

A developer contracted in writing with a buyer to sell a house on a one-acre lot for \$100,000. The developer told the buyer that the lot abutted a national park and that the water for the house came from a natural artesian spring. The developer knew that both these representations were important to the buyer and that both were false. The buyer moved into the house and eight months later learned that a private golf course was being constructed on the adjacent land and that the water for the house came from the city reservoir. The buyer immediately sued the developer to avoid the contract. The construction of the golf course will probably increase the market value of the buyer's property, and the water from the city reservoir exceeds all established standards for drinking water.

Is the buyer likely to prevail?

- A. No, because eight months exceeds a reasonable time for contract avoidance.
- B. No, because the developer's misstatements caused no economic harm to the buyer.
- C. Yes, because the buyer retained the power to avoid the contract due to fraud.
- D. Yes, because the contract was void ab initio.

Explanation:

Factors used to determine reasonable time to avoid contract

Extent to which:

- delay enabled (or might have enabled) party with power of avoidance to speculate at other party's risk
- delay resulted (or might have resulted) in justifiable reliance by other party or third party
- ground for avoidance was result of either party's fault
- other party's conduct contributed to delay

Misrepresentation is a defense to enforceability that makes a **contract voidable** by the adversely affected party. This defense is available when:

- 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.

If the misrepresentation was fraudulent, then the adversely affected party **must seek to avoid** the contract **within a reasonable time after learning** of the misrepresentation.* Otherwise, the power to avoid the contract is lost.

Here, the developer fraudulently misrepresented both the location of the lot and the water source, which induced the buyer to purchase the house. Because the developer's statements were not obviously false, the buyer **justifiably relied** on them. And since the buyer *immediately* sued the developer to avoid the contract after discovering the misrepresentation eight months later, the buyer retained the power to avoid the contract and will likely prevail **(Choice A)**.

*If the misrepresentation was nonfraudulent, then the reasonable time period begins to run when the party knows or has reason to know about the misrepresentation.

(Choice B) A party may avoid a contract for misrepresentation even if the resulting contract causes that party no economic harm.

(Choice D) The contract was *not* void ab initio (ie, invalid from the outset). Rather, it was voidable, meaning that it operated as a valid contract until the buyer took steps to avoid it.

Educational objective:

To avoid a contract for fraudulent misrepresentation, the adversely affected party must seek this remedy within a reasonable time after learning of the misrepresentation.

References

- Restatement (Second) of Contracts § 164 (Am. Law Inst. 1981) (when misrepresentation makes a contract voidable).
- Restatement (Second) of Contracts § 381 cmt. b (Am. Law Inst. 1981) (when power to avoid contract is lost due to delay).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.