

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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Ida Relich)
)
) *Plaintiff,*)
)
) - v. -)
)
) Case Number 011013
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)
)
)
) Maurice Leigh,)
)
) **COMPLAINT**
)
) *Defendant.*)
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Plaintiff Ida Relich, by her attorney Tomasa Tirado, comes now before this court and says:

A Complaint is supposed to set out the factual and legal bases for each of the complaining party's claims. Most lawyers find drafting complaints to be a demanding art. They must be specific enough to meet statutory requirements and to survive expected motions to dismiss. Nonetheless, attorneys sometimes aim to draft complaints that are as loose and general as they can get away with. In part this is to avoid contradicting facts which may emerge later, but it is also to avoid giving more information to the other side than is strictly required. As you read through this Complaint see if you agree with the way that Ms. Tirado balanced those competing interests in this particular Complaint.

1. On or about October 18, 20___, Defendant entered into a Contract of Sale with Plaintiff for the residential property located at 305 Oakmont Avenue (hereinafter "Property").

2. The sale of the subject Property was predicated upon the representations made by Defendant seller in the Disclosure Statement attached to this Complaint as Exhibit A.

3. Defendant's Disclosure Statement omits important and material information about the Property.

4. The omitted information affects the value of the Property.

5. The omitted information would, if known, have affected Plaintiff's decision-making process regarding the purchase of the Property.

6. The Property is widely reputed to be possessed by poltergeists.

7. Defendant and his visitors have reportedly seen these poltergeists on numerous occasions, and the presence of poltergeists has been reported upon in the local press. Defendant himself gave an interview with local news station KNXV approximately two years before listing the house for sale, in which he reported having seen the specter of an elderly woman hovering near the rear entrance to the Property, and of a younger man "walking" near its kitchen.

8. Plaintiff is relocating to Arizona from Texas, and had no reason to be familiar with the local lore regarding the Property.

When you review the elements of the contracts defenses at issue in this case, come back to consider these points and ask yourself what each numbered paragraph contributes and why the attorney framed them the way she did.

Proximity and juxtaposition suggest meaning to readers (whether they register it consciously or not). Consider the attorney's reasons for placing this point immediately after the one that precedes it.

This use of an evocative word like "grisly" stands out in the otherwise detached tone of this document. Why do you think the attorney included the term?

9. Upon learning of the reputation of the Property's haunting, Plaintiff undertook to research its history and discovered at the local library a newspaper report describing a grisly multiple homicide that took place in the Property in 1932. The murder victims included an elderly woman and her younger nephew. Plaintiff has reason to believe that the haunted reputation of the Property stems from this established event.

Do you see how this story is designed to allude to the elderly woman and the younger man from paragraph 8 without having to explicitly contend that they are the ghosts of the murder victims?

10. Defendant was under a duty to disclose what he knew regarding the Property's reputation.

11. Defendant was aware of the Property's reputation for paranormal activity.

12. Defendant may have known, and/or should have known, about the homicides previously committed on the Property.

13. If defendant was unaware of the homicides in the Property's past, then this history would constitute a mistake by both parties.

14. The mistake referenced in paragraph 14, if there was one, is basic to the agreement reached between the Plaintiff and Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court issue an order:

1. Rescinding the sale between the parties of the Property, located at 305 Oakmont Avenue, AND
2. Awarding consequential damages in the amount of \$28,052.00, OR
3. In the alternative, awarding restitution for the diminished value of the property.
4. Together with awarding such other relief as may be just and proper.

DATED this 17th day of December, 20____.

THE CULPEPPER LAW FIRM, LLC

By /s/ Thomasa Tirado _____

2203 30th Street, Suite 200
Phoenix, Arizona, 85014

Attorneys for Plaintiff

Restatement (Second) of Contracts

Chapter 6. Mistake

§ 151 Mistake Defined

A mistake is a belief that is not in accord with the facts.

§ 152 When Mistake of Both Parties Makes a Contract Voidable

(1) Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake under the rule stated in [§ 154](#).

(2) In determining whether the mistake has a material effect on the agreed exchange of performances, account is taken of any relief by way of reformation, restitution, or otherwise.

§ 153 When Mistake of One Party Makes a Contract Voidable

Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in [§ 154](#), and

- (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or
- (b) the other party had reason to know of the mistake or his fault caused the mistake.

Law students frequently struggle to differentiate mistake from misrepresentation claims. In part this may be because the same core facts can give rise to both defenses. But the elements of the two are quite different, so naturally the facts needed to support the defenses are quite distinct. Pay careful attention here to how a mistake is defined, and compare with the definition of a misrepresentation in § 159 below. Do you see the difference in emphasis?

Restatement (Second) of Contracts

Chapter 7. Misrepresentation, Duress and Undue Influence

Topic 1. Misrepresentation

§ 159 Misrepresentation Defined

A misrepresentation is an assertion that is not in accord with the facts.

§ 160 When Action is Equivalent to an Assertion (Concealment)

Action intended or known to be likely to prevent another from learning a fact is equivalent to an assertion that the fact does not exist.

§ 162 When a Misrepresentation Is Fraudulent or Material

(1) A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker

- (a) knows or believes that the assertion is not in accord with the facts, or
- (b) does not have the confidence that he states or implies in the truth of the assertion, or
- (c) knows that he does not have the basis that he states or implies for the assertion.

(2) A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.

§ 164 When a Misrepresentation Makes a Contract Voidable

(1) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.

(2) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient, unless the other party to the transaction in good faith and without reason to know of the misrepresentation either gives value or relies materially on the transaction.

§ 167 When a Misrepresentation Is an Inducing Cause

A misrepresentation induces a party's manifestation of assent if it substantially contributes to his decision to manifest his assent.