

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02515-JLK

FANG TIAN,

Plaintiff,

v.

NEWMONT INTERNATIONAL SERVICES LIMITED, a Delaware Corporation,

Defendant.

ORDER ON JURY INSTRUCTIONS

At the trial preparation conference on August 21, 2015, and in brief arguments submitted by email to chambers, Plaintiff has objected to Jury Instruction No. 24 defining unreasonable reliance on the grounds that unreasonable reliance is an affirmative defense to Negligent Misrepresentation Causing Physical Harm, as to which the Defendant bears the burden of pleading and proof. *See* CJI-CIV 9:3 n. 5. Because Defendant did not assert contributory negligence as an affirmative defense in its answer, Plaintiff argues that Instruction No. 24 should not apply to Plaintiff's Negligent Misrepresentation Causing Physical Harm claim. Defendant argues that Instruction No. 24 requiring Plaintiff to prove justifiable reliance should apply to both of Plaintiff's negligence claims.

Although neither the parties nor the Court have found any Colorado authority clearly addressing this issue, Colorado cases suggest that justifiable reliance is an element for plaintiff to prove rather than an affirmative defense in negligent misrepresentation cases in general. *See Colorado Pool Systems, Inc. v. Scottsdale Ins. Co.*, 317 P.3d 1262, 1272 (Colo. App. 2012) ("In

every negligent misrepresentation case, the plaintiff must show justifiable reliance on the alleged misrepresentation.”); CJI-CIV 9:4 n. 9 (“Although unreasonable reliance may be considered a form of contributory or comparative negligence and treated as an affirmative defense, in a number of cases, the Colorado Court of Appeals has indicated that “justifiable” reliance is an element of a plaintiff’s claim.”). Accordingly, Plaintiff’s objection is **OVERRULED** and Instruction No. 24 will apply to both of Plaintiff’s negligence claims.

Dated: August 24, 2015

s/ John L. Kane
Senior U.S. District Judge