

#	Element	WKN	WKNT	#	Citation	Keycite	Quote	
1	a false representation, usually of a material fact;	k18	Materiality of matter represented or concealed	1.1	SOUTHERN EQUIPMENT & TRACTOR CO. v. K & K MINES, INC.	613.S.W.2D.596	597 (1)(2) To prove materiality of a misrepresentation, it is only *280 necessary to show the misrepresented fact was a material influence on the decision; it must have been a substantial factor, but it is not necessary that it was the paramount or decisive inducement. This is a question of fact for the factfinder. Prosser, Law of Torts, 4th Ed., s 108; also see 37 Am.Jur.2d, Fraud and Deceit, ss 177 and 178. Here there was considerable testimony that the year model is a factor in the resale value of this type equipment. Also, the owner of ap-pellee, K & K Mines, testified that the machine was represented to him by appellant as being a 1975 model, and he thought he was getting a "real good buy" when he purchased what he thought was a \$26,000 machine for \$15,000. We cannot say the trial court's finding was clearly erroneous. Ark.Rules of Civ.Proc., Rule 52.	
				1.2	HUNT v. DAVIS.	135.S.W..458	459	In order to charge the seller with fraud, it must be shown that he has made an active attempt to deceive the buyer relative to some matter material to the contract, either by statements which he knows to be false, or by acts, conduct, or representations which suppress the truth and induce in the buyer a false impression
				1.3	ELLIS v. LITER	841.S.W.2D.155	156	38 To prove materiality of a misrepresentation, it is only necessary to show the misrepresented fact was a material influence on the decision; it must have been a substantial factor, but it is not necessary that it was the paramount or decisive inducement. This is a question of fact for the fact-finder. [Our emphasis.] Prosser, Law of Torts, 4th Ed. § 108; also see 37 Am.Jur.2d Fraud and Deceit §§ 177 and 178.
2	scienter-knowledge or belief by the defendant that the representation is false;	k13	Falsity and Knowledge Thereof	2.1	JARRATT v. LANGSTON	138.S.W..1003	1004	It is well settled, we think, that one who has been induced to purchase property by the fraudulent re-presentations of the vendor has the right to sue in a court of equity to have such sale rescinded, or in a court of law to recover the damages which he has sustained by reason of such deceit and fraud. Representations to be fraudulent, however, must be material to the contract, and "must be made by one who either knows them to be false, or else, not knowing, asserts them to be true, and made with the intent to have the other party act upon them to his injury, and such must be their effect."
				2.2	Grendell v. Kiehl	723 S.W.2D 830	831	At the outset we point out that appellant's argument is based in part on a misconception of the law. Citing Robinson v. Williams, 231 Ark. 166, 328 S.W.2d 494 (1959), he argues that fraud must be proved by clear and convincing evidence. That is incorrect. That rule applies to chancery cases, where fraud is *230 urged as a basis for altering a solemn writing. It has no application to actions at law, where the burden of proof of misrepresentation is simply by a preponderance of the evidence. **832 Sellers v. West-Ark. Construction Co., 283 Ark. 341, 676 S.W.2d 726 (1984)
				2.3	Sellers v. West-Ark Const. Co.	676 S.W.2d 726	728	Clear and convincing evidence of fraud is required in equity to cancel or reform a solemn writing, but proof by a preponderance of the evidence is the proper standard in fraud cases tried to a jury. Ray Dodge, Inc. v. Moore, 251 Ark. 1036, 479 S.W.2d 518 (1972); Clay v. Brand, 236 Ark. 236, 365 S.W.2d 256 (1963).
				2.4	Interstate Freeway Services, Inc. v. Houser	835 S.W.2d 872	874	Further, circumstantial evidence can serve as a basis for the jury to infer fraud as it can serve as a basis to infer any other fact. Moore Ford Co. v. Smith, 270 Ark. 340, 604 S.W.2d 943 (1980).
				2.9	SLEDGE & NORFLEET CO. v. MANN.	103 S.W.2D 630	632	"A false representation, to be actionable, must not only mislead, but must be made fraudulently, and with that intent. No one can be held liable for a false representation, who honestly believed it when made, however false it may be; but he is liable if he knew it to be false, or, knowing nothing about it, asserted it to be true."
3	intent to induce reliance on the part of the plaintiff;	k24	Acts induced by fraud	3.1	ALLRED v. DEMUTH	890 S.W.2d 578	580	Intent is an act of the mind and must be established by circumstantial evidence. However in the ALLRED v. DEMUTH case, there was evidence of painting and possession showing that they had exclusive control from the creation of the home until the sale of the home and that painting over the cracks was there
				3.2	SOUTH COUNTY, INC v. FIRST WESTERN LOAN CO	871 S.W.2d 325	326	Fraud involves the idea of intentional deception, and exists where there is misrepresentation made with intent to deceive, or with actual knowledge of its falsity.... Proof of a mere naked falsehood or representation is not enough even though the complaining party relied on it and sustained damages, but, in addition thereto, the false statement must have been knowingly or intentionally made."
				3.9	MORRIS v. RUSH;	69 S.W.3D 876	880	in the Rush case, the court held that even though there was painting on the cracks of a foundation, that the extent of the alleged cover up was not sufficient for evidence of mal intent
4	justifiable reliance by the plaintiff; and	k19	Reliance on representations and inducement to act	4.1	MFA Mut. Ins. Co. v. Keller	623 S.W.2D 841	843	we hold there is substantial evidence to support the finding that appellant made false representations of material facts. There is substantial evidence to support the finding that the misrepresentations were knowingly made and they were made with the intention of inducing the appellees to act on them, that is, they were made with the intent to deceive appellees about the true cost of repairing their house. However, there is absolutely no evidence that appellees relied on appellant's misrepresentations. In fact, they knew the statements were false. The appellees were induced neither to act or not to act by reason of appellant's misrepresentations. The maker of a fraudulent misrepresentation is not liable to one who does not rely on that misrepresentation. This is a lack of causal relation in its simplest form. No damage resulted from reliance upon appellant's misrepresentations.

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				4.2	Fausett & Co. v. Bullard	229 S.W.2D 490 491, 92	In this case Fausett was engaged in the business of buying and selling houses. He had been living in this house for a number of months. He said that his crew had been under the house and it was in excellent condition. In view of these circumstances the trial court correctly refused to declare as a matter of law that the Bullards were not entitled to trust Fausett's assurances. 'The *180 recipient in a business transaction of **492 a fraudulent misrepresentation of fact is justified in relying on its truth, although he might have ascertained the falsity of the representation had he made an investigation. * * * The rule * * * applies not only where an investigation would involve an expenditure of effort and money out of proportion to the magnitude of the transaction but also where it could be made without any considerable trouble or expense.' Rest., Torts, § 540.
				4.3	Winter v. Bandel	1875 WL 1446	11 In actions for deceit, before the plaintiff can recover, the jury must find that, taken by surprise, the plaintiffs relied on the representations of defendant, but if the evidence shows that plaintiffs selected Bob Sherman, at their instance, to pick said notes out from among the lot or bulk of notes offered by defendant in part payment for the horses and mules in question, that such selection of the said Sherman, or any one else, was a waiver of any confidence or reliance they may have placed upon the representation of defendant Winter, as to the solvency or money value of said notes, so selected by the said Sherman, and delivered to and received by said plaintiffs in part payment as aforesaid, and the jury may find for defendant.
				4.4	Southeastern Distributing Co. v. Miller Brewing Co	237 S.W.3d 63	74 Miller also argues that Southeastern has failed to present proof that it either actually or justifiably relied on this false statement. In fact, although Freeman alleged that Young first told him in March that Miller wanted him to sell to O'Conner and around May 1 that it would be a waste of time for Southeastern to submit other letters of intent, Freeman admitted that he continued to negotiate with other potential buyers and actively sought a better offer up until he signed the letter of intent with O'Conner on May 17, 2001. He also testified that, in spite of Young's statement, he would have submitted a better offer to Miller if he had received one. It does not appear that Southeastern relied on Young's alleged statement if Freeman was still negotiating to obtain a better offer from someone other than O'Conner. Southeastern either knew Young's statement was false or it was not relying on the statement. In either case, it has not submitted sufficient proof of fraud to demonstrate the existence of a material issue of fact. We affirm the circuit court's decision granting summary judgment in favor of Miller on Southeastern's fraud claim.
5	Resulting damage to the plaintiff	k25	Injury and causation	5.1	Wallis v. Ford Motor Co	208 S.W.3D 153	In view of the above-quoted analysis by the Fifth Circuit, it is clear that the **159 Coghlan case ultimately supports our conclusion. In a no-injury products liability case, it is the wrongful act of placing a dangerous or defective product in the stream of commerce that creates the cause of action; whereas, in a misrepresentation or a fraud case, such as Coghlan, the cause of action rests solely on the premise that a party did not receive the <u>benefit of his or her bargain</u>. In order to prove the later claim, a party must show that the product delivered was not in fact what was promised. For example, the Coghlan's bargained for an "all fiberglass" boat; instead, they received a boat with 1.5 inches of plywood.
				5.2	Tyson Foods, Inc. v. Davis	66 S.W.3D 568	580 In *585 Interstate Freeway Serv., Inc. v. Houser, 310 Ark. 302, 308, 835 S.W.2d 872 (1992), this court stated as to damages in fraud: Two measures of general damages are generally applied in actions for fraud in recognition of the underlying elements of both tort and contract in those actions. The first measure is the benefit of the bargain measure, in which the injured party is entitled to the difference between the value of the property, business, or chattel as represented and its actual value at the time of the purchase. In essence, the injured party would receive his expectation. The second measure is the out-of-pocket measure, in which the injured party is to be made whole by being restored to the position he was in prior to the injury; this measure provides for the difference between the purchase price and the actual value of the goods received. H. Brill, Arkansas Law of Damages, 35-37 (1990).