

700.12D [4] Fraud:

Alternative 1 - Clear and Convincing Evidence Only as to Certain Elements

Generally, the law provides if one party fraudulently by misrepresentation of a material fact convinced another to enter into a contract, then that party cannot enforce that contract against the other.

_____[Defendant's name]_____ [claims] [claim] and [has] [have] the burden of proving each of the following propositions of fraud by clear and convincing evidence:

First, [plaintiff's name]_____ made the following statement[s]:

[Here insert or paraphrase the allegedly fraudulent statement or statements that the plaintiff is claimed to have made.]

Second, the statement[s] [was a] [were] false statement[s] of material fact[s].

Third, [the plaintiff [knew] [or] [believed] the statement[s] [was] [were] false] [or] [the plaintiff made the statement[s] in reckless disregard of whether [it was] [they were] true or false].

The defendant has the burden of proving that each of the following propositions is more probably true than not true.

Fourth, the plaintiff made the statement[s] with the intent to induce the defendant to enter into the contract;

Fifth, the defendant reasonably believed the statement[s] and [acted] in justifiable reliance on the truth of the statement[s];

Sixth, the defendant entered into the contract based upon the defendant's reliance on the statements made by the plaintiff.

Plaintiff denies defendant's claim of fraud.

You will address these issues in question _____ on your verdict.

Alternative 2 - Clear and Convincing Evidence on all Elements

Generally, the law provides if one party fraudulently by misrepresentation of material facts convinced another to enter into the contract, then that party cannot enforce the contract against the other.

__[defendant's name]_____ [claims] [claim] and [has] [have] the burden of proving each of the following propositions of fraud by clear and convincing evidence:

First, _[plaintiff's name]_____ made the following statement[s]:

[Here insert or paraphrase the allegedly fraudulent statement or statements that the plaintiff is claimed to have made.]

Second, the statement[s] [was a] [were] false statement[s] of material fact[s].

Third, [the plaintiff [knew] [or] [believed] the statement[s] [was] [were] false [or] [the plaintiff made the statement[s] in reckless disregard of whether [it was] [they were] true or false].

Fourth, the plaintiff made the statement[s] with the intent to induce the defendant to enter into the contract;

Fifth, the defendant reasonably believed the statement[s] and [acted] in justifiable reliance on the truth of the statement[s];

Sixth, the defendant entered into the contract based upon the defendant's reliance on the statements made by the plaintiff.

Plaintiff denies defendant's claim of fraud.

You will address these issues in question _____ on your verdict.

Instruction revised April 2016. Notes on Use and Comment created April 2016.

Notes on Use

Either Alternative 1 or Alternative 2 should be given when the defendant has raised fraud as an affirmative defense.

Comment

See the comment to IPI 800.02A and the cases cited there. Alternative 1 should be used in those cases where the trial court rules that only the first, second and third proposition of IPI 700.12D must be proved by clear and convincing evidence and the remaining elements require only proof by a preponderance of the evidence.

Alternative 2 should be used in those cases where the trial court rules that each element of this affirmative defense of fraud must be proved by clear and convincing evidence.