

# Supreme Court of Texas

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No. 24-0171

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Maya Walnut LLC f/k/a Maya Foods, Inc.,

*Petitioner,*

v.

Bryan Ly, Walnut Creek Center, Inc., Leng Chiv Ly, and Sao  
Minh Ly,

*Respondents*

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On Petition for Review from the  
Court of Appeals for the Fifth District of Texas

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CHIEF JUSTICE BLACKLOCK, joined by Justice Lehrmann and Justice Sullivan, concurring in the judgment.

Bryan Ly told Maya Walnut LLC that the commercial property Maya wanted to re-lease for its grocery store was “available” and that negotiations toward a lease would continue. Ly never agreed to re-lease the property to Maya. He never even agreed to agree, which would not have been enforceable anyway. He just told Maya that the property Maya wanted was available and that Maya might get it. This was at least misleading, and perhaps outright false, because Ly had already signed with another tenant. Maya, apparently assuming it would get

the lease it wanted, made no backup plan, which left it exposed to the possibility it would be left out in the cold if no lease with Ly materialized. Having put all its eggs in that basket, Maya suffered substantial loss—\$11 million, according to the jury—when no lease with Ly came to fruition.

As sympathetic as these facts may be in the light most favorable to Maya, I find it obvious, as does the Court and the court of appeals, that Maya cannot recover as a matter of law. No reasonable business owner, told by a commercial landlord that the property he wants is “available” to lease, would bet the future of his business on actually obtaining that lease. Even if some risk-loving business owners would take that bet, no reasonable judicial system would make the landlord compensate them if it doesn’t work out.

Whatever Ly’s cut-throat business practices may have been, this lawsuit is an impermissible attempt to hold him responsible for breach of a lease agreement he never made. Ly strung Maya along for his own advantage, perhaps manipulatively, but he promised nothing of substance. He promised only to negotiate, and the law cannot treat one who promises only to negotiate as if the deal had been made. Perhaps Maya could hold Ly responsible for fraudulently inducing it to waste time and money negotiating for a deal that could not happen. That would be a low-dollar case, and it is not the case Maya brought. Maya instead seeks to hold Ly responsible for not leasing the property to Maya, which was never his obligation and which he never promised.

I share the Court’s view that Maya cannot recover, and I understand why the Court focuses on the red-flags question given the

court of appeals' emphasis on it and the way the briefs present the case. As I see it, however, the real problem with Maya's case is not that Maya could or should have come to disbelieve Ly's representations through a diligent inquiry in the face of red flags. The key problem, for me, is that Ly's representations were unworthy of Maya's heavy reliance as a matter of law because no reasonable business owner would rely on Ly's non-committal statements in the bet-the-farm way Maya did. In other words, the alleged misrepresentations, even if false, were not material to Maya's decision to forgo pursuit of a backup lease because no reasonable person would have relied on the representations in making that decision.

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“The party deceived must not only be justified in his belief that the representation is true, but he must also be justified in taking action on that basis. This usually is expressed by saying that the fact represented must be a material one.” W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 108 (5th ed. 1984). As we have said before, a misrepresentation is material if “a reasonable person would attach importance to and would be induced to act on the information in determining his choice of actions in the transaction in question.” *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337 (Tex. 2011) (citation modified); *see also TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976) (“The question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable [decisionmaker].”).

Ly's misrepresentations—even if actually believed by Maya and even if no red flags suggested they shouldn't be believed—would not induce a reasonable person to act as Maya did. Maya does not dispute the court of appeals' observation that “[n]one of the complained-of representations and nondisclosures [was] a specific and definite promise by landlord that a new lease would be executed.” 719 S.W.3d 347, 358 (Tex. App.—Dallas 2024). Instead, as Maya puts it, the “fraud intrinsic to every one of [Ly's] sham negotiations and empty reassurances was the false premise that Maya *could* renew its lease”; in other words, that a deal *could* be achieved. Pet. Br. at 15 (emphasis added).

But Maya did not act as though a deal *could* be achieved; it acted as though a deal *would* be achieved. With no deal reached after more than a year and a half of negotiations, Ly told Maya in August 2018 that the parties would “renegotiate next year,” a representation Maya immediately recognized as “[n]ot good news.” When negotiations resumed, Ly told Maya that he would come back with “an agreement to agree.” Not that there *was* an agreement to agree (unenforceable anyway); but that there *would be*. So, at most, Ly made an agreement to agree to agree. Yet Maya “placed its entire business in jeopardy” on the strength of these flimsy representations, failing to develop any feasible alternatives with less than a year left on its most important contract. 719 S.W.3d at 361. In other words, Maya took Ly's representations that a deal could be reached and acted like a deal would be reached. That is the only possible basis for Maya's \$11 million damages model and its theory that Ly is legally responsible for the total loss of its business.

The materiality inquiry does not ask, subjectively, whether Ly's representations influenced Maya's decision. It appears they did, but that does not answer the question. Instead, materiality asks, objectively, whether "a reasonable person would attach importance to and would be induced to act on the information in determining his choice of actions in the transaction in question." *Italian Cowboy*, 341 S.W.3d at 337. Maya's claim fails that objective test because a reasonable person with multiple options would not leave his business exposed to ruin merely because he's told his first-choice option is "available." A reasonable person with no lease in hand and time running out knows that the landlord could be stringing him along as a backup or hoping for a higher-paying tenant to come along. Just as Ly was probably stringing Maya along as a potential backup, Maya should have looked for backups itself rather than assuming it would have a deal with Ly. It failed to do so at its own risk. The law will not foist onto Ly the consequences of Maya's unfounded reliance on a deal that was never promised and never consummated.

This is not to say that Maya could not reasonably have attached *some* importance to Ly's representations or been induced by his statements to act in *some* way. A party's representation that a property is available would obviously be material to the counterparty's decision whether to invest more time and effort in trying to obtain the property. Likewise, a party's promise to continue negotiating could reasonably induce the counterparty to stay at the table. But Maya is not seeking \$11 million as compensation for the money and effort it wasted on pointless negotiations.

The “importance” of a representation, and thus its materiality, “cannot be determined in a vacuum.” *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1239 (3d Cir. 1993). There must be a purpose or end against which the representation’s importance is assessed, and “[w]hat is material for some purposes is not so as to others.” *In re Valley*, 21 B.R. 674, 680 (Bankr. D. Mass. 1982); *cf. Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 69 (2006) (“[A]n act that would be immaterial in some situations is material in others.” (citation modified)). For example, the same representation about a house might be essential to someone buying it as a home and irrelevant to someone buying it as a teardown. Assessing whether “a reasonable person would attach importance to” a representation “in determining his choice of action[]” requires understanding what the relevant choice of action was. Under Maya’s theory of the case, the relevant “choice of action[]” was not just whether to stay at the table; it was whether to put all the chips on red. Ly’s alleged misrepresentations were not material to that ill-fated choice because no reasonable person would be induced by the misrepresentations to make such a choice.

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Although I find the non-materiality of Ly’s misrepresentations to be a more compelling explanation of the defect in Maya’s claim than the red-flags argument on which the Court relies, my point is not to insist that my preferred route to reversal is the only available one. When a claim contains a fundamental defect from its inception, as this one does, we should not be surprised if multiple, overlapping doctrinal explanations for the claim’s failure present themselves.

Others have recognized “the intimate conceptual relationship between reliance and materiality.” *E.g.*, *Montgomery Mut. Ins. v. Riddle*, 587 S.E.2d 513, 515 (Va. 2003); Joseph M. Stool, *The Element of Materiality in Deceit Cases*, 29 TEX. L. REV. 644, 650 (1951) (“It is sometimes difficult to separate the requirement of justifiable reliance from that of materiality.”). Appellate courts in Texas often treat claims stemming from promised future negotiations as matters primarily of justifiable reliance. *See* 719 S.W.3d at 358–59 (collecting cases). The overlap between reliance and materiality is unsurprising. The various doctrinal concepts at play in a common-law case are rarely sealed silos. They instead work together to mutually reinforce the common law’s pursuit of justice in accordance with our society’s legal traditions.

Another rule of decision that could resolve this case comes from contract law: “[A]greements to negotiate toward a future contract are not legally enforceable.” *Dall./Ft. Wor. Int’l Airport Bd. v. Vizant Techs., LLC*, 576 S.W.3d 362, 371 (Tex. 2019). Maya’s is a tort claim, not a contract claim. But regardless of the labels, the claim is that, by agreeing to negotiate toward a future contract, Ly became responsible to Maya as if he had made a deal and then breached it. The law of contracts squarely forecloses any such theory of recovery, and we must not allow the law of torts to undermine settled rules governing the liability of parties engaged in contract negotiations. Perhaps that line of thinking would have been enough on its own, without anything said about reliance, red flags, or the materiality of misrepresentations. In any event, while my preferred pathway to reversal diverges somewhat from the Court’s, we share the correct destination.

I respectfully concur in the judgment.

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James D. Blacklock  
Chief Justice

**OPINION FILED:** June 26, 2026