

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 10, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0559-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

KENNETH BINGER,

Plaintiff-Appellant,

v.

**JAMES J. ANDERSON and
DAWN M. ANDERSON,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM J. HAESE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Kenneth Binger appeals from an order granting summary judgment in favor of James and Dawn Anderson. He argues that the trial court should not have granted summary judgment against him on his claim for intentional misrepresentation. Pursuant to this court's order dated April 3, 1996, this case was submitted to the court on the expedited appeals calendar. See § 809.17, STATS. We affirm.

Binger purchased property from David Schmidt on October 11, 1994. Schmidt had purchased the property from James and Dawn Anderson on August 15, 1994. After the closing in August, Schmidt had sent a Real Estate Condition Report to the Andersons in Tennessee, where they had moved. The cover letter advised them that they had to complete the report to comply with Wisconsin law. In the report, the Andersons disclosed that work was performed on the basement walls of the house in 1990, before they had purchased the property, and that they had no water problems in the basement in their four years of ownership.

After Binger had owned the property for about nine months, he brought an action for intentional misrepresentation against the Andersons based on water problems in the basement, claiming that he saw and relied on the condition report completed by the Andersons in purchasing the home from Schmidt.¹ The Andersons had never met nor spoken with Binger until this lawsuit was commenced.

Summary judgment allows disputes to be settled without trial where there are no disputed material facts and only legal questions are presented. *In re Cherokee Park Plat*, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582-83 (Ct. App. 1983). The statute upon which Binger based his intentional misrepresentation claim, § 100.18, STATS., provides that "[n]o person ... with intent to sell ... or in any [way] dispose of any real estate ... offered by such person ... shall make ... [a] representation of any kind to the public relating to such purchase ... contain[ing] any assertion, representation or statement of fact which is untrue, deceptive or misleading."

We conclude that the trial court properly granted summary judgment in favor of the Andersons because the Andersons had shown that they had a defense to a claim for *intentional* misrepresentation. See *In re Cherokee Park Plat*, 113 Wis.2d at 116, 334 N.W.2d at 583. There was nothing to suggest that the Andersons intended to deceive Binger in filling out the condition report. When the Andersons filled out the condition report, the

¹ Binger initially brought four causes of action -- breach of contract, strict responsibility, rescission, and intentional misrepresentation. Subsequently, however, he acknowledged that by virtue of the lack of any contractual relationship between the Andersons and himself, the first three claims were not viable.

property had already been sold to Schmidt. There is no allegation that the Andersons were agents of Schmidt, or that the Andersons prepared the condition report to aid Schmidt in selling the property. They had no reason to induce Schmidt to buy the property as he had already purchased it. They had no interest in -- and were not even aware of -- Schmidt's subsequent sale to Binger. We agree with the Andersons that they had "no conceivable reason to induce anyone to purchase the property they had already sold."²

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

² We do not reach the issue of whether, in fact, the condition report actually contained inaccuracies. As aptly explained by the Andersons, however, Binger's contention assumes that they "had some motive for intentionally misleading strangers to enter a transaction [they] had no interest in."