

Before putting her home up for sale, a homeowner painted the living room ceiling to conceal major water damage caused by a leaking roof that had not yet been repaired. On the first day the home was offered for sale, the homeowner gave a buyer a personal tour. The homeowner made no statements at all regarding the water damage or the roof. Without discovering the water damage or the leaking roof and without consulting a lawyer, the buyer immediately agreed in writing to buy the home for \$200,000. Before the closing date, the buyer discovered the water damage and the leaking roof. The cost of repair was estimated at \$22,000. The buyer has refused to go through with the purchase.

If the homeowner sues the buyer for breach of contract, is the homeowner likely to prevail?

- A. No, because no contract was formed since the buyer did not have a real opportunity to understand the essential terms of the contract.
- B. No, because the homeowner concealed evidence of the water damage and of the leaking roof.
- C. Yes, because the buyer acted unreasonably by failing to employ an inspector to conduct an independent inspection of the home.
- D. Yes, because the homeowner made no affirmative statements of fact about the water damage or the leaking roof.

## Explanation:

### When reliance on misrepresentation is justified

<b>Fact</b> (almost always justified)	If untrue assertion is presented as fact, party's reliance justified <i>unless</i> : <ul style="list-style-type: none"><li>• assertion is patently false <i>or</i></li><li>• party knows assertion is false</li></ul>
<b>Opinion*</b> (rarely justified)	If untrue assertion is presented as opinion, party's reliance justified <i>only if</i> : <ul style="list-style-type: none"><li>• facts as speaker understands them are consistent with or justify opinion</li><li>• relationship of trust &amp; confidence exists</li><li>• party reasonably believes speaker has special expertise <i>or</i></li><li>• party is particularly susceptible to type of misrepresentation involved</li></ul>

\*A statement of opinion is also a statement of fact—and can therefore be a misrepresentation—because it states that a person has a particular state of mind.

**Misrepresentation** is an untrue assertion of fact made by words or conduct (eg, **concealment**—an act intended to **prevent discovery of facts**). When this occurs, a **contract is voidable** by the adversely affected party if:

- the misrepresentation was **fraudulent** (ie, made knowingly or recklessly with intent to induce the other party's assent to the contract) OR **material** (ie, likely to induce a reasonable person's assent)
- the misrepresentation **induced assent** to the contract *and*
- the adversely affected party **justifiably relied** on the misrepresentation.

Here, the homeowner painted the living room ceiling to conceal water damage and a leaking roof. As a result of this fraudulent misrepresentation, the buyer decided to purchase the home. And since the homeowner never mentioned the water damage or roof during the personal tour, the buyer justifiably relied on the misrepresentation. Therefore, the buyer can avoid the contract and the homeowner is unlikely to prevail.

**(Choice A)** No contract is formed (ie, the apparent contract is void) if a fraudulent misrepresentation prevents a party from knowing the character or essential terms of the transaction and the party did not have a reasonable opportunity to understand those terms. But there is no evidence that the buyer did not understand the essential terms of the contract here.

**(Choice C)** A party's reliance on a misrepresentation is justified unless the misrepresentation is patently false (eg, if the water damage was visible) or the party knows it to be false. Therefore, the buyer's failure to inspect the home does not bar relief.

**(Choice D)** An affirmative *statement* is not required for a misrepresentation to occur. Affirmative *conduct* intended to prevent another from discovering a fact (eg, concealment) also qualifies as a misrepresentation.

**Educational objective:**

A contract is voidable for misrepresentation if (1) the misrepresentation was fraudulent or material, (2) it induced assent to the contract, and (3) the adversely affected party justifiably relied on the misrepresentation.

**References**

- Restatement (Second) of Contracts § 164 (Am. Law Inst. 1981) (when misrepresentation makes a contract voidable).

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