

## Fraud: Illinois

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A Q&A guide to fraud claims under Illinois law. This Q&A addresses the elements of actual fraud (also called common law fraud or legal fraud), including material misrepresentation and reliance and other types of fraud claims, such as equitable fraud, fraudulent concealment, and constructive fraud under Illinois law.

### Elements Generally

#### 1. What are the elements of a fraud claim in your jurisdiction?

In Illinois, the plaintiff asserting a common law fraud claim (also called actual or legal fraud) must plead and prove that:

- The defendant made a false statement of material fact (see Material Misrepresentation).
- The defendant made the statement with the knowledge that it was false.
- The defendant intended the statement to induce the plaintiff to act (see Scierter).
- The plaintiff reasonably and justifiably relied on the false statement (see Reliance).
- The plaintiff suffered damages due to reliance on the false statement (see Remedies).

(See *Soules v. Gen. Motors Corp.*, 79 Ill. 2d 282, 286 (1980); *Abazari v. Rosalind Franklin Univ. of Med. & Sci.*, 2015 IL App (2d) 140952, ¶ 14 (noting intentional misrepresentation is another name for fraud); *Schrager v. N. Cmty. Bank*, 328 Ill. App. 3d 696, 703 (2002) (noting that fraudulent misrepresentation is a form of common law fraud in Illinois).)

### Material Misrepresentation

#### 2. What are the requirements for a material misrepresentation in your jurisdiction?

Under Illinois law, a material misrepresentation ordinarily must be a statement of present or pre-existing facts. A party generally cannot base a fraud claim on statements of future intent or conduct. (See *Ault v. C.C. Servs., Inc.*, 232 Ill. App. 3d 269, 271 (1992); see also *Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 649 (2001).) However, a statement relating to an intention to perform future conduct may be actionable if the promise is part of an overall scheme to defraud the plaintiff (*HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 168-69 (1989) (repeated promises by the defendant to pay in the future as part of scheme to induce the plaintiff to continue to provide goods and services supported claim for common law fraud); see Question 5).

The plaintiff also must show that the defendant made an affirmatively false statement containing the misrepresentation. It is not enough to assert that the plaintiff inferred false information from or perceived a false implication in the defendant's statement. (See *Mullen v. GLV, Inc.*, 488 F. Supp. 3d 695, 707 (N.D. Ill. 2020) (applying Illinois law); *Sandy Creek Condo. Ass'n v. Stolt & Egner, Inc.*, 267 Ill. App. 3d 291, 298 (1994).)

#### 3. What is the standard of materiality for a fraud claim in your jurisdiction?

Under Illinois law, a misrepresentation is material if either:

- The plaintiff would have acted differently if they had known the misrepresentation was false.
- The defendant knew that the misrepresentation was likely to induce the plaintiff to engage in the conduct in question.



- The misrepresentation was the type of information a plaintiff would rely on in deciding to act.

(See *Linkepic Inc. v. Vyasyl, LLC*, 370 F. Supp. 3d 906, 917-18 (N.D. Ill. 2019) (applying Illinois law); *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 591 (2011); *Kleinwort Benson N. Am., Inc. v. Quantum Fin. Servs., Inc.*, 285 Ill. App. 3d 201, 210 (1996) (defendant knew misrepresentation was material to plaintiff moving ahead with transaction, especially where fact that was misrepresented was listed as material in contract).)

#### 4. What types of representation are not actionable in fraud in your jurisdiction?

Under Illinois law, a plaintiff may not base a fraud claim on a defendant's statement that is:

- About future acts or expectations (*Abazari*, 2015 IL App (2d) 140952, ¶ 15; *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 17; *Ill. Non-Profit Risk Mgmt. Ass'n v. Human Serv. Ctr. of Southern Metro-East*, 378 Ill. App. 3d 713, 723 (2008)). However, Illinois courts recognize an exception to this general rule when the defendant's false promise or representation of its intent to perform in the future is part of a scheme to defraud the plaintiff (see Question 5).
- Opinion (*Abazari*, 2015 IL App (2d) 140952, ¶ 19; *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 35; *Simmons v. Champion*, 2013 IL App (3d) 120562, ¶ 37). However, an opinion may support a fraud claim where:
  - the defendant holds itself out or is understood to have specialized knowledge of facts that are not otherwise available to the plaintiff (*Power v. Smith*, 337 Ill. App. 3d 827, 832 (2003)); or
  - it is a representation of value made with the intent for the plaintiff to rely on it (*Rasgaitis v. Waterstone Fin. Grp., Inc.*, 2013 IL App (2d) 111112, ¶¶ 40-42 (noting that whether a statement is opinion or fact depends on the sense in which the statement is understood, considering the particular facts and circumstances of the case)).
- Puffery (*Pennington v. Travelex Currency Servs., Inc.*, 114 F. Supp. 3d 697, 703 (N.D. Ill. 2015) (applying Illinois law); *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 173-74 (2005) (puffery includes opinions about the quality of a product, such as "high quality," "perfect," or "magnificent" that no reasonable person would consider a statement of fact); *Miller*, 326 Ill. App. 3d at 649 (description of vehicle as "executive driven," intended to be understood by customers as a specific fact, was not puffery)).

- A misrepresentation or incorrect opinion about a point of law, unless:

- the plaintiff could not discover the law by exercising ordinary prudence; and
- the defendant holds itself out as having special knowledge of the law about which it made the misrepresentation.

(See *Partlow v. Johnson*, 2018 WL 5312335, \*3-4 (N.D. Ill. Oct. 26, 2018) (applying Illinois law); *Edson v. Fogarty*, 2019 IL App (1st) 181135, ¶¶ 22-39; *Kupper v. Powers*, 2017 IL App (3d) 160141, ¶¶ 27-28.)

#### 5. Does your jurisdiction recognize fraud claims based on a defendant's false promise to honor a contract? If so, under what circumstances?

Under Illinois law, a defendant's false promise to perform an act or contractual obligation in the future is generally not actionable in fraud (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 168; *Abazari*, 2015 IL App (2d) 140952, ¶ 15; *Mitchell v. Norman James Constr. Co.*, 291 Ill. App. 3d 927, 940 (1997)).

However, a plaintiff may pursue a fraud claim based on a promise to perform in the future, where both:

- The defendant did not intend to honor that promise.
- The promise was part of a scheme to defraud the plaintiff.

(See *Henderson Square Condo. Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 69; *HPI Health Care Servs., Inc.*, 131 Ill. 2d at 169 (repeated promises by the defendant to pay in the future as part of scheme to induce the plaintiff to continue to provide goods and services supported claim for common law fraud); *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶¶ 32-33 (noting that the "scheme to defraud" exception has largely engulfed the rule against promissory fraud).)

Courts may find that a defendant engaged in a scheme to defraud where:

- The false promise was embedded in a larger pattern of deceptive conduct (for example, that the defendant made repeated intentional false representations and promises).
- The defendant breached the promise so soon after making it that it raises the inference that the defendant never intended to honor the promise in the first place.

(See *Dugas-Filippi v. JP Morgan Chase, N.A.*, 66 F. Supp. 3d 1079, 1091-92 (N.D. Ill. 2014) (applying Illinois law); *HPI Health Care Servs., Inc.*, 131 Ill. 2d at 168-69; *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 349-50 (2011); *Chatham Surgicore, Ltd. v. Health Care Serv. Corp.*, 356 Ill. App. 3d 795, 804-05 (2005).)

### Scienter

#### 6. Must a plaintiff plead and prove scienter in your jurisdiction? If so, what must a plaintiff plead and prove to establish scienter?

Under Illinois law, a plaintiff asserting a common law fraud claim must plead and prove scienter, or intent to deceive (*Ollivier v. Alden*, 262 Ill. App. 3d 190, 198 (1994)). To establish scienter, a plaintiff must show that the defendant intended to both:

- Deceive the plaintiff with a reckless or knowingly false representation or omission.
- Induce the plaintiff to rely on the false representation or omission.

(See *Conn. Gen. Life Ins. Co. v. Sw. Surgery Ctr., LLC*, 349 F. Supp. 3d 718, 728 (N.D. Ill. 2018) (applying Illinois law) (the plaintiff must show that the defendant's false statement was an intentional misrepresentation at the time it was made); *Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 193-94 (1989); *Fox v. Heiman*, 375 Ill. App. 3d 35, 47 (2007).)

Because the plaintiff may be unable to allege specific facts about the defendant's thoughts and motives, the plaintiff may allege facts about the surrounding circumstances sufficient to permit a strong inference of fraudulent intent (see *Miche Bag, LLC v. Be You, LLC*, 2011 WL 4449683, at \*4 (N.D. Ill. Sept. 26, 2011) (applying Illinois law) (in a fraudulent inducement claim, FRCP 9(b) allows the plaintiff to make general allegations about the defendant's state of mind); *Szajna v. Gen. Motors Corp.*, 115 Ill. 2d 294, 322-23 (1986) (the plaintiff may demonstrate scienter by alleging that the defendant knowingly made a false statement to the plaintiff on which it relied); *Duhl v. Nash Realty, Inc.*, 102 Ill. App. 3d 483, 491 (1981).)

A plaintiff may establish a defendant's scienter by alleging that:

- The matter in question was particularly within the range of facts known to the defendant (see *Georgia-Pacific Corp. v. Walsh Constr. Co. of Ill.*, 2001 WL 1135855, at \*3

(N.D. Ill. Sept. 26, 2001) (applying Illinois law); *Mother Earth, Ltd. v. Strawberry Camel, Ltd.*, 72 Ill. App. 3d 37, 50-51 (1979)).

- The defendant's expertise implies that it knew the truth of the matter (see *Washington Courte Condo. Ass'n-Four v. Washington-Golf Corp.*, 267 Ill. App. 3d 790, 817 (1994)).
- The defendant had a financial motive to induce the plaintiff to act (see *Linkepic Inc.*, 370 F. Supp. 3d at 918 (applying Illinois law)).

#### 7. Are there any types of fraud claims for which the plaintiff does not need to allege and prove scienter?

Under Illinois law, a plaintiff need not allege and prove scienter to assert a claim for constructive fraud (*Mitchell*, 291 Ill. App. 3d at 934). Actual dishonesty or an intent to deceive are not required to plead and prove constructive fraud (*LaSalle Nat'l Tr., N.A. v. Bd. of Dirs. of 1100 Lake Shore Dr. Condo.*, 287 Ill. App. 3d 449, 455 (1997); *Vermeil v. Jefferson Tr. & Sav. Bank of Peoria*, 176 Ill. App. 3d 556, 564 (1988); see Question 17).

### Reliance

#### 8. Must a plaintiff plead and prove actual reliance on the defendant's misrepresentation in your jurisdiction?

Under Illinois law, fraud plaintiffs must plead and prove that:

- The defendant's misrepresentation induced them to change their position.
- They were reasonably justified in relying on the defendant's misrepresentation or omission.

(See *First Mercury Ins. Co. v. Ciolino*, 2018 IL App (1st) 171532, ¶¶ 41-42; *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 30 (2003) (fraud claim dismissed where no statement was made to the plaintiff corporation inducing the corporation to agree to a stock transfer); *People ex rel. Peters v. Murphy-Knight*, 248 Ill. App. 3d 382, 391 (1993) (noting plaintiff's fraud claim failed where no facts were alleged indicating that the plaintiff was ever shown the letter, proposal or brochure in which the alleged misrepresentations were made).)

The plaintiff must show it received the representation from either:

- The defendant directly.
- A third party to whom the defendant made the representation, intending that it reach the plaintiff.

(See *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 487-89 (2009); *Miller*, 326 Ill. App. 3d at 651-52; *Peters*, 248 Ill. App. 3d at 391-92; see Question 11.)

### 9. What is the standard of reliance for a fraud claim in your jurisdiction?

Illinois courts variously refer to the standard of reliance for a fraud claim as justifiable or reasonable (see *Doe v. Dilling*, 228 Ill. 2d 324, 342-44 (2008) (justifiable reliance is an element of fraud); *Metro. Capital Bank & Tr. v. Feiner*, 2020 IL App (1st) 190895, ¶ 47 (nonfinal opinion not yet released for publication) (justifiable and reasonable reliance are used interchangeably); *Phillips v. DePaul Univ.*, 2014 IL App (1st) 122817, ¶ 71 (reasonable reliance is an element of fraud); *Schrager*, 328 Ill. App. 3d at 703; see Question 8).

### 10. Explain how a plaintiff can satisfy the reliance standard for a fraud claim in your jurisdiction.

Under Illinois law, whether plaintiff's reliance was justifiable or reasonable is a question of fact (*Johnson v. Waterfront Servs. Co.*, 391 Ill. App. 3d 985, 993 (2009); *Sims v. Tezak*, 296 Ill. App. 3d 503, 511 (1998)). A court considers the facts surrounding a transaction when determining whether the plaintiff satisfied the reliance standard, including the parties' knowledge, ability to investigate, and prior business experience. A plaintiff can satisfy the reliance standard by establishing:

- A reasonably prudent person in the plaintiff's position using ordinary intelligence was likely to have relied on the misrepresentation.
- The plaintiff was justified in relying on the defendant's misrepresentation under the circumstances because, for example:
  - the defendant created a false sense of security;
  - the defendant blocked further inquiry into the facts;
  - the plaintiff was not required to investigate the truthfulness of the defendant's representation (see Question 12);
  - the plaintiff did not have the ability to discover the truth; and
  - the parties' relationship was one of good faith or trust.

- The plaintiff took steps to investigate:
  - the truth of the representation; or
  - the sincerity of the promise.

(See *Gerill Corp.*, 128 Ill. 2d at 195 (a plaintiff is justified in relying on a defendant's representations without investigation where the plaintiff does not have the same ability to discover the truth as the defendant); *Soules*, 79 Ill. 2d at 286-87 (the reasonableness of the plaintiff's reliance turns on all of the facts and circumstances of the case, including the facts known to the plaintiff and the facts the plaintiff could have learned through ordinary prudence); *Ciolino*, 2018 IL App (1st) 171532, ¶¶ 41-42; *Hassan*, 408 Ill. App. 3d at 350-51.)

To establish the plaintiff's justifiable or reasonable reliance on a defendant's fraudulent concealment, the plaintiff must show either:

- The defendant prevented the plaintiff from discovering the truth.
- The truth could not be discovered through reasonable inquiry.

(See *Neptuno Treuhand-Und Verwaltungsgesellschaft Mbh v. Arbor*, 295 Ill. App. 3d 567, 575 (1998); *Stewart v. Thrasher*, 242 Ill. App. 3d 10, 16 (1993).)

### 11. Does your jurisdiction permit fraud claims based on the plaintiff's reliance on a third party's communication of the defendant's misrepresentation?

Under Illinois law, reliance on a third party's communication of the defendant's misrepresentation may provide grounds for a fraud claim. The plaintiff must show:

- The defendant made the representation to the third party intending that it reach the plaintiff.
- The misrepresentation did in fact reach the plaintiff and the plaintiff was influenced by it.

(*Village of Bensenville*, 389 Ill. App. 3d at 487-89.)

### 12. Must a plaintiff investigate the truthfulness of a defendant's representation before relying on it in your jurisdiction?

Under Illinois law, whether a plaintiff must investigate the truthfulness of a defendant's representation depends on the particular facts of the fraud claim. A plaintiff is not

required to investigate the truthfulness of a defendant's representation when:

- The representation is a fact within the speaker's knowledge.
- The misrepresentation does not contain improbable facts creating doubt about the truth of the statement.

(See *Pack v. Maslikiewicz*, 2019 IL App (1st) 182447, ¶ 106; *Schrager*, 328 Ill. App. 3d at 709; *Sims*, 296 Ill. App. 3d at 511.)

However, a plaintiff must investigate the truthfulness of a defendant's representation when, for example:

- The information is obvious and available.
- The plaintiff is a sophisticated businessperson or has prior business experience with the transaction.
- The plaintiff has the same ability to discover the truth as the person making the representations.

(See, for example, *Vigortone AG Prods., Inc. v. PM AG Prods., Inc.*, 316 F.3d 641, 645-46 (7th Cir. 2002) (applying Illinois law) (purchaser of a business did not reasonably rely on seller's misrepresentations regarding contracts where the purchaser's attorney reviewed the contracts during due diligence); *Metro. Capital Bank & Tr.*, 2020 IL App (1st) 190895, ¶ 54 (nonfinal opinion not yet released for publication); *Hassan*, 408 Ill. App. 3d at 350.)

## Remedies

### 13. Must a fraud plaintiff elect its remedies in your jurisdiction? If so, are there any exceptions?

Where the fraud involves a contract, the plaintiff must elect to either:

- Seek rescission of the contract.
- Seek damages for fraud.
- Affirm the contract and seek damages for breach of contract.

(*Estes v. Smith*, 244 Ill. App. 3d 681, 686 (1993) (a plaintiff asserting a fraud claim has an election of remedies); *Sciarabba v. Chrysler Corp.*, 173 Ill. App. 3d 57, 61 (1988).)

A fraud plaintiff in Illinois may plead alternative inconsistent remedies that seek either rescission of the contract or damages for the fraud, but the plaintiff must elect remedies before final judgment (FRCP 8(a)(3); 735 ILCS 5/2-604.2(b); 735 ILCS 5/2-613(a); 735 ILCS 5/2-613(b); *Hassan*, 408 Ill.

App. 3d at 356; see *Union Planters Bank, N.A. v. Thompson Coburn LLP*, 402 Ill. App. 3d 317, 359 (2010) (a plaintiff can present alternative legal theories to the jury but cannot recover twice for the same injury); *Kel-Keef Enters., Inc. v. Quality Components Corp.*, 316 Ill. App. 3d 998, 1008-11 (2000) (a party may plead inconsistent legal theories in its complaint but must elect which remedy it wants to pursue)).

### 14. What are the forms of damages available to a fraud plaintiff in your jurisdiction?

A fraud plaintiff in Illinois may recover:

- Compensatory damages. Courts typically award a fraud plaintiff:
  - restitution damages (to compensate plaintiff for out-of-pocket expenses) where the parties failed to complete the transaction; or
  - benefit of the bargain damages (the difference between what the plaintiff was likely to have received without the fraud occurring and the value of what it actually received) where the parties completed the transaction.

(See *Roboserve, Inc. v. Kato Kagaku Co.*, 78 F.3d 266, 273-4 (7th Cir. 1996) (applying Illinois law); *Gerill Corp.*, 128 Ill.2d at 195-96; *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 758-60 (1993).)

- Punitive damages, in cases involving gross fraud, breach of trust, or other extraordinary or exceptional circumstances clearly showing malice and willfulness (*AMPAT/Midwest, Inc. v. Ill. Tool Works Inc.*, 896 F.2d 1035, 1043-44 (7th Cir. 1990) (applying Illinois law) (punitive damages were not appropriate where the defendant acted in a highly irresponsible manner but not maliciously); *Stump v. Swanson Dev. Co.*, 2014 IL App (3d) 110784, ¶¶ 64-68; *Parsons v. Winter*, 142 Ill. App. 3d 354, 360-61 (1986)).

### 15. What forms of equitable relief are available to a fraud plaintiff in your jurisdiction?

Where a defendant induced a transaction by fraud, a fraud plaintiff in Illinois may seek either:

- Rescission.
- Reformation.

(See *Ciolino*, 2018 IL App (1st) 171532, ¶¶ 46-47; *Hassan*, 408 Ill. App. 3d at 353; *23-25 Bldg. P'ship v. Testa Produce*,

*Inc.*, 381 Ill. App. 3d 751, 757 (2008); *Elson v. State Farm Fire & Cas. Co.*, 295 Ill. App. 3d 1, 15 (1998).)

## Fraudulent Concealment

### 16. Does your jurisdiction recognize claims of fraudulent concealment? If so, under what circumstances?

Under Illinois law, a defendant may commit fraud by concealing or failing to disclose a material fact if the defendant had a duty to disclose that fact to the plaintiff (*Benson v. Stafford*, 407 Ill. App. 3d 902, 918 (2010); *Stewart*, 242 Ill. App. 3d at 16; but see *Linkepic Inc.*, 370 F. Supp. 3d at 917 (applying Illinois law) (mere silence does not necessarily equate to fraud)). A defendant has a duty to disclose where either:

- The parties have a fiduciary relationship (which may be implied in law or arise as a matter of fact) (see *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 500-01 (1996); *D'Atomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 59).
- The parties share a special trust relationship where the plaintiff places trust and confidence in the defendant and the defendant gains influence or superiority over the defendant (see *DreamPak, LLC v. InfoData Corp.*, 2019 WL 130448, at \*7-8 (N.D. Ill. Jan. 8, 2019) (applying Illinois law); *Benson*, 407 Ill. App. 3d at 918-19; *Miller*, 326 Ill. App. 3d at 657).
- The defendant made a partial disclosure which was deceptive (see *Abazari*, 2015 IL App (2d) 140952, ¶ 33; *W.W. Vincent & Co. v. First Colony Life Ins. Co.*, 351 Ill. App. 3d 752, 762 (2004); *Williams v. Chicago Osteopathic Health Sys.*, 274 Ill. App. 3d 1039, 1052 (1995)).
- The defendant actively concealed material facts (see *Hassan*, 408 Ill. App. 3d at 343 (a party may commit fraud by misrepresentation or concealment); *Williams*, 274 Ill. App. 3d at 1052; *Mitchell v. Skubiak*, 248 Ill. App. 3d 1000, 1005 (1993)).

A plaintiff also may assert a claim for fraudulent concealment under Illinois law where a defendant's failure to disclose a material fact is coupled with deceptive conduct, even where the defendant is not otherwise under a duty to disclose (*Greene v. Mizuho Bank, Ltd.*, 206 F. Supp. 3d 1362, 1374-75 (N.D. Ill. 2016) (applying Illinois law); *Henderson Square Condo. Ass'n*, 2014 IL App (1st) 130764, ¶ 99; *Platinum Partners Value Arbitrage Fund, Ltd. P'ship v. Chicago Bd. Options Exch.*, 2012 IL App (1st) 112903, ¶ 29).

## Constructive Fraud

### 17. Does your jurisdiction recognize claims of constructive fraud? If so, what distinguishes constructive fraud from actual fraud?

Illinois courts recognize constructive fraud claims. Constructive fraud is anything that is calculated to deceive, including acts, omissions, and concealments involving a breach of a legal, equitable, or fiduciary duty, that causes damage to the plaintiff (*Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 64). However, unlike actual fraud, constructive fraud does not require a showing of actual dishonesty or an intent to deceive on the part of the defendant (*Prodromos v. Everen Sec., Inc.*, 341 Ill. App. 3d 718, 726 (2003); *LaSalle Nat'l Tr., N.A.*, 287 Ill. App. 3d at 455; *Vermeil*, 176 Ill. App. 3d at 564; *Pottinger v. Pottinger*, 238 Ill. App. 3d 908, 918 (1992)).

The elements of a constructive fraud claim are that:

- The plaintiff and defendant are in a fiduciary or other confidential relationship where:
  - the defendant is clearly dominant; or
  - the plaintiff places trust or dependence in the defendant.
- The defendant breached a legal or equitable duty that is imposed as a matter of law because of that relationship.
- The plaintiff suffered damages as a result.

(See *Kovac*, 2014 IL App (2d) 121100, ¶ 64; *Mitchell*, 291 Ill. App. 3d at 934; *Vermeil*, 176 Ill. App. 3d at 564; see Question 7.)

Courts do not look to the defendant's moral guilt in determining the existence of a constructive fraud claim, but rather whether the defendant's misrepresentation or omission had the tendency to deceive others (*Prodromos*, 341 Ill. App. 3d at 726).

## Doctrines That Preclude Fraud Claims

### 18. Does your jurisdiction permit fraud claims based on the defendant's breach of contract?

Illinois courts generally do not permit fraud claims based on the defendant's breach of contract except where the plaintiff was fraudulently induced to enter into the contract (*Dyson*,

*Inc. v. Syncreon Tech. (America), Inc.*, 2019 WL 3037075, at \*5 (N.D. Ill. July 11, 2009) (applying Illinois law) (noting that while Illinois courts do not permit fraud claims that merely restate breach of contract claims, nor redundant recovery, acts of misrepresentation separate and apart from breach of contract claims are allowed); *WTM, Inc. v. Henneck*, 125 F. Supp. 2d 864, 869 (N.D. Ill. 2000) (applying Illinois law) (plaintiff specifically pled facts showing that they would not have entered into a contract to purchase securities absent the defendant's misrepresentations and thus could plead both fraud and breach of contract claims); *Johnson v. George J. Ball, Inc.*, 248 Ill. App. 3d 859, 867-68 (1993); but see 735 ILCS 5/2-613(b) (a party may plead in the alternative regardless of consistency)).

In cases involving both fraud and breach of contract claims, the plaintiff must plead and prove that:

- the fraud is more than just a contractual obligation the defendant failed to meet; and
- the plaintiff's damages stemming from the misrepresentation are independent of the damages the plaintiff sustained from the breach of contract.

(See *Aasonn, LLC v. Delaney*, 2011 IL App (2d) 101125, ¶¶ 29-32 (plaintiff's fraud claim did not merely restate its breach of contract claim where the plaintiff alleged that the defendants' invoices misrepresented the work performed); see also *Palmolive Tower Condos, LLC v. Simon*, 409 Ill. App. 3d 539, 546 (2011) (explaining the difference between contract and fraud damages); *Johnson*, 248 Ill. App. 3d at 867-68 (a plaintiff may assert a fraud claim in a contract setting where the defendant fraudulently induced the plaintiff to enter into the contract).)

### 19. Does the economic loss doctrine foreclose a fraud claim in your jurisdiction?

Under Illinois law, fraud is an exception to the economic loss doctrine, referred to as the *Moorman* doctrine, which generally precludes the recovery of purely economic losses in tort actions (*Wigod v. Wells Fargo Bank, N.A.*, 673 F. 3d 547, 568-69 (7th Cir. 2012) (applying Illinois law); *Moorman Mfg. Co. v. Nat'l Tank Co.*, 91 Ill. 2d 69, 86-87 (1982); *Olson v. Hunter's Point Homes, LLC*, 2012 IL App (5th) 100506, ¶ 8).

### 20. Does your jurisdiction recognize any other doctrine or rule that precludes a common law fraud claim? If so, what is the doctrine or rule?

Under Illinois law, the doctrines or rules that may preclude a common law fraud claim include that:

- The fraud claim is duplicative of the plaintiff's breach of contract claims (see Question 18).
- The claim is not for a commercial or financial injury (*Bonhomme v. St. James*, 2012 IL 112393, ¶35; *Dilling*, 228 Ill. 2d at 343-51); but see *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 133-35 (2003) (recognizing a cause of action for fraud in the context of a wrongful adoption)).

## Procedural Issues

### 21. What is the pleading standard for a fraud claim in your jurisdiction?

In both state and federal court, plaintiff must plead fraud with specificity and particularity. This means that in addition to pleading the elements of fraud (material misrepresentation, scienter, reliance, and damages), the plaintiff must allege specific facts from which fraud is the necessary or probable inference, including:

- What representations were made.
- When they were made.
- Which party made them.
- To which party they were made.

(FRCP 9(b); *United States v. Walgreen Co.*, 417 F. Supp. 3d 1068, 1083 (N.D. Ill. 2019) (applying Illinois law); *Connick*, 174 Ill. 2d at 496-97; *Ciolino*, 2018 IL App (1st) 171532, ¶¶ 39-40.)

### 22. What is the burden of proof a plaintiff must satisfy for a fraud claim in your jurisdiction?

In Illinois, the plaintiff must prove a fraud claim by clear and convincing evidence (see *Metro. Capital Bank & Tr.*, 2020 IL App (1st) 190895, ¶¶ 39-44 (nonfinal opinion not yet released for publication) (although there is a split of authority in Illinois with some cases holding that certain elements of fraud need only be proved by a preponderance of the evidence, the trial court did not err by applying the clear and convincing evidence standard to all elements of the plaintiff's claim); see also *Stump*, 2014 IL App (3d) 110784, ¶ 56; *Johnson*, 391 Ill. App. 3d at 993).

### 23. What is the statute of limitations for asserting a fraud claim in your jurisdiction?

The statute of limitations for fraud in Illinois is five years, which runs from the date the plaintiff either:

- Becomes aware of the fraud.
- Should, with reasonable diligence, be aware of the fraud.

(See 735 ILCS 5/13-205; *Henderson Square Condo. Ass'n*, 2015 IL 118139, ¶¶ 51-55; *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶¶ 41-43 (the discovery rule did not toll the statute of limitations on the plaintiff's unjust enrichment and fraud claims); see also *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77-79 (1995) (discussing the discovery rule in tort and breach of contract actions).)

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