

Negligent Misrepresentation: Liability for Mistakenly Saying Something False



By John Nelson

Most people know that you can get into trouble for intentionally lying or concealing information during a business deal. That's referred to as fraud or intentional misrepresentation. What you may not know is that a person can also be held liable in Georgia if he negligently supplies incorrect information during the course of his business, profession or employment, or in a business deal. This is called negligent misrepresentation.

In business and real estate deals, people often rely on information from other sources, either from the party on the other side of the deal or an outside advisor such as an accountant, appraiser or engineer. In Georgia, a plaintiff in those situations can sue a person who negligently provides incorrect information under certain circumstances, even if the plaintiff did

not hire the defendant and even if the defendant did not act intentionally or recklessly.

For example, a building owner decides to sell a commercial property. She hires an engineer to perform an inspection report and tells the engineer that she plans to use the report to market the property. The engineer negligently reports that the exterior cladding is in good condition. A buyer relies on the information in the report and decides to buy the building; then, surprise, he has to spend \$200,000 to replace the cladding. The buyer can sue the engineer for providing the incorrect report, even though the engineer was hired by the seller and never met the buyer.

Let's take a closer look at the parties involved in this negligent mishap.

WHO CAN BE SUED FOR NEGLIGENT MISREPRESENTATION?

Any person who negligently supplies false information for the guidance of others as part of his business, profession, or employment, or in a transaction in which he has a financial interest.

WHO CAN SUE FOR NEGLIGENT MISREPRESENTATION?

The person who relied on the false information if the defendant knew that the person or others in the same group (such as buyers) would rely on it. In the previous example, the engineer could win if he could show that he had no

reason to believe that the seller could give his report to buyers.

WHAT IF THE PLAINTIFF SHOULD HAVE KNOWN BETTER?

Even if a defendant negligently supplies false information to a plaintiff, the plaintiff cannot recover if he failed to exercise due diligence to determine the truth. In the last example, for instance, the engineer would win if the buyer saw indications of problems with the

exterior cladding but did nothing to verify the engineer's report.

HOW MUCH CAN THE PLAINTIFF RECOVER?

A successful plaintiff can recover the out-of-pocket expenses he incurred as a result of relying on the incorrect information. In a transaction involving a sale, this comes down to the purchase price minus the real value of the property plus any other out-of-pocket expenses directly caused by relying on the false information. Punitive damages are

never available, and attorney's fees are available only if the plaintiff can show that the defendant had no basis to dispute the claim but forced the plaintiff to file suit anyway.


WHAT IS THE STATUTE OF LIMITATIONS?

According to the Georgia Supreme Court, a plaintiff must file suit for negligent misrepresentation within four years after the date when "it is certain, and not speculative, that the plaintiff has suffered economic loss." In some cases, that starting point can be tricky.

Take an appraiser as an example. An appraiser gives a negligent appraisal that values a house at \$500,000 when the house is actually worth only \$250,000. The lender relies on the appraisal in deciding to make the loan. Six years later, the borrower defaults. When the lender discovers that the property is not worth the amount in the appraisal, it sues the appraiser for negligent misrepresentation.

When did the statute of limitations start to run? When the lender made the loan? If so, the suit is too late. Or did it start to run when the borrower defaulted six years later? If so, the lender is in the clear.

This issue has not been addressed by Georgia appellate courts, and the answer has serious implications for professionals who provide information as part of their jobs. With appraisers, for example, a borrower might not default on a 30-year mortgage until the 29th year. If the appellate courts hold that the four-year statute of limitations does not begin to run until the borrower defaults, appraisers might have to defend their appraisals decades after they provided them.

If you are a professional who supplies information in the course of your business or you provide information to other persons during business deals, you must remember that you are responsible for the accuracy of that information, at least for those persons whom you know will rely on your information or can reasonably expect to rely on your information. 

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