is due.
- The plaintiff is not in breach and performed or is ready, willing, and able to perform its contractual obligations.
- The defendant breached the contract.
- The breach harmed the plaintiff.

(*Hurtubise v. McPherson*, 951 N.E.2d 994, 997-98 (Mass. App. Ct. 2011); *Hammermill Dev. Corp. v. Blueberry Dev. Tr.*, 2000 WL 782924, at *2 (Mass. Super. Mar. 28, 2000); *282 Shore Drive Realty Tr. V. Wilensky*, 2018 WL 1787352, at *3 (Mass. Land Ct. Apr. 12, 2018).)

The party seeking specific performance cannot have acted unjustly (that is, inequitably) in the underlying transaction (*Hawthorne's, Inc. v. Warrenton Realty, Inc.*, 606 N.E.2d 908, 913 (Mass. 1993); *Galipault v. Wash Rock Invs., LLC*, 836 N.E.2d 1123, 1134 (Mass. App. Ct. 2005)).

Massachusetts courts typically consider specific performance in disputes involving contracts to convey land (M.G.L. c. 214, § 1A (allowing courts to award specific performance remedy if it is practicable, even if plaintiff has remedy in damages); *Greenfield Country Estates Tenants Ass'n, Inc. v. Deep,* 666 N.E.2d 988, 993 (Mass. 1996); see *Pierce v. Clark*, 851 N.E.2d 450, 453 (Mass. App. Ct. 2006) (finding money damages usually are inadequate to give the aggrieved party the benefit of their bargain in contracts involving land conveyance)).

21. How, if at all, does seeking specific performance affect a party's ability to bring a breach of contract claim seeking damages in your jurisdiction?

Specific performance and money damages are alternative remedies for a breach of contract. Specific performance seeks to give the aggrieved party the benefit of its contract where money damages would be inadequate or inappropriate (*Greenfield Country Estates Tenants Ass'n, Inc.*, 666 N.E.2d at 993).

The aggrieved party may bring an action for both money damages and specific performance as alternative remedies for a breach, but ordinarily cannot receive both remedies (*K.G.M. Custom Homes, Inc. v. Prosky*, 10 N.E.3d 117, 125 (Mass. 2014); *Perroncello v. Donahue*, 859 N.E.2d 827, 831 (Mass. 2007)). The plaintiff may continue to pursue other, related claims for money damages after the court orders specific performance on a contract claim (*Perroncello*, 859 N.E.2d at 833).

22. What relief may be granted to a party seeking specific performance in your jurisdiction?

The relief available to a party seeking specific performance is a court order directing the party in breach to fulfill its contractual obligations (*Normandin v. Eastland Partners, Inc.*, 862 N.E.2d 402, 414 (Mass. App. Ct. 2007) (noting that specific performance is an extraordinary remedy and should not be any more intrusive than necessary to protect a party's rights)).

23. What damages, if any, are available when a party seeks specific performance in your jurisdiction?

Massachusetts courts generally do not award both specific performance and money damages in the same action for the same breach (*Prosky*, 10 N.E.3d at 125; *Donahue*, 859 N.E.2d at 831).

Under certain circumstances, courts may award consequential or incidental damages when necessary to place the parties in the same position they would be in if they fully performed, including for example:

- Lost profits.
- Damages resulting from delayed performance.

(*Prosky,* 10 N.E.3d at 127; *Motsis v. Ming's Supermarket, Inc.*, 134 N.E.3d 610, 617 (Mass. App. Ct. 2019), *rev. denied*, 141 N.E.3d 99 (Mass. 2020); *Clark*, 851 N.E.2d at 454.)

24. What are the most common defenses to a specific performance claim in your jurisdiction?

Under Massachusetts law, the most common defenses to a claim seeking specific performance are that:

- An adequate remedy at law exists (*Quinn*, 871 N.E.2d at 526).

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- The party seeking specific performance is not ready, willing, and able to perform or has not offered to do so (*Coviello v. Richardson*, 924 N.E.2d 761, 767 (Mass. App. Ct. 2010); *Traboini v. Kirk*, 2018 WL 2452818, at *3 (Mass. Land Ct. May 31, 2018)).
- The plaintiff acted inequitably (*Galipault*, 836 N.E.2d at 1134; *Lundgren v. Gray*, 671 N.E.2d 967, 972 (Mass. App. Ct. 1996)).
- The contract terms are indefinite or too vague or ambiguous to support an award of specific performance (*Caggiano v. Marchegiano*, 99 N.E.2d 861, 865 (Mass. 1951); *Lima v. Lima*, 570 N.E.2d 158, 162 (Mass. App. Ct. 1991)).
- Specific performance would be inequitable or impose an undue hardship on the other party (*Deep*, 666 N.E.2d at 994; *Freedman v. Walsh*, 119 N.E.2d 419, 423 (Mass. 1954)).

25. How, if at all, can a defendant assert specific performance in your jurisdiction?

Under Massachusetts law, a defendant may assert a counterclaim seeking specific performance. A counterclaim for specific performance may be appropriate where, for example, the plaintiff violates the terms of its lease with its tenant. A defendant believing that the agreement is valid and enforceable may assert a counterclaim requesting specific performance. (*Motsis*, 134 N.E.3d at 614-17; *Gatta v. Daly*, 2003 WL 734434, at *1, 7 (Mass. Super. Jan. 24, 2003).)

26. What is the statute of limitations for a claim seeking specific performance and when does the statute of limitations begin to run in your jurisdiction?

Under Massachusetts law, the statute of limitations for bringing a claim seeking specific performance for breach of contract is six years from the date the cause of action accrues. The claim begins to run on the date the breach occurs (M.G.L. c. 260, § 2; *Barber v. Fox,* 632 N.E.2d 1246, 1248 (Mass. App. Ct. 1994)). Counsel should be aware that the statute of limitations for contracts made under seal is 20 years (M.G.L. c. 260, § 1; *City of Bos. v. Roxbury Action Program, Inc.*, 862 N.E.2d 763, 768 (Mass. App. Ct. 2007)).

In cases when the plaintiff did not know and could not reasonably have known that the defendant harmed it, the discovery rule can apply. Under the discovery rule, the statute of limitations does not begin to run for a cause of action based on an inherently unknowable wrong until the plaintiff discovers or with reasonable diligence should have discovered that it suffered or may have suffered harm by the defendant's conduct. (*Int'l Mobiles Corp.*, 560 N.E.2d at 126 (holding discovery rule applies to a breach of contract action).)

If the defendant's breach of its fiduciary duty to the plaintiff serves as the basis for the plaintiff's claim, the statute of limitations tolls to the time when the plaintiff had actual knowledge of the harm (*Demoulas*, 677 N.E.2d at 174).

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