

A woman was touring a house that was "for sale by owner." She noticed water stains on the living-room ceiling and asked the seller about them. The seller responded that the roof did not leak even though he knew otherwise. The woman entered into a contract with the seller to purchase the house. The contract had a provision that conditioned the woman's obligation to purchase the house on the receipt of a favorable inspection report by an inspector of her choosing.

The inspection report prepared by the woman's inspector indicated that the roof substantially leaked. However, the woman really wanted the home and purchased it in reliance on the seller's statement regarding the roof's condition. One month later, during the first heavy rain after the purchase, the roof leaked and caused extensive damage to the house.

If the woman sues the seller for fraud, who is likely to prevail?

- A. The seller, because the woman did not justifiably rely on the seller's statement that the roof did not leak.
- B. The seller, because the woman had a contractual obligation to perform an inspection of the house.
- C. The woman, because the roof's condition was a material fact in her decision to purchase the home.
- D. The woman, because the seller told her that the roof did not leak even though he knew otherwise.

## Explanation:

### Misrepresentation

(fraudulent v. negligent)

	Conduct	Setting	Harm
<b>Fraudulent</b>	Knowingly or recklessly misrepresented material fact to induce reliance	Any setting	Justifiable reliance caused  pecuniary loss
<b>Negligent</b>	Negligently provided plaintiff false information	Commercial setting or setting with risk of physical harm	Justifiable reliance caused  pecuniary loss <i>or</i> physical harm

A prima facie case of **fraud** (also called "intentional misrepresentation" or "deceit") is established by proof of the following elements:

The defendant knowingly or recklessly **misrepresented a material fact** with the intent to induce the plaintiff's reliance.

The plaintiff **justifiably relied** on the misrepresentation and suffered **pecuniary (ie, financial) loss** as a result.

Justifiable reliance does not require the plaintiff to investigate the truth or falsity of the defendant's statement. But **reliance is not justifiable if** the statement is **obviously false** OR the defendant is stating a lay opinion.

Here, the seller knowingly misrepresented a material fact when he told the woman that the roof did not leak. The seller presumably intended to induce the woman to purchase the home, and the woman *did* purchase it in reliance on the seller's statement. But that statement was obviously false in light of the water stains and the report by the woman's own inspector that the roof substantially leaked. Therefore, the woman's reliance was not justifiable and the seller will likely prevail (**Choices C & D**).

**(Choice B)** The contract did not obligate the woman to have the house inspected. Instead, it gave her the right to obtain a favorable inspection report before concluding the sale. The woman received an unfavorable report yet chose to rely (unjustifiably) on the seller's statement instead. For this reason, the seller will prevail in the fraud suit.

**Educational objective:**

Fraud (ie, intentional misrepresentation or deceit) requires proof that the plaintiff's reliance on the defendant's misrepresentation was justifiable. Reliance was not justifiable if the representation was obviously false or the defendant was stating a lay opinion.

**References**

Restatement (Second) of Torts § 525 (Am. Law Inst. 1977) (fraudulent misrepresentation).

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