

A real estate developer was trying to purchase land on which he intended to build a large commercial development. An elderly widow had rejected all of the developer's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of the developer's planned development. Finally, the developer offered her \$250,000. He told her that it was his last offer and that if she rejected it, state law authorized him to have her property condemned.

The widow then consulted her nephew, a law student, who researched the question and advised her that the developer had no power of condemnation under state law. The widow had been frightened by the developer's threat and was outraged when she learned that the developer had lied to her.

If the widow asserts a claim based on misrepresentation against the developer, will she prevail?

- A. No, because the widow suffered no pecuniary loss.
- B. No, if the developer's offer of \$250,000 equaled or exceeded the market value of the widow's property.
- C. Yes, if the developer knew he had no legal power of condemnation.
- D. Yes, if the developer tried to take unfair advantage of a gross difference between himself and the widow in commercial knowledge and experience.

### **Explanation:**

To establish a prima facie case of **intentional misrepresentation** (ie, fraud or deceit), the plaintiff must show that:

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

the plaintiff **reasonably relied** on the misrepresentation and suffered **pecuniary loss** (ie, monetary loss) as a result.

Here, the developer may have knowingly or recklessly misrepresented state law with the intent to persuade the widow to sell her home. But since the widow did not rely on the developer's statement (eg, by selling her home) and suffered no pecuniary loss (eg, by selling her home for less than its worth), she will not prevail on a misrepresentation claim.

**(Choice B)** The widow did not sell her home in reliance on the developer's statement (and therefore could not have suffered pecuniary loss), so it does not matter whether the developer's offer equaled or exceeded the market value of her home.

**(Choice C)** Even if the developer knew that he had no legal power of condemnation (ie, he knowingly misrepresented a material fact), the widow will not prevail because she did not rely on his misrepresentation or suffer a pecuniary loss.

**(Choice D)** The developer's superior commercial knowledge and his experience go to whether the widow could have reasonably relied on his misrepresentation. But since the widow did not rely on his statement, his knowledge and experience are irrelevant.

### **Educational objective:**

Liability for intentional misrepresentation arises when (1) the defendant knowingly or recklessly misrepresents a material fact with the intent to induce the plaintiff's reliance and (2) the plaintiff reasonably relies on the misrepresentation and suffers pecuniary loss as a result.

### **References**

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

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## **Intentional misrepresentation**



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graph TD; A[Intentional misrepresentation] --> B[Defendant must:]; B --> C[Plaintiff must:];
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### **Defendant must:**

- knowingly or recklessly misrepresent a material fact
- with the intent to induce plaintiff's reliance

### **Plaintiff must:**

- reasonably rely on defendant's misrepresentation
- suffer pecuniary loss as a result

