

# OREGON LAW UPDATE

## Intentional Torts Do Not Require Special Relationship to be Actionable

**From the desk of John Kreutzer: Where a contractual relationship exists, a “special relationship” between the parties is required for negligent misrepresentation claims to be actionable. This is not true, however, for intentional torts like fraud.**

**Claims Pointer: No special relationship was required between an employee and employer for the employee’s fraudulent inducement claim. The employee alleged that the employer coaxed her to switch jobs under the condition that a binding employment agreement would be in effect, but that later the employer refused to sign the agreement. The fraud claim alleged an intentional tort for which no special relationship was required.**

case in point...

McNeff v. Emmert, 260 Or. App. 239, 241, 317 P.3d 363, 364 (2013)

Plaintiff McNeff, an attorney, was introduced to defendant Emmert through a mutual friend who felt that McNeff would be an ideal fit for a vacant in-house attorney position at Emmert’s industrial moving company. At the time, McNeff was licensed to practice law, but was not making her living as a lawyer. Rather, she owned and managed a small demolition company and was in the process of putting together another company installing solar panels on commercial buildings. McNeff explicitly told Emmert that to work for him, she would have to close her companies and that she wasn’t willing to do this without a guarantee of employment. Emmert replied that he understood, so the two discussed a written three-year employment contract. Emmert said that “everything else looks good” and told McNeff to bring the contract with her when she came to work. McNeff did so, but neither Emmert nor McNeff ever signed it or any other employment contract. Despite the lack of a signed agreement, McNeff started working as in-house counsel at the same pay rate set forth in the agreement, and she wound down her solar energy and demolition companies.

After about eight months, Emmert fired McNeff. McNeff sued alleging fraud, stating that to induce her to work for Emmert and give up her other business interests, Emmert represented to her that they agreed to the terms of the contract she prepared, and intended to perform in accordance with it. She alleged further that the representation was false and that Emmert did not intend to sign the agreement or to perform under the contract, and that Emmert made the false representations either intentionally or recklessly. At trial, Emmert moved for a directed verdict on that claim, arguing

that (1) McNeff’s reliance on any oral promise of an employment contract was unreasonable as a matter of law and (2) McNeff had not alleged a “special relationship” between herself and defendant that would give rise to tort liability. The trial court granted the motion. McNeff appealed.

On appeal, McNeff argued that the evidence at trial was sufficient to establish the elements of fraud and that neither of the grounds raised by Emmert—unreasonable reliance or the lack of a “special relationship”—was sufficient to defeat the claim as a matter of law. Emmert argued that this was simply a case in which there was never a meeting of the minds regarding the terms of an employment contract, and the mere fact of nonperformance of a contract—one that never existed, for that matter—was not sufficient to prove that Emmert had any wrongful intent.

The Court of Appeals agreed with McNeff. The Court noted that a fraud claim does not depend on a “meeting of the minds”—in fact, it is predicated on the theory that Emmert had in mind something very different from what he communicated to McNeff, and from what she understood. Specifically, at trial, Emmert testified that he never agreed to a three-year contract and never would have entered into a written employment agreement. When asked whether he ever intended to honor a three-year term, Emmert testified:

“I never had a meeting of the minds on any of the terms in there. I wouldn’t sign a contract with anybody, number one. I wouldn’t sign that I was going to pay somebody two years worth of wages if they didn’t prove to be successful or couldn’t do the job after two months.”

Contact: John Kreutzer | [www.smithfreed.com](http://www.smithfreed.com) | email: [jkreutzer@smithfreed.com](mailto:jkreutzer@smithfreed.com)

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.



# OREGON LAW UPDATE

## Intentional Torts Do Not Require Special Relationship to be Actionable

case in point...

This evidence, coupled with Emmert’s conduct when McNeff arrived—putting off signing the contract, then later denying that any agreement had been reached—would permit a reasonable juror to find that Emmert promised to enter into a three-year employment contract to induce McNeff to accept an offer as in-house counsel, but that he never had any intention of performing that promise. Alternatively, Emmert argued that McNeff’s reliance was unreasonable because, as an attorney and business person, she was sophisticated. The Court noted that this was a question for the jury and not proper to be decided by a directed verdict. The Court rejected Emmert’s last argument that McNeff’s fraud claim was barred by the absence of a “special relationship.” The Court noted that a “special relationship” applied only to negligent misrepresentation claims, not to intentional torts like fraud. Reversed and remanded on the fraud claim.



Contact: John Kreutzer | [www.smithfreed.com](http://www.smithfreed.com) | email: [jkreutzer@smithfreed.com](mailto:jkreutzer@smithfreed.com)

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.

