

A lawyer wanted to retire from practicing law and enter the bakery business. The lawyer contacted the owner of a successful bakery that she wished to purchase. After several days of negotiations, the lawyer made a written offer to purchase the bakery for \$500,000.

The bakery owner reviewed the offer but was confused about who would be responsible for the outstanding mortgage on the bakery. The lawyer told her that one of the contract's provisions required the lawyer to assume the mortgage, but the lawyer knew that the provision did not actually require her to do so. The lawyer and the owner signed the offer, which purported to be a fully integrated writing. Thereafter, the lawyer refused to assume the mortgage.

If the bakery owner sues the lawyer seeking reformation of the contract, will she be likely to prevail?

- A. No, because a contract is void due to a fraudulent misrepresentation that induced a manifestation of assent.
- B. No, because prior oral assertions are inadmissible under the parol evidence rule when there is a fully integrated writing.
- C. Yes, because a contract can be reformed due to a fraudulent misrepresentation about the effect of the writing.
- D. Yes, because prior oral assertions are admissible to interpret an ambiguous term in a fully integrated writing.

Explanation:

Effect of misrepresentation

No contract formed	<ul style="list-style-type: none">• Misrepresentation as to character/essential terms of proposed contract• Induced appearance of assent to contract• Adversely affected party neither knew nor had reasonable opportunity to know of actual character/essential terms
Contract voidable	<ul style="list-style-type: none">• Fraudulent or material misrepresentation• Induced assent to contract• Adversely affected party justifiably relied on misrepresentation
Reformation available*	<ul style="list-style-type: none">• Fraudulent misrepresentation as to contents/effect of written contract• Induced assent to contract• Adversely affected party justifiably relied on misrepresentation

*Adversely affected party can choose to avoid contract instead.

Where a party **misrepresents** the **contents or effect of a writing** that embodies all or part of a contract, a court can **reform** (ie, rewrite) the writing to comport with what had been represented if:

- the misrepresentation was **fraudulent**—ie, made knowingly or recklessly, with intent to induce the other party's assent
- the misrepresentation **induced assent** to the writing *and*
- the adversely affected party **justifiably relied** on the misrepresentation.

However, a court will not do so to the extent that the rights of third parties (eg, good-faith purchasers for value) would be unfairly affected (not seen here).

Here, the lawyer fraudulently misrepresented the legal effect of a contract provision when she said that it required her to assume the outstanding mortgage on the bakery even though she knew that it did not. This misrepresentation likely induced the bakery owner's assent to the writing, and since it was not obviously false or known by her to be false, she justifiably relied on it. Therefore, the bakery owner will likely prevail in her suit.

(Choice A) A contract may be void if a misrepresentation induced conduct that only *appeared* to be a manifestation of assent—eg, if an actor unknowingly signed a contract after a fan asked for an autograph. But here, the bakery owner's manifestation of assent was genuine, even though she did not know the true effect of the mortgage provision.

(Choices B & D) The parol evidence rule generally bars evidence of prior or contemporaneous agreements that modify or contradict the terms of an integrated

writing. However, there is an **exception** for evidence used to prove a fraudulent misrepresentation (or other ground) to justify reformation. There also is an exception for evidence used to interpret an ambiguous term, but none is at issue here.

Educational objective:

A misrepresentation about the contents or effect of a writing is grounds for reformation if (1) the misrepresentation was fraudulent, (2) it induced assent to the contract, and (3) the adversely affected party's reliance was justifiable.

References

- Restatement (Second) of Contracts § 166 (Am. Law Inst. 1981) (explaining when a misrepresentation as to a writing justifies reformation).