CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Contractors, Subcontractors, Trades & Suppliers

J. NORMAN STARK, ATTORNEY and REGISTERED ARCHITECT

JURIS DOCTOR, B. ARCHITECTURE, B.F.A.

The Stark Building • 1310 East 49th Street • Cleveland, Ohio 44114-3803 USA

Tel.: (216) 426-8400 • Fax: (216) 426-8411 • E-Mail: www.Normstark@aol.com

In Florida • 6500 Midnight Pass Rd. #105 • Sarasota, FL 34242 • (941) 349-2061•

Homepage: www.Jnormanstark.com

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CONTRACT MISTAKES

To prove the existence of a contract, a party must establish the essential elements of a contract: an offer, an acceptance, a meeting of the minds, an exchange of consideration, and certainty as to the essential terms of the contract. * * * 'In **order** to declare the existence of a contract, both parties to the contract must consent to its terms ** * there must be a meeting of the minds of both parties * * * and the contract must be definite and certain.' * * * In **order** to prove the existence of a written contract, the essential elements of the contract must be part of a writing, or part of multiple writings that are part of the same contractual transaction." *Juhasz v. Costanzo* (2001), 144 Ohio App.3d 756, 762. (Citations omitted.)

" 'Typically, a price quotation is considered an invitation for an offer, rather than an offer to form a binding contract.' * * * [A] buyer's **purchase** agreement submitted in response to a price quotation is usually deemed the offer." *Dyno Constr. Co. v. McWane, Inc.* (C.A.6, 1999), 198 F.3d 567, 572 (Citations omitted.) See, also, *TLG Electronics, Inc. v. Newcome Corp.* (Mar. 5, 2002), Franklin App. No. 01AP-821. "However, a price quotation may suffice for an offer if it is sufficiently detailed and it 'reasonably appear[s] from the price quotation that assent to that quotation is all that is needed to ripen the offer into a contract.' " *Dyno Constr. Co.*, quoting *Quaker State Mushroom Co. v. Dominick's Finer Foods, Inc., of Illinois* (N.D.Ill. 1986), 635 F.Supp. 1281, 1284.

"Mutual mistake is the mistake of all parties to the contract. Reformation is available where it is shown that the written instrument does not express the true agreement entered into between the contracting parties by reason of mistake common to them; in such a case equity affords the restorative remedy of reformation in **order** to make the writing conform to the real intention of the parties." *Weiner v. Kopp* (June 25, 1997), Hamilton App. No. C-960611, quoting *Wagner v. Nat'l Fire Ins. Co.* (1937), 132 Ohio St. 405, 412. See, also, *Shank v. Porter* (Mar. 14, 2002), Franklin App. No. 01AP-838; Restatement of the Law 2d, Contracts (1981) 385, Mistake, Section 152(1) (determining a contract may be voidable by adversely affected party where there is a mistake of both parties as to a basic assumption that has a material effect on the agreed exchange of performances, unless adversely affected party bears the risk of the mistake); *Reilley v. Richards* (1994), 69 Ohio St.3d 352, 353, reconsideration denied, 69 Ohio St.3d 1483; *Music v. Sash & Storm, Inc.* (Mar. 28, 2002), Allen App. No. 1-01-142 ("Reformation of a contract based on mutual mistake is proper when the parties made the same mistake and understood the contract as the party seeking reformation alleges").

L.B. Trucking Co., Inc. v. C.J. Mahan Construction Co., No. 01AP-1240, 02-LW-6311 (10th).

(To be continued in the next issue.)

There's only one thing money won't buy, and that is poverty.

~ Joe E. Lewis, Comedian ~

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts of Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Claims, Project Management and Litigation Expert Support. He maintains his office in Cleveland, Ohio.