

Economic Loss Doctrine – Intentional Misrepresentation – Real Estate

Agents – Shister v. Patel (Court of Appeals, 2008 AP 2803, October 28, 2009)

Shister v. Patel

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The plaintiff home buyer sued the defendant home sellers and their real estate agent, alleging intentional misrepresentation for failing to disclose the fact that the home had been remodeled without the proper city permits, thus increasing the property's tax assessments. The defendant real estate agent moved for summary judgment, arguing that the economic loss doctrine barred the plaintiff's tort allegations against her because the home sale contract was a contract for a product and the claimed damages were only monetary. The plaintiff asserted that there was no contract between him and the real estate agent, and that a real estate agent owes separate duties of full disclosure to home buyers under Ramsden v. Farm Credit Services, 223 Wis. 2d 704, 590 N.W.2d 1 (Ct. App. 1998). The circuit court granted summary judgment and the plaintiff appealed.

The court of appeals reversed, holding that home buyers may sue real estate agents and brokers for intentional misrepresentation when the agent knows of a seller's failure to disclose on a property condition report. The agent or broker provides services, and the economic loss doctrine does not apply to the provision of services. A real estate agent owes disclosure duties to home buyers separate and apart from a seller's duties. Furthermore, there was no contract between the plaintiff and the real estate agent. Note: this case involves a real estate sale completed before the enactment of 2009 Wisconsin Act 4, which allows for intentional misrepresentation or fraud claims against a home seller in relation to a home sale completed after April 23, 2009.



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All of the summarized decisions are recommended for publication. The full text of these and other Wisconsin cases can be found on the State Bar's Web site at www.wisbar.org. Further information can be provided by any member of the firm by phone or email (enter first letter of first name, followed by last name, @pjmlaw.com). Questions about the Update can be directed to Luke Kingree by phone or at lkingree@pjmlaw.com.

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