

Monday Contemplation No 6

So, how serious is a misrepresentation actually?

A misrepresentation is a false statement of fact or an act or omission that is designed to get the other person to enter into a contract. Hence, the other person enters into a contract as a result of the misrepresentation.

In our law, there are three types of misrepresentation:

Fraudulent or intentional misrepresentation – this would be a false statement that is specifically made knowing it be not true with the express intention of getting the other party to enter into the contract;

Negligent misrepresentation – this type of misrepresentation, is a statement that is made not knowing whether it is true, but not bothering to check the accuracy of the statement; and

Innocent misrepresentation – this is a false statement of fact that is made, but the person making the statement fully believes that it is true.

Examples of each would include:

Fraudulent or intentional misrepresentation – the seller says the roof does not leak knowing full well that it is leaking;

Negligent misrepresentation – a potential buyer asks the property practitioner (PP) if the road running in front of a property is going to be widened and the PP answers that it will not be widened, not knowing whether or not that is in fact the case; and

Innocent misrepresentation – the seller tells the PP that the swimming pool has been fixed and does not leak and the PP fully believes this to be the case.

In the event of a contract having been entered into as a result of a misrepresentation, the remedies in each instance would be that the contract is voidable. This means that the party who has acted to their detriment, has the right to either continue with the contract or to withdraw from the contract. In the event of an intentional or negligent misrepresentation, the aggrieved party can in addition claim damages.

Of course, the type of misrepresentation will depend upon what has happened in the circumstances. Proving that a contract has been entered into as a result of a misrepresentation is often difficult. This is especially the case when one considers that in general, most offers to purchase contain a clause that says that the parties agree that no verbal representations were relied upon when entering into the contract and that what ever has been reduced to writing is the whole contract.

Some interesting lessons here for sellers, buyers and property practitioners.

Further discussion in the coming weeks.

Look out for an interesting recent court case relating to this next week.