

~ Sample Multi-Issue Memo ~

Memorandum

To: Prof. Chapin
From : [student id]
Date: [due date]
Re: Julie Larson; Real Estate Fraud; File No. 04-567

Issue

[Identify the legal issue and incorporate key facts (those most important to your legal analysis in the Discussion section).]

Does Larson have a claim for fraud against the Randalls when she purchased a house from the Randalls unaware that there was a graveyard in the backyard, the Randalls deny that they knew about the graveyard, and the graveyard decreases the value of the house?

Brief Answer

[Begin with a forthright answer; then briefly summarize the applicable law and its application to the client's situation.]

No, Larson probably does not have a claim for fraud against the Randalls. A fraud claim requires a false representation or concealment of a material fact. A defendant must know a representation is false, or that a material fact is being concealed, and have an intent to deceive. Also, it must be shown that a buyer reasonably relied upon the representation or concealment and suffered damages.

This memorandum was adapted from an anonymous sample by a previous Duke Law School student. This memorandum is intended to be used as an example of a multi-issue memorandum corresponding to the paradigm recommended in Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* (3d ed. 2002). Although based on North Carolina law, several liberties have been taken for pedagogical purposes, and this memorandum should not be relied upon as an accurate representation of current law.

Here, while Larson may have reasonably relied on the Randalls' representations and suffered damages, it does not appear that the Randalls made any false representations or concealed any material facts or that they intended to deceive Larson. The Randalls did not make any representations about the graveyard to Larson. Further, the fact that the graveyard was in their backyard does not support the conclusion that the Randalls knew of its existence and intended to conceal that fact and deceive Larson. Thus, an action for fraud will likely fail.

Facts

[The first paragraph should set context by identifying the client and his or her problem or goal. From there, organize the facts logically (i.e., chronologically or topically). The most important facts to include are the facts you will use in your legal analysis; also provide background facts that provide context. Use neutral, objective-sounding language, and avoid characterizing the facts.]

Julie Larson purchased a house from the Randalls. After moving in, she discovered a graveyard in her backyard located thirty feet from the house. An appraiser and a realtor both found that the graveyard decreased the value of the house at least \$27,000 below the purchase price. Larson wants to know whether she can recover for fraud against the Randalls.

Prior to buying the house, Larson visited the property but saw no indication of the graveyard. The house has a long, narrow backyard that extends approximately fifty yards behind the house. When she visited the property, the first twenty feet of yard had a small patio, a grassy area, several

well-tended flowerbeds, and some ornamental trees. The remainder of the yard was wooded and overgrown. Although Larson walked briefly around the patio and tended areas, she never explored beyond them to the overgrown areas where the gravestones were located.

During her visit to the house, Larson spoke with the Randalls. Although she asked specific questions about the house, she did not ask about the backyard. The Randalls mentioned it was tranquil in the garden in the backyard. In a follow-up fax to Larson encouraging her to make an offer, the Randalls wrote that if she bought the house she could relax out back with a tall iced tea.

After moving in, Larson noticed what she later found out were gravestones in an overgrown area of her backyard when she was pulling weeds and cutting trees. She did not realize that the stones might be graves until a contractor, hired to make a price estimate for a deck, discovered the stones and suggested that they might be a graveyard.

Larson then had friends over to help clear out more weeds from the yard. They found fifteen stones. Most of the stones were lying down, but one stood up as tall as the grass. Larson then called a state office and requested a state inspector come out to the house. The inspector found two more stones, and confirmed that they were indeed graves.

After conducting more research, Larson learned that her neighbors were aware of other graveyards in the area and that a local newspaper had written an article about other local graveyards.

Larson contacted the Randalls; they denied knowing anything about the graveyard. They refused to pay for its removal or to compensate Larson for the decrease in value of the home. Thus, Larson is wondering if she may have a legal basis for collecting damages.

Discussion

[Begin your Discussion by asserting your conclusion in the heading and first sentence of text. Then use an umbrella section to provide the overarching rule and to highlight the issues that will be discussed. Since this is a multi-issue memo, a full CRAC paradigm should be used for each subsection of the Discussion.]

LARSON PROBABLY CANNOT RECOVER FOR FRAUD SINCE THERE IS NO INDICATION THAT THE RANDALLS KNEW ABOUT THE GRAVEYARD IN THEIR BACKYARD WHEN THEY SOLD THEIR HOME TO LARSON.

Larson probably cannot recover for fraud because there is no indication that the Randalls knew about the graveyard in their backyard when they sold their home to Larson. [Note that your umbrella should set out the rules you will discuss in the same order you will discuss them in the remainder of your Discussion.] To succeed in an action for fraud, a plaintiff must show all of the following elements: (1) that a defendant made a false representation relating to, or concealed, a material fact and the defendant knew the representation was false or made it recklessly without any knowledge of its truth; (2) the

defendant made the false representation with an intent to deceive the plaintiff; (3) the plaintiff reasonably relied and acted upon the representation; and, (4) the plaintiff suffered damages. Myers v. Thomas G. Evans, Inc., 374 S.E.2d 385, 391 (N.C. 1988).

Here, Larson might have reasonably relied upon the available information and suffered damage, but she cannot meet the first two elements of fraud. First, there was no misrepresentation or concealment of a material fact. Second, there is no indication that the Randalls knew about the graveyard, an essential element of an intent to deceive.

A. Larson cannot succeed with a fraud claim because there was no misrepresentation of a material fact.

Larson cannot succeed with a fraud claim because there was no misrepresentation of a material fact. [After your conclusion for the section, begin explaining the applicable rules, using case law examples as appropriate and integrating any relevant policy considerations. Make sure to organize your rules topically with thesis sentences (avoid a “tour of cases”).] Fraud requires a false representation of a material fact. Id. at 391. A material fact is one that affects a purchaser's decision to buy property. Powell v. Wold, 362 S.E.2d 796, 798 (N.C. Ct. App. 1987).

Fraud also requires a false representation. Myers, 374 S.E.2d at 391. A representation "must be definite and specific." Ragsdale v. Kennedy, 209

S.E.2d 494, 500 (N.C. 1974). An "unspecific statement of opinion" is not a representation. Carpenter v. Merrill Lynch Realty Operating P'ship, 424 S.E.2d 178, 180 (N.C. Ct. App. 1993). For example, in Carpenter a broker told a buyer that a road-widening project would probably take place on the opposite side of the road from the buyer's house since there were already curbs and gutters on the buyer's side. Id. Because the statement was manifestly based on common sense, not knowledge, it was considered an unspecific opinion, not a representation. Id.

A defendant may also make a false representation through concealment, but only if the defendant has a duty to disclose a material fact. Ragsdale, 209 S.E.2d at 501. The duty to disclose arises when a defendant has knowledge of a material fact. Id. Evidence establishing a defendant's knowledge must be explicit. It is insufficient to base a claim for fraud on an assertion that a defendant "should have known." Brickell v. Collins, 226 S.E.2d 387, 390 (N.C. Ct. App. 1980). For example, in Brickell a builder lacked knowledge that metal wall ties had been installed improperly even when he had observed his workers on a daily basis. Id. at 389; see also Clouse v. Gordon, 445 S.E.2d 428, 433 (N.C. Ct. App. 1994) (insufficient evidence showing broker knew property in flood plain even though broker lived on the same street and public records showed property was in flood

plain). In contrast, a seller who lived in a house was held to have known that the heater did not work. Johnson v. Owens, 140 S.E.2d 311, 314 (N.C. 1965) (noting smoke stains around heating registers and seller's efforts to cover the stains with furniture corroborated seller's knowledge of defective heater).

A duty to disclose may be imposed on a seller even if a purchaser fails to ask about a fact. Brooks v. Ervin Constr. Co., 116 S.E.2d 454, 457 (N.C. 1960). A duty to disclose arises when a fact is not "within the reach of the diligent attention, observation, and judgment of a purchaser." Id. at 458. For example, in Brooks a seller dug a hole, filled it with soil, and then built a house on top of it. Id. He did not reveal the fact to a purchaser, who never asked whether the house was built on filled soil. Because of its location underneath the house, the filled soil was held beyond the diligent attention of the purchaser. Id. Accordingly, the seller had a duty to disclose. Id.

[After your rule explanation, provide a clear transition to your rule application. Your rule application should apply the rules you have set out in your explanation to your client's case. It is often effective to mirror your rule explanation. Use case authority to support your application using rule-based, analogical, and policy-based reasoning.]

Here, Larson will probably not be able to show that the Randalls made a misrepresentation of a material fact. There is little question that the existence of the graveyard is a material fact. Had Larson known about the

defect, she presumably would not have agreed to pay \$27,000 more than the value of the house. See Powell, 362 S.E.2d at 798.

However, the Randalls' statements to Larson about the backyard do not amount to representations. The Randalls told Larson that the backyard was tranquil and sent her a fax stating that if she bought the house she could relax out back with a cup of ice tea. As in Carpenter, where the broker's statements were based on common sense and without authority, the Randalls' statements were opinions based on common sense and do not constitute representations. See 424 S.E.2d at 181.

In addition, Larson cannot show concealment because the Randalls probably had no duty to disclose a material fact. A duty to disclose would only arise if the Randalls had knowledge of the material fact, the graveyard. See Brooks, 116 S.E.2d at 457. The newspaper article about graveyards in the area is no more sufficient to prove knowledge than the existence of the maps in Clouse that showed the property was in a flood plain. See 445 S.E.2d at 433. In neither case is there evidence that the vendors read the newspaper or studied the maps. Without facts indicating the Randalls read the newspaper, the article about other graveyards in the area is insufficient to prove knowledge.

Further, no other facts support an inference that the Randalls knew about the graveyard. Since the gravestones were located outside the house, their location does not support an inference that the Randalls knew about them. This case is unlike Johnson, where the defective heater was located inside the house and, thus, must have been discovered by its occupant. See 140 S.E.2d at 314. Further, Randalls' neighbors told Larson that they knew of other graveyards in the area, but none of the neighbors knew that the Randalls' yard contained the gravesites. This fact supports the conclusion that the Randalls' graveyard was undiscovered, rather than an inference that the Randalls knew of the graveyard.

If, however, any further facts reveal that the Randalls knew about the graveyard, a duty to disclose might be imposed. Because the gravestones were set back from the house, covered with weeds, and surrounded by trees, the graveyard, similar to the filled soil in Brooks, would likely be found beyond Larson's "diligent attention" or "observation." See Brooks, 116 S.E.2d at 457. The Randalls would, therefore, have had a duty to disclose even though Larson never asked about the graveyard. See id. at 458.

In sum, Larson cannot succeed with a fraud claim because there was no misrepresentation of a material fact.

B. Larson cannot succeed with an action for fraud since there is no indication the Randalls acted with an intent to deceive.

Larson also cannot succeed with an action for fraud since there is no indication the Randalls acted with an intent to deceive. Fraud requires that a representation or concealment be made with an intent to deceive. Myers, 374 S.E.2d at 391. Intent may be inferred from a party's conduct throughout a transaction. Harbach v. Lain & Keonig, Inc., 326 S.E.2d 115, 119 (N.C. Ct. App. 1985). Intent is closely tied to the element of knowledge; it exists when a seller knows that a representation would be relied on by a buyer. Calloway v. Wyatt, 97 S.E.2d 881, 885 (N.C. 1957). There is no intent to deceive unless a seller has knowledge of a material fact. Compare Myers, 374 S.E.2d at 392 (no intent to deceive when no evidence defendant knew representation false), with Johnson, 140 S.E.2d at 313 (intent to deceive where knowledge established).

Here, the Randalls did not act with an intent to deceive because there is no indication that they knew about the graveyard. As discussed in more detail in section A of this memorandum, there is no indication that the Randalls read the newspaper article about gravestones or knew that the gravestones were located outside toward the back of their lot. Although many of the Randalls' neighbors knew of other graveyards in the area, none knew that there was a graveyard in the Randalls' backyard. Thus, without any proof that the Randalls had knowledge of the graveyard, it cannot be

established that the Randalls intended to deceive Larson. See Myers, 374 S.E.2d at 391.

Conclusion

[Your Conclusion should briefly sum up the key points and state an explicit conclusion.]

Larson will probably not be able to succeed with an action for fraud. First, Larson cannot succeed with a fraud claim because there was no misrepresentation of a material fact. Although the graveyard was located thirty feet from the house and neighbors knew of other graveyards in the area, there is no indication that the Randalls knew of the graveyard. Second, Larson cannot succeed with an action for fraud since there is no indication the Randalls acted with an intent to deceive. Knowledge is a necessary prerequisite to an intent to deceive. Thus, the Randalls' lack of knowledge regarding the graveyard would prevent a finding of an intent to deceive.

[Important stylistic points: Use:

- Plain English (simple, straightforward language)
- Formal writing (no dashes, contractions, slang)
- An objective tone
- Quotes only for key or catchy phrases (otherwise paraphrase)
- Terms consistently (avoid synonyms)
- Short paragraphs with only one topic per paragraph
- Strong thesis sentences]