

A chemical corporation owned and operated a chemical processing plant. An accidental spill occurred, which made the plant unsafe for processing any chemicals. The chemical corporation subsequently entered a written and signed contract to sell the plant to a paint manufacturer for \$2 million. The paint manufacturer planned to move its operations to the plant after closing the sale, and the chemical corporation assured the paint manufacturer that the plant was suitable and safe for that purpose.

The chemical corporation hired a hazardous waste company to clean up the chemical spill, and the plant was made safe for operations one week before closing the sale. Two days before closing, the paint manufacturer learned about the chemical spill from the local newspaper and refused to go through with the closing.

If the chemical corporation sues the paint manufacturer for breach of contract, which party is likely to prevail?

- A. The chemical corporation, because it cured the misrepresentation regarding the suitability and safety of the plant before closing.
- B. The chemical corporation, because it had no duty to notify the paint manufacturer about the chemical spill.
- C. The paint manufacturer, because it can be presumed that the paint manufacturer was harmed by the chemical corporation's misrepresentation.
- D. The paint manufacturer, because the chemical spill rendered title to the plant unmarketable.

Explanation:

A **misrepresentation** is an **untrue assertion of fact** that makes a contract **voidable** by the adversely affected party when:

- the misrepresentation was fraudulent (ie, made knowingly or recklessly with the 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.

However, a misrepresentation can be **cured**, and the contract is **no longer voidable**, if the circumstances change in such a way that the **misrepresentation becomes true** *before* the adversely affected party avoids the contract.

Here, the chemical corporation fraudulently misrepresented that its plant was suitable and safe for operations, thereby inducing the paint manufacturer to enter the contract. But since the corporation cured the misrepresentation by making the plant safe for operations *before* closing, the manufacturer could not subsequently avoid the contract. Therefore, the manufacturer's refusal to close was a breach, and the corporation is likely to prevail.

(Choice B) The chemical corporation *did* have a duty to notify the paint manufacturer about the spill since it knew that this made the plant unsafe for the manufacturer's intended operations. But the corporation will still prevail because it cured its misrepresentation.

(Choice C) A misrepresentation cannot be cured to the extent that the adversely affected party can prove that it was actually harmed by relying on the misrepresentation. But there is no presumption to that effect, nor is there evidence that the manufacturer was harmed by the misrepresentation.

(Choice D) In land-sale contracts, the seller impliedly warrants that it will convey marketable title to the buyer upon closing. Here, the chemical spill affected the manufacturer's intended use of the plant but did not render title **unmarketable**. And regardless, this defect was cured before closing.

Educational objective:

A fraudulent or material misrepresentation can be cured—and the contract is no longer voidable by the adversely affected party—if the circumstances change in such a way that the misrepresentation becomes true before the adversely affected party avoids the contract.

References

- Restatement (Second) of Contracts § 165 (Am. Law Inst. 1981) (explaining that a misrepresentation is cured if the facts come into accord with the assertion).

Curing fraudulent or material misrepresentation

