

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 14, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2010AP1159

Cir. Ct. No. 2008CV877

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MICHAEL RAMMER,

PLAINTIFF-APPELLANT,

V.

**THE RIVERBANK INSURANCE CENTER, INC. AND GENERAL CASUALTY
COMPANY OF WISCONSIN,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

Before Vergeront, P.J., Lundsten and Blanchard, JJ.

¶1 PER CURIAM. Michael Rammer appeals an order dismissing his claims related to whether he should have received an insurance payment for a property loss. We affirm.

¶2 The parties are familiar with the complaint, and so we do not restate its allegations in detail here. The circuit court dismissed the complaint on the ground that Rammer was unable to show that defendant Riverbank Insurance Center owed a duty to anyone other than its client Page. As to defendant General Casualty Insurance Company, the court held that it had no common law or contractual duty to include Rammer as payee on the policy. Although the circuit court analyzed the defendants separately, due to their different roles as insurance agent and insurance company, Rammer does not make such a distinction in his brief on appeal.

¶3 Rammer first argues that “the defendants” breached a duty to him, before the insurance contract was formed, by not checking with the register of deeds to determine whether there were third parties (such as Rammer) with an interest in the land who should be made insurance payees. Rammer did not advance this theory of duty in his brief opposing summary judgment, even though lack of duty was the only ground argued in Riverbank’s summary judgment motion. Nor did Rammer raise this issue at a hearing, because no hearing was held on the motion. We usually do not address issues that are raised for the first time on appeal, *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), and we see no reason to do so in this case.

¶4 Rammer next argues that the defendants assumed a duty to him by volunteering to provide a service to him, namely, by agreeing, after the loss occurred, to make the insurance payment to him. He further argues that the defendants negligently breached this voluntarily assumed duty by sending the check to another person instead. He cites WIS JI—CIVIL 1397, and cases noted there, as the legal source of this theory. This is again a theory he argues for the first time on appeal, and we do not consider it.

¶5 Rammer also appears to argue that the insurance contract was equitably reformed to include him as payee. His claim appears to be that the reformation occurred when Rammer told General Casualty that he was supposed to be the payee. This would no longer be a tort claim, but would be an action for breach of the reformed contract. Rammer cites federal cases from Louisiana on equitable reformation, but provides no discussion of Wisconsin law of equitable reformation. We conclude the argument is inadequately developed. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶6 For future reference of appellant's counsel, we also note certain flaws in the brief. The brief lacked sufficient citations to the record. *See* WIS. STAT. RULE 809.19(1)(d) and (1)(e). This deficiency makes the work of opposing counsel and the court more difficult than it should be. If the deficiency had been brought to our attention earlier by a motion to strike, we likely would have rejected the brief. The brief's appendix also fails to provide the decision of the trial court, as required by WIS. STAT. RULE 809.19(2)(a). In spite of that obvious deficiency, appellant's counsel signed a certification stating specifically, but inaccurately, that the appendix contained "the findings or opinion of the circuit court" and "oral or written rulings or decisions showing the circuit court's reasoning regarding" the issues raised. We exercise our discretion not to impose a monetary sanction in this case, but caution counsel that similar filing in the future may lead to sanctions.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

