**INTRODUCTION**

`Fraudulent misrepresentation occurs when one party makes a false statement with the intent to deceive another party, leading the deceived party to enter into a contract or take an action based on that false statement. Several elements typically need to be present to establish a claim of fraudulent misrepresentation. These elements include:

**1.False representation**: The party accused of fraud must have made a false statement of fact, rather than expressing an opinion or making a prediction. The representation can be made verbally, in writing, or through conduct.

**FALSITY**

Truth is an absolute defense to a claim of misrepresentation. “It is axiomatic that fraud cannot be predicated on the truth. A true representation is not actionable.” Franklin Theatre Corp. v. City of Minneapolis, 198 N.W.2d 558, 560 (Minn. 1972) (quoting Rien v. Cooper, 1 N.W.2d 847, 851 (Minn. 1942)).

**REPRESENTATION BY AFFIRMATIVE MISSTATEMENT OR BY OMISSION**

An affirmative misstatement—saying or writing something that is not true—is the most common form of false representation. But if there is a duty to disclose, silence may also constitute fraud. A failure to speak is actionable if there is a “suppression of facts which one party is under a legal or equitable obligation to communicate to the other, and which the other party is entitled to have communicated to him.” Richfield Bank & Trust Co. v. Sjogren, 244 N.W.2d 648, 650 (Minn. 1976). The Minnesota Supreme Court has identified three “special circumstances” in which silence may be fraudulent.

* **Half-Truth**

“One who speaks must say enough to prevent his or her words from misleading the other party.” Id.; see also Heidbreder v. Carton, 645 N.W.2d 355, 367 (Minn. 2002) (“A duty to disclose may exist … when disclosure

would be necessary to clarify information already disclosed.”). For example, in Commercial Property Investments, Inc. v. Quality Inns Int’l, Inc., 938 F.2d 870, 877 (8th Cir. 1991), the defendant hotel franchisor touted the prospects of building a hotel in Roseville, citing the high occupancy rates of nearby hotels and the proximity of a civic center. The Eighth Circuit held that the defendant may be liable for fraud because it did not further disclose that the nearby hotels enjoyed advantages the new project lacked, and the civic center was failing. Commercial Prop. Inv. Inc., 938 F.2d at 877 (applying Minnesota law).

* **Special Knowledge**

“One who has special knowledge of material facts to which the other party does not have access may have a duty to disclose these facts to the other party.” Richfield Bank, 244 N.W.2d at 650. The party with special knowledge must “‘know[] that the other party acts on the presumption that no such facts exist.’” Driscoll v. Standard Hardware, Inc., 785 N.W.2d 805, 812 (Minn. Ct. App. 2010) (quoting Richfield Bank). This exception rarely applies, particularly “in arm’s-length business transactions between commercial entities.” Id. at 813.

Richfield Bank was one of those rare instances. The plaintiff borrower sought financing to purchase goods from a manufacturer, which also was a depositor at the defendant bank. Richfield Bank, 244 N.W.2d at 649. The plaintiff executed a promissory note for the purchase, the proceeds of which went to the manufacturing company. Id. At that time, the bank’s loan officer knew that the manufacturer was irretrievably insolvent, but said nothing. Id. at 649–50. The bank was found liable for fraud because the bank knew there was no reasonable way the manufacturer would fulfill its obligation to plaintiff. Id. at 651–52.

* **Confidential or Fiduciary Relationship**

“One who stands in a confidential or fiduciary relation to the other party to a transaction must disclose material facts.” Id. at 650. Trustees, attorneys, and business partners may be among those with a duty to disclose. See, e.g., Appletree Square I Ltd. P ‘ship v. Investmark, Inc., 494 N.W.2d 889, 892 (Minn. Ct. App. 1993) (in selling property to fellow partners in a limited partnership, defendants had fiduciary duty to disclose presence of asbestos); In re Boss, 487 N.W.2d 256, 259 (Minn. Ct. App. 1992) (attorney had fiduciary duty to disclose his beneficial interest in client’s transaction)

**2.Knowledge of falsity:** The party making the false statement must have known that it was false at the time it was made or made the statement recklessly without caring about its truthfulness.

**PAST OR EXISTING FACTS SUSCEPTIBLE OF KNOWLEDGE**

For a representation to be actionable, the subject of the alleged misstatement must be knowable as either true or false. The pattern jury instructions explain: “This means it must be possible to discover the fact.” CIVJIG 57.10. Statements about past or existing facts generally are actionable, but predictions, opinions, and statements of law typically are not.

**1. Statements About the Future**

A statement about the future—i.e., a prediction or projection—does not support a claim of fraud just because the forecasted event does not occur. Vandeputte v. Soderholm, 216 N.W.2d 144, 147 (Minn. 1974); see also Valspar, 764 N.W.2d at 369 (alleged misrepresentations were not actionable because they “were expressions of confidence that the paint application problems would be resolved, and thus were predictions of future results”); Kennedy v. Flo-tronics, Inc., 143 N.W.2d 827, 830 (Minn. 1966) (no fraud where “the prophecy or prediction of future value or profits is made in good faith and without a misrepresentation of fact”).

That said, a statement about the future may give rise to fraud in at least two circumstances. First, a promise to perform may be fraudulent if “the promisor had no intention to perform at the time the promise was made.” Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 747 (Minn. 2000) (quoting Vandeputte, 216 N.W.2d at 147). “A subsequent intention to break the promise or failure to fulfill it does not constitute fraud.” Benson v. Rostad, 384 N.W.2d 190, 195 (Minn. Ct. App. 1986). Affirmative evidence of the promisor’s contemporaneous intent is required. Vandeputte, 216 N.W.2d at 147; Kramer v. Bruns, 396 N.W.2d 627, 631 (Minn. Ct. App. 1986).

Second, predictions or projections may be fraudulent if they fail to “reflect past or present facts.” Berg v. Xerxes-Southdale Office Bldg. Co., 290 N.W.2d 612, 615 (Minn. 1980) (positive cash flow projection was actionable where defendant concealed current year’s negative cash flow). Without new facts that would presage a turnaround, optimistic forecasts that are inconsistent with prior or current performance may amount to fraud. The Minnesota Supreme Court stated: “Projections should be considered actionable or not in fraud, depending upon whether they accurately reflect past and present circumstances.” Id.

**2. Statements of Pure Opinion**

Expressions of pure opinion do not amount to fraud. “A wide variety of statements ordinarily used in sales negotiations are not actionable as fraud. These include ordinary sales puffing, statements of opinion, and promises of future performance.” Am. Computer Trust Leasing v. Jack Farrell Implement Co., 763 F. Supp. 1473, 1487 (D. Minn. 1991) (citations to Minnesota law omitted), aff’d, 967 F.2d 1208 (8th Cir. 1992). For example, in American Computer Trust, the defendant’s statements that it was a “proven dealer in data processing” and “capable of dramatically increasing efficiency and profitability” were not actionable. Am. Computer Trust, 763 F. Supp. at 1487; see also Smith v. Brutger Cos., 569 N.W.2d 408, 414 (Minn. 1997) (same for statements that building was “luxury apartment complex” and a “very safe environment”).

**3. Statements of Law**

An abstract statement of law or pure legal opinion likewise cannot be a fraudulent misrepresentation. Hoyt,

736 N.W.2d at 318. “[T]he law is presumed to be equally within the knowledge of both parties.” Miller v. Osterlund, 191 N.W. 919, 919 (Minn. 1923). There are two exceptions, however. A general statement of law may be actionable when the speaker either “is learned in the field and has taken advantage of the solicited confidence of the party defrauded,” or “stands with reference to the person imposed upon in a fiduciary or other similar relation of trust and confidence.” Northernaire Prods., Inc. v. Cnty. of Crow Wing, 244 N.W.2d 279, 281 (Minn. 1976) (quoting Stark v. Equitable Life Assurance Soc’y, 285 N.W. 466, 469 (Minn. 1939)).

**3.Intent to deceive**: The party making the false statement must have intended to deceive the other party or induce them to rely on the false statement.

**4Materiality**: The false statement must be significant or material, meaning that it would likely influence the decision-making process of a reasonable person.

**5.Justifiable reliance**: The deceived party must have reasonably relied on the false statement and been led to take action or enter into a contract based on that reliance. The reasonableness of reliance is a subjective standard that varies by the specific plaintiff. “Reliance in fraud cases is generally evaluated in the context of the aggrieved party’s intelligence, experience, and opportunity to investigate the facts at issue.” *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, 764 N.W.2d 359, 369 (Minn. 2009). One standard applies to the individual of limited education who ventures outside of his or her field to do business with a large company, and another to a sophisticated corporation that engages in a typical transaction with a comparable business entity. As the Eighth Circuit put it: “Fraud must be proved with reference to the specific intelligence and experience of the party alleging it.” *Children’s Broad. Corp. v. Walt Disney Co.*, 245 F.3d 1008, 1020 (8th Cir. 2001) (applying Minnesota law). Reasonableness cannot typically be resolved on summary judgment and usually is a fact-intensive question for the jury to decide—even when the plaintiff is sophisticated, educated, and experienced in the matters at hand. *Hoyt*, 736 N.W.2d at 321 (holding that reasonable reliance was a jury question despite plaintiff’s extensive business and legal background).

product).

**a). Reliance on Extra-Contractual Representations**

Although the reasonableness of reliance is usually ill-suited for summary judgment, there is an exception to this general rule. In a common scenario, the plaintiff alleges that the defendant’s fraudulent misrepresentation induced it to enter into a written contract. But if the written contract directly contradicts the alleged oral misrepresentation, reliance on the oral statement is unreasonable as a matter of law. *Dahmes v. Indus. Credit Co.*, 110 N.W.2d 484, 490 (Minn. 1961

The key question is: Can the alleged oral misrepresentation and the written contract provision both be true? The court carefully compares the content of the alleged oral misrepresentation with the text of the written contract. If the plaintiff could accept both as true, then reliance on the oral statement may remain reasonable. But if the oral representation cannot be reconciled with the parties’ agreed writing, then reliance is unreasonable as a matter of law.

For example, in *Crowell v. Campbell Soup Co.*, 264 F.3d 756, 762–64 (8th Cir. 2001), the plaintiff farmers alleged that the defendant induced them to enter into a poultry production contract through a variety of oral misrepresentations, including that the contract could be terminated only for cause, that there would be a long-term commitment to continue placing flocks with the plaintiffs beyond 35 to 40 flocks, and that the plaintiffs would realize a certain amount of profits per year after the first seven or eight years. The Eighth Circuit scrutinized each alleged misrepresentation, and found that none could be reconciled with the contract’s written terms. *Crowell*, 264 F.3d at 762–64*.* First, the contract permitted termination “essentially any time,” which “plainly contradicts” the alleged oral promise to terminate only “for cause.” *Id.* at 763. Second, the alleged long-term commitment beyond 35 to 40 flocks was likewise “in plain contradiction of the written contract provisions granting to [the defendant] the express right to terminate the contracts *prior to* the placement of 35 or 40 flocks.” *Id.* (emphasis in original). Third, the alleged revenue misrepresentation also “plainly contradicts” the contract’s termination-at-will provision and payment schedule. *Id.* at 763–64.

## **b). Disclaimers of Reliance**

In Minnesota, integration clauses and general contractual disclaimers of reliance do not preclude reasonable reliance as a matter of law. A commercial contract typically provides that the written document composes the parties’ entire agreement and supersedes all prior agreements, understandings, promises, and the like with respect to the subject matter. In the same vein, the parties expressly disclaim reliance on any representations and warranties that are not included in the written contract.

General disclaimers of reliance do not bar claims of misrepresentation under Minnesota law. This reflects a policy choice made many years ago: a party may not escape liability for fraudulent statements by providing in the contract that the other party should not rely on them. “The law should not and does not permit a covenant of immunity to be drawn that will protect a person against his own fraud.” *Ganley Bros., Inc. v. Butler Bros. Bldg. Co.*, 212 N.W. 602, 603 (Minn. 1927); *see also* *Nat’l Equip. Corp. v. Volden*, 252 N.W. 444, 445 (Minn. 1934) (“A party who makes fraudulent misrepresentations to induce another to make a contract cannot escape liability for his fraud by incorporating a disclaimer of fraud in the contract.”).

**6.Damages**: The deceived party must have suffered harm or damages as a result of relying on the false statement.

**Compensatory Damages**

Money damages are an essential element of fraud. *Nodland v. Chirpich*, 240 N.W.2d 513, 517 (Minn. 1976). Minnesota measures a fraud plaintiff’s damages by his or her out-of-pocket loss—that is, the difference between the value of the property received and the price paid, plus “any special damages naturally and proximately caused by the fraud prior to its discovery, including expenses incurred in mitigating damages.” *B.F. Goodrich Co. v. Mesabi Tire Co.*, 430 N.W.2d 180, 182 (Minn. 1988). Minnesota is in the minority. Most states permit a fraud plaintiff to recover the benefit of the bargain—that is, the difference between the value of the property actually received and the value the plaintiff would have received if the representations had been true

It's important to note that the specific elements of fraudulent misrepresentation can vary slightly depending on the jurisdiction and applicable laws. If you believe you have been a victim of fraudulent misrepresentation, it's advisable to consult with a legal professional who can provide guidance based on the laws relevant to your situation

**Remedies**

Fraudulent misrepresentation remedies include taking an individual to court to receive compensation or to get a contract rescinded.3 min read

Fraudulent misrepresentation remedies include taking an individual to court to receive compensation or to get a contract rescinded. A misrepresentation claim takes place when a party in a contract makes a false statement that entices another party to agree to the contract. Misrepresentation cases fall under common law and via the Misrepresentation Act of 1967.

In cases of misrepresentation, a plaintiff has the right to revoke the agreement.

1. **Fraudulently:** A case where individuals either knowingly or recklessly made false statements without regard to the truth.
2. Under fraudulent claims, a plaintiff may seek damages in addition to having the contract rescinded.
3. **Negligently**: A case where someone made a careless claim without knowing the full facts of the situation.
4. Under a negligible misrepresentation, the plaintiff may seek damages and get the [agreement revoked](https://www.investopedia.com/terms/r/rescission.asp).
5. **Innocently**: A case where an individual made a claim believing that the statement was true at the time.

In this case, the plaintiff is still entitled to compensation and/or rescission of the agreement in light of the situation. It’s also worth noting that innocent misrepresentation is easier to win in court than fraud or negligence misrepresentation cases, as they can be harder to win due to the need for stronger evidence.