

A Brief Discussion on Fraudulent and Non-Fraudulent Misrepresentation

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ABSTRACT:

False information or deceptive assertions that are sent during the creation or execution of a contract fall under the categories of fraudulent and non-fraudulent misrepresentation, which are separate concepts in contract law. The ramifications and legal issues of both types of deception are examined in this abstract. The research looks at the features and traits of fraudulent misrepresentation, such as the deliberate or careless spread of false information, the motive to mislead, and the loss or damages experienced by the innocent person as a consequence. It explores the legal options open to victims of fraudulent misrepresentation, including cancellation, monetary compensation, and possible sanctions against the fraudster. The abstract also examines non-fraudulent misrepresentation, which includes harmless or careless lies given to another party during contract discussions. It examines the legal criteria used to determine how a non-fraudulent misrepresentation affects a contract's capacity to be enforced, including the idea of materiality and the idea of reasonable reliance.

KEYWORDS:

Rescission Period, Fraudulent Misrepresentation, Negligent Misrepresentation, Non-Fraudulent Misrepresentation.

I. INTRODUCTION

A key idea in contract law is misrepresentation, which is concerned with the exchange of false or deceptive information between parties during the establishment or execution of a contract. When one party misrepresents a significant fact, withholds a crucial fact, or gives the other party erroneous information to persuade them to enter into a contract, this happens. Fraudulent and non-fraudulent misrepresentations are the two basic categories under which misrepresentation may be divided. The deliberate or negligent broadcast of false information with the aim of misleading the other party is referred to as fraudulent misrepresentation. This might include telling lies, delivering forgeries, or purposefully leaving out crucial details. A severe offence and often seen as a kind of dishonesty or fraud is fraudulent misrepresentation. When the innocent party learns of the false misrepresentation, they have the right to cancel the agreement and pursue remedies like damages [1], [2].

When a party accidentally makes a misleading statement or misrepresents a crucial fact, this is referred to as non-fraudulent misrepresentation, also known as innocent misrepresentation. Contrary to false misrepresentation, there is no malicious intent. Innocent errors, misunderstandings, or reliance on false information may result in non-fraudulent misrepresentation. Depending on the jurisdiction and the circumstances surrounding the misrepresentation, the innocent party may be entitled to terminate the contract, pursue remedies, or demand damages in such situations [3], [4].

As it impacts the legal repercussions and potential remedies for the aggrieved party, the difference between fraudulent and non-fraudulent misrepresentation is essential. Due of the purposeful deceit component, fraudulent misrepresentation imposes more severe responsibilities on the misrepresenter. On the other hand, non-fraudulent misrepresentation can be seen as the outcome of carelessness or a genuine error. Both contractual parties must be able to distinguish between fraudulent and non-fraudulent misrepresentation. It supports openness and honesty in contractual interactions and helps in defining the limits of contractual duties. To prevent possible disagreements and legal repercussions, parties should behave with caution, due diligence, and good faith when providing information and confirm the veracity of assertions made during contract discussions [5], [6].

II. DISCUSSION

Fraudulent misrepresentation

The House of Lords case *Derry v. Peek* (1889), which stated that a fraudulent misrepresentation was a false statement made "knowing, without belief in its truth, or recklessly as to whether it be true or false," is where the term "fraudulent misrepresentation" first appeared. A statement that is fraudulent might be defined as one that the creator does not really believe to be truthful.

Because fraud is taken severely by the courts, they will search for evidence that goes beyond simple negligence or carelessness. Since the proof of fraud involves a state of mind, it is often exceedingly difficult to establish. In reality, the criminal standard of evidence (beyond a reasonable doubt) was affirmed in the case of *Ahmed v. Addy* (2004). Two remedies are possible if false misrepresentation is established:

- a. The plaintiff may make a damage claim. Damages for fraud are computed significantly differently than they are for contract violation since they are based on the tort of deception rather than a purely contractual remedy. The goal of contract damages is to put the plaintiff in the position he would have been in if the contract had been completely carried out, while tort damages seek to put the plaintiff back in the position he would have been in if the tort (in this case, the fraud) hadn't been committed. Additionally, the plaintiff has the right to request that any property that has been transferred back to him.
- b. The agreement may be cancelled (see below). This entails returning any assets (including money) transferred throughout the contract and taking the initial position. Since rescission is an equitable remedy, it is prohibited in certain situations where injustice would result (see rescission limitations below). Note that if the innocent party is sued for rescission, a false misrepresentation may be used as a defence. They may decline to provide any products or advantages received under the terms of the contract. This may happen, for instance, if one party used false statements to get insurance coverage (remember, these contracts are *uberrimae fidei*). Any premium payments made to the insurance provider are theirs to retain in the event that the contract is cancelled.

A sort of dishonest communication or statement made by one party to another during the creation of a contract is called a fraudulent misrepresentation. In order to persuade the other party to sign the contract, it happens when one party deliberately makes false assertions, withholds important information, or behaves in a misleading manner. In contract law, fraudulent misrepresentation is a severe offence that may have substantial legal repercussions [7], [8]. The following are the main components and effects of false misrepresentation:

Important Components of Fraudulent Representation:

False Representation: The party must exaggerate a fact in some way. If there is a need to reveal particular facts, this might take the shape of a spoken or written declaration, behaviour, or simply silence.

Knowledge of Falsity: The person making the claim must be aware that it's untrue or careless about whether it's true or not.

Deceitful intent: False statements must be made with the goal to mislead or persuade the other person to depend on them.

Materiality: The misleading statement must be substantial, which means it must have an impact on the other party's choice to engage into the contract.

Reliance: When making the decision to enter into the contract, the party receiving the misleading representation must have a reasonable basis to rely on it [9], [10].

Legal Implications of Fraudulent Misrepresentation:

- a. **Contract Voidable:** The innocent party may be entitled to cancel the contract or have it voidable where fraudulent misrepresentation has place. This indicates that they have the option to revoke the contract and return to the pre-agreement situation.

- b. **Damages:** If the innocent person suffers losses as a consequence of the false misrepresentation, they may be entitled to compensation. This could involve harms like monetary losses and other direct effects of relying on erroneous information.
- c. **Rescission Period:** The innocent party often has a limited window of time in which to assert their claim to void the agreement due to false misrepresentation. After that time has passed, the agreement could be legally binding.
- d. **Criminal as well as civil liability:** Fraudulent misrepresentation may result in civil liability, in which the victimised party sues for damages. If the fraudulent activity fits the requirements for criminal fraud under the relevant legislation, it may sometimes also lead to criminal culpability.

It might be difficult to prove a false misrepresentation since it calls for proving the components of purpose, knowledge, materiality, and reasonable reliance. During contract negotiations, it is critical for parties to use caution when making assertions and to confirm the veracity of any information given by the other side. To preserve one's rights and pursue the best remedies, it is crucial to swiftly obtain legal counsel in situations where fraud or misrepresentation is suspected.

Error in the Law

Inaccurate legal conclusions can result in relief, but they seldom do. If a statement of fact is incorrect, it is subject to the same laws that apply to general misrepresentations of fact. For example, saying "the city has repealed the sales tax" or "a court has cleared title to a parcel of land" is a statement of fact. If both parties know or presume the same facts, a declaration of the legal ramifications of a particular set of facts is often an opinion on which the receiver relies at his or her risk. The seller's claim that "the courts will throw it out, you won't be bothered by it" if there is a lien on a property is thus an opinion. A remark such as "you can build a five-unit flat on this property" is not actionable under common law since no one should depend on a layperson's statement about the law as everyone is expected to be aware of the relevant local and state legislation. The assertion of law, however, may be considered as fact and, if inaccurate, serve as the foundation for a claim of misrepresentation if it is given by a lawyer, real estate broker, or another person on whom a layman may legitimately depend. Generally, claims concerning foreign laws are considered to be assertions of fact rather than opinions.

Declarations of Intent

Intentional claims are often not regarded as facts. The law gives you a lot of latitude when declaring your intentions. A deception of purpose that is "consistent with reasonable standards of fair dealing" is what the Restatement refers to. Section 171(1) of the Restatement (Second) of Contracts. The ability to falsify intentions is most helpful when buying property since it allows purchasers to hide their true intentions from the seller so that he won't suspect that the land is worth much more than his asking price. A claim of purpose must be untrue at the time it is made, meaning the person making the assertion did not intend it at the time it was made, in order for it to qualify as a misrepresentation that would allow rescission. It is not evidence that there was no intention when it was declared that he or she afterwards fails to carry out the stated purpose. Furthermore, the false claim of purpose must somehow impair other interests of the receiver in order for the contract to be voidable. As a result, in the typical scenario, the buyer of property tells the seller that he plans to construct a house there, but in reality, he really wants to build a factory. He lied to the seller because he knows that if he didn't, she wouldn't sell the land since her own home is on a lot next to it. The seller has the right to revoke the contract. So a developer pledges, "I'll sure try to save it," in reference to the charming old barn on the property, but after purchasing the site he realises it would be extremely costly (and in the way), so he does not attempt to save it. Nothing was misrepresented.

Non-fraudulent misrepresentation

Prior to 1964, the only legal remedy for non-fraudulent misrepresentation was rescission, and damages were not available without proof of fraud (see above). Any non-fraudulent misrepresentations were regarded as "innocent," without the ability to receive compensation. The House of Lords modified this approach in 1963 by ruling, *obiter*, that damages may be sought in tort in specific situations when a careless misstatement caused pecuniary loss. In order for this obligation to exist, there has to be a duty of care between the parties due to their "special relationship." The banker, *Heller*, was seen as having been careless rather than purposefully dishonest in the case of *Hedley Byrne and Co Ltd v Heller and Partners Ltd* (1964) (see p. 172). Even though fraud was not shown, the

court would have been inclined to award damages if it weren't for a technicality. *Esso v. Mardon*, which was heard in court in 1976 but really occurred before the Misrepresentation Act was created in 1967, provides another example (p. 168). There are certain rules, even if it's unclear precisely what the word "special relationship" entails. First and foremost, the tort duty of care forms the foundation of the responsibility concept. Second, based on *Esso v. Mardon* (see above, p. 168), it is probable that a connection will be deemed to exist where the representor has the necessary knowledge or expertise and would anticipate the other party relying on it. Misrepresentation that is not fraudulent may also give rise to some relief. Both negligent and innocent misrepresentations fall under this category.

Negligent Misrepresentation

Negligent misrepresentation occurs when negligence leads to a representation. A plaintiff must demonstrate a careless factual misrepresentation that was relevant and relied upon in order to establish this.

Negligent

"Negligent" in this context refers to the person making the claim being careless, which is a component of misrepresentation. A prospective buyer of rural property asks the realtor whether the area is peaceful. She is, the broker tells her. In reality, the neighbours down the street keep a large pack of noisy hunting hounds. The broker was unaware of this; she only believed that the area was peaceful. That is negligence: failing to use due caution.

Misstatement of Fact

The same broad methodology that is used to talk about fraudulent misrepresentation may be used to determine if something is a fact. (A person may carelessly express an opinion or negligently hide a fact, as in the case of legal malpractice.)

Materiality

A false statement that "would be likely to persuade a sensible person to manifest his assent" or that "the maker knows would be likely to persuade the recipient to do so" falls within the definition of a substantial misrepresentation. Section 162(2) of the Restatement (Second) of Contracts. Because it is not significant unless the seller understood that the buyer had emotional or other reasons for buying a home constructed in 1922, an honest incorrect remark that the house for sale was built in 1922 rather than 1923 would not be a grounds for breaking the contract.

The victim may escape the contract regardless of the magnitude of the deception if the misrepresentation is fraudulent, even if we did not specifically define materiality as a component of fraud. Therefore, despite the fact that materiality is not strictly necessary for fraudulent misrepresentation, it is often a key component in establishing whether the plaintiff did depend. Naturally, it is less probable that the victim relied on the fraudulent statement to his harm the more irrelevant it was. This is particularly true when the defendant is aware that he lacks the support for an allegation he makes but still thinks the specific argument is irrelevant and hence insignificant. Of course, suing for an inconsequential false deception is seldom worthwhile for the plaintiff. As a result, materiality is often a crucial factor for practical reasons. In *Reed v.s King*, the topic of materiality together with nondisclosure, "Misrepresentation by Concealedness."

Justifiable Reliance

The problems with careless misrepresentation in this case are the same as those with fraudulent misrepresentation. Negligent misrepresentation indicates guilt and is often addressed in the same way as fraudulent misrepresentation; however, if the representation is not fraudulent, it cannot be used as justification for revocation unless it is also substantial.

Innocent Misrepresentation

Based on what we've seen so far, it seems sense that the following are the factors needed to establish innocent misrepresentation: an innocent misstatement of truth that is substantial and properly relied upon. It is not essential to go into depth about the components here. The same problems as before are there, but this time, an innocent

mistake has been made. The defendants' claim that the property had specific water rights for irrigation led the plaintiffs to buy the defendants' eighteen-acre plot, which they thought to be accurate. It wasn't accurate. On the grounds of innocent misrepresentation, the plaintiffs were qualified for rescission. Or. Ct. App. 2000) Leshner v. Strid, 996 P.2d 988.

III. CONCLUSION

In conclusion, the ideas of fraudulent and non-fraudulent misrepresentation, which deal with false claims made during the creation of a contract, are crucial in the field of contract law. Despite the fact that both kinds of deception may significantly affect a contract's capacity to be upheld and enforced, their legal ramifications and aim vary. On the other hand, a non-fraudulent misrepresentation is a misleading statement that is given without intending to mislead. It could result from careless misstatements, benign errors, or a factual misunderstanding. Non-fraudulent misrepresentation may not include willful deceit, but it might nevertheless have an effect on the contract's legality. If the innocent party can show that they were hurt by relying on the deception, they may be able to withdraw the agreement or seek compensation. The innocent party in both situations must prove that the deception was substantial, or that it had a major influence on the choice to enter into the contract. The innocent party must also have legitimately relied on the deception in order for them to engage into the contract on a false pretence.

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