28 N.Y. Prac., Contract Law § 5:6

New York Practice Series - New York Contract Law | July 2023 Update
Glen Banks

Part III. Defenses to the Enforcement of a Contract

Chapter 5. Fraud

§ 5:6. Fraud in the inducement—Material misstatement

References

A party seeking to avoid contractual obligations on the basis of a fraud in the inducement claim must show a material misrepresentation.[1] Plaintiff must prove, among other things, defendant's misrepresentation of a material fact.[2] A misrepresentation is material only if it is the type of misrepresentation likely to be deemed significant to a reasonable person considering whether to enter into the transaction.[3] The misrepresentation should influence the party's decision to enter into the contract.[4] A misrepresentation that had a negligible effect on a party is not material and cannot be the basis for a rescission claim.[5]

Materiality has both objective and subjective aspects. A fact is material if:

- a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or
- the maker of the representation knows or has reason to know that its recipient regards, or is likely to regard, the matter as important in determining his choice of action, although a reasonable man would not so regard it.[6]

A fraud in the inducement claim is usually premised upon a misrepresentation of an existing objective fact.[7] The misrepresentation should relate to a past or existing fact or something similar thereto to constitute a basis for a claim of fraud.[8] Statements will not form the basis of a fraud claim if they are mere "puffery."[9] For example, a seller's general commendations of the product sought to be sold, commonly known as "dealer's talk" or "sales talk" do not amount to a statement that can be the basis of a claim of fraud.[10] Courts have found statements to be puffery as a matter of law when the statements do not provide any concrete representations.[11]

A statement of present intention is a statement of existing fact that can support a claim of fraud.[12] A statement of future intent, however, cannot support the claim.[13]

Representations that are mere expressions of opinion concerning present or future expectations usually are not to be considered when examining the issue of fraud in the inducement.[14] Prophecy, prediction, hopes and expectations regarding future events,[15] as well as an opinion concerning a future event[16] cannot be the basis of a claim of fraud. The claim cannot be premised on statements concerning future events which cannot be foreseen with certainty nor controlled with precision.[17] In general, a representation of opinion or a prediction of something that is hoped or expected to occur in the future will not sustain an action for fraud.[18] An expression or prediction as to some future event, known by the speaker to be false when made or made despite

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

the speaker's anticipation that the event will not occur, however, is deemed a statement of material existing fact sufficient to support a fraud claim.[19]

A baseless statement of opinion can, in some circumstances, be the basis of a fraud claim such as where an opinion is based on grounds so flimsy as to lead to the conclusion that there was no genuine belief in its truth.[20] An expression of opinion also may constitute fraud if the opinion were not sincerely held[21] or the speaker knew it was false.[22] For example, when a party provides an estimate of the cost of performance knowing that the estimate is false, it makes a fraudulent misrepresentation.[23]

False statements of opinion generally are not sufficient to support a claim of fraud in the inducement.[24] Statements of subjective belief, whether, for example, something is "good," "valuable," "large," or "strong" involve an exercise of individual judgment and cannot be the basis of a fraud claim.[25] As the Second Circuit has noted, quoting from an opinion by Learned Hand, a distinction between whether a certain standard has been met (a factual statement) and expression of opinion:

> depends upon how far the utterance implicitly presupposes the use of some subjective standard by the utterer. Value, quality, fitness, success, are usually understood as meaning no more than that the objects conform with the declarant's individual yardstick in such matters. While he may make it clear that his reference is to some commonly accepted measure, ordinarily he does not, and his hearer takes it for more at his peril.
>
> ….
>
> What one man would call a success another might not; there is no certain objective standard to which reference is impliedly made.[26]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 See also §§ 21:10, 21:11.

2 Tucker v. Wyckoff Heights Medical Center, 52 F. Supp. 3d 583 (S.D. N.Y. 2014), appeal dismissed, (2nd Circ. 14-4195) (Feb. 26, 2015).

3 Greenberg v. Chrust, 282 F. Supp. 2d 112, 119 (S.D. N.Y. 2003) (quoting Moore v. PaineWebber, Inc., 189 F.3d 165, 170, R.I.C.O. Bus. Disp. Guide (CCH) P 9758 (2d Cir. 1999)).

4 Energy Capital Co. v. Caribbean Trading and Fidelity Corp., 1996 WL 157498 (S.D. N.Y. 1996); Leasing Service Corp. v. Graham, 646 F. Supp. 1410, 1416, 3 U.C.C. Rep. Serv. 2d 267 (S.D. N.Y. 1986); Chase Manhattan Bank v. Motorola, Inc., 184 F. Supp. 2d 384, 394 (S.D. N.Y. 2002) (quoting Matter of Liquidation of Union Indem. Ins. Co. of New York, 89 N.Y.2d 94, 107, 651 N.Y.S.2d 383, 389, 674 N.E.2d 313 (1996) (noting that in insurance case that "[m]aterial facts are those likely to influence the decisions of underwriters")).

5 Dunkin' Donuts, Inc. v. HWT Associates, Inc., 181 A.D.2d 711, 713, 581 N.Y.S.2d 363, 365 (2d Dep't 1992).

6 Cohen v. Koenig, 25 F.3d 1168, 1172, 29 Fed. R. Serv. 3d 989 (2d Cir. 1994).

7 Chase Manhattan Bank v. Motorola, Inc., 184 F. Supp. 2d 384, 394 (S.D. N.Y. 2002); see also § 21:10.

8 Zanani v. Savad, 217 A.D.2d 696, 630 N.Y.S.2d 89 (2d Dep't 1995).

9 Cohen v. Koenig, 25 F.3d 1168, 1172, 29 Fed. R. Serv. 3d 989 (2d Cir. 1994) ("[S]tatements will not form the basis of a fraud claim when they are mere 'puffery'"); Koch v. Greenberg, 14 F. Supp. 3d 247, 94 Fed. R. Evid. Serv. 52 (S.D. N.Y. 2014); Sidamonidze v. Kay, 304 A.D.2d 415, 757 N.Y.S.2d 560 (1st Dep't 2003).

10 EED Holdings v. Palmer Johnson Acquisition Corp., 387 F. Supp. 2d 265, 276 (S.D. N.Y. 2004).

11 Basquiat ex rel. Estate of Basquiat v. Sakura Intern., 2005 WL 1639413 (S.D. N.Y. 2005).

12 Channel Master Corp. v. Aluminum Limited Sales, Inc., 4 N.Y.2d 403, 407, 176 N.Y.S.2d 259, 262, 151 N.E.2d 833 (1958); Warner Theatre Associates Ltd. Partnership v. Metropolitan Life Ins. Co., 149 F.3d 134, 136 (2d Cir. 1998).

13 Orix Credit Alliance, Inc. v. R.E. Hable Co., 256 A.D.2d 114, 682 N.Y.S.2d 160 (1st Dep't 1998).

14 Spectra Securities Software, Inc. v. MuniBEX.com, Inc., 307 A.D.2d 835, 763 N.Y.S.2d 313 (1st Dep't 2003); Goldman v. Strough Real Estate, Inc., 2 A.D.3d 677, 678, 770 N.Y.S.2d 94, 94 (2d Dep't 2003); Platus Corporation Pension Plan v. Nazareth, 271 A.D.2d 422, 705 N.Y.S.2d 649 (2d Dep't 2000).

15 Dooner v. Keefe, Bruyette & Woods, Inc., 157 F. Supp. 2d 265, 278 (S.D. N.Y. 2001).

16 Cohen v. Koenig, 25 F.3d 1168, 29 Fed. R. Serv. 3d 989 (2d Cir. 1994).

17 Dooner v. Keefe, Bruyette & Woods, Inc., 157 F. Supp. 2d 265, 278 (S.D. N.Y. 2001); accord Korea Life Ins. Co., Ltd. v. Morgan Guar. Trust Co. of New York, 269 F. Supp. 2d 424, 437 (S.D. N.Y. 2003).

18 Zanani v. Savad, 217 A.D.2d 696, 697, 630 N.Y.S.2d 89, 90 (2d Dep't 1995).

19 Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Wise Metals Group, LLC, 19 A.D.3d 273, 798 N.Y.S.2d 14 (1st Dep't 2005).

20 State Street Trust Co. v. Ernst, 278 N.Y. 104, 112, 15 N.E.2d 416, 120 A.L.R. 1250 (1938).

21 National Conversion Corp. v. Cedar Bldg. Corp., 23 N.Y.2d 621, 627, 298 N.Y.S.2d 499, 504, 246 N.E.2d 351 (1969); Union Carbide Corp. v. Montell N.V., 9 F. Supp. 2d 405, 409 (S.D. N.Y. 1998).

22 CPC Intern. Inc. v. McKesson Corp., 70 N.Y.2d 268, 286, 519 N.Y.S.2d 804, 813, 514 N.E.2d 116, Blue Sky L. Rep. (CCH) P 72641, Fed. Sec. L. Rep. (CCH) P 93419 (1987); VTech Holdings, Ltd. v. Pricewaterhouse Coopers, LLP, 348 F. Supp. 2d 255 (S.D. N.Y. 2004).

23 Wright v. Selle, 27 A.D.3d 1065, 811 N.Y.S.2d 525 (4th Dep't 2006).

24 Stern v. Satra Corp., 539 F.2d 1305, 1308–09 (2d Cir. 1976) (fraud claim cannot be based upon an "opinion or subjective appraisal"); Greenberg v. Chrust, 282 F. Supp. 2d 112, 120 (S.D. N.Y. 2003); Goldman v. Strough Real Estate, Inc., 2 A.D.3d 677, 770 N.Y.S.2d 94 (2d Dep't 2003); Reich v. Mitrani Plasterers Co., Inc., 268 A.D.2d 256, 701 N.Y.S.2d 368 (1st Dep't 2000)

25 Stern v. Satra Corp., 539 F.2d 1305, 1308 (2d Cir. 1976); see also Samuels v. Eleonora Beheer, B. V., 500 F. Supp. 1357, 1364 (S.D. N.Y. 1980), aff'd, 661 F.2d 907 (2d Cir. 1981) and aff'd, 661 F.2d 910 (2d Cir. 1981).

26 Stern v. Satra Corp., 539 F.2d 1305, 1308 (2d Cir. 1976) (quoting Taylor v. Burr Printing Co., 26 F.2d 331, 334 (C.C.A. 2d Cir. 1928)).

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.