

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 26, 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. 2010AP1866

Cir. Ct. No. 2009CV729

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LYNN M. ROWAN,

PLAINTIFF-APPELLANT,

V.

TRUMAN J. BOURGET, MIRIAM R. BOURGET AND LYLE A. GOETTL,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Lynn Rowan appeals a summary judgment dismissing her claims related to a residential real estate transaction. Rowan claims the circuit court erred by concluding the economic loss doctrine barred her misrepresentation claims. We affirm.

¶2 Rowan purchased the property at issue from Truman Bourget and Lyle Goettl on July 22, 2002. A real estate condition report stated that the sellers were unaware of any material defects in the property. In January 2008, Rowan was informed by a neighbor of extensive structural damage to the property. The neighbor further informed her that Bourget and Goettl were aware of the damage prior to their purchase of the property. A subsequent inspection indicated a failing house foundation. Rowan also determined that Bourget and Goettl had received a real estate condition report prior to their purchase of the property which disclosed structural defects.¹

¶3 Rowan commenced a lawsuit on October 19, 2009. The lawsuit alleged claims for breach of contract, as well as intentional, negligent and strict responsibility misrepresentation. The defendants sought summary judgment, claiming the breach of contract claim was barred by the applicable six-year statute of limitations and the tort claims were barred by the economic loss doctrine. Rowan conceded at the summary judgment hearing that her contract claim was

¹ Bourget and Goettl purchased the property as a foreclosure through WHEDA. A previous prospective purchaser had rejected an accepted offer after an inspection revealed material defects, including that the home's block foundation and footings were undermined on three sides. The listing agent for the property provided Bourget and Goettl with this inspection report. The agent also provided them a real estate condition report that he prepared, indicating defects in the structure and foundation. Bourget and Goettl subsequently purchased the property.

barred by the statute of limitations. The circuit court granted summary judgment on the contract and misrepresentation claims, and Rowan now appeals.²

¶4 We review the circuit court’s grant of summary judgment using the same methodology as the circuit court. *City of Beaver Dam v. Cromheecke*, 222 Wis. 2d 608, 613, 587 N.W.2d 923 (Ct. App. 1998). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶5 Rowan does not dispute that the economic loss doctrine bars misrepresentation claims based in negligence and strict responsibility. *See Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶30, 283 Wis. 2d 555, 699 N.W.2d 205. Rowan’s intentional misrepresentation claim is her only potentially viable cause of action.

¶6 Our supreme court held that intentional misrepresentation claims arising out of residential real estate transactions were barred by the economic loss doctrine. *See Below v. Norton*, 2008 WI 77, ¶36, 310 Wis. 2d 713, 751 N.W.2d 351. In response to *Below*, the Wisconsin legislature enacted WIS. STAT. § 895.10, allowing claims for intentional misrepresentation in residential real

² Both parties fail to conform to the requirements of WIS. STAT. RULE 809.19 and unnecessarily complicate our review of this case. For example, Rowan improperly refers to the parties by designation rather than name, such as “plaintiff” or “defendant.” *See* WIS. STAT. RULE 809.19(1)(i) (2009-10). Bourget and Goettl cite generally to multi-page documents, such as “R18.” It should be clear to all attorneys that reference to the page of a document is required for each citation in an appellate brief. We will not search the record for evidence to support a party’s arguments. *See Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. Both counsel are admonished that future violations of the rules of appellate procedure may result in sanctions.

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

estate transactions. However, the statute “first applies to residential real estate transactions that are completed on the effective date of this section.” Rowan concedes the statute’s effective date was April 23, 2009.

¶7 In the present case, the real estate transaction occurred in 2002, long before the effective date of WIS. STAT. § 895.10.³ Therefore, the statute is not applicable to the transaction at issue. The economic loss doctrine barred Rowan’s misrepresentation claims, including intentional misrepresentation.

¶8 Rowan argues for the first time in her reply brief that the economic loss doctrine does not bar her cause of action against realtor Miriam Bourget.⁴ In the alternative, Rowan contends she can fulfill “a narrow fraud in the inducement exception to the economic loss doctrine” adopted in *Kaloti*. Arguments raised for the first time in a reply brief will not be considered. *See Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995).

¶9 Truman Bourget, Miriam Bourget and Lyle Goettle also filed a “Motion For Costs, Fees and Attorney’s Fees For Frivolous Appeal.” The motion is denied.

³ Rowan argues in her reply brief that her cause of action “accrued in January of 2008 when through a neighbor, she became aware of the defective basement or foundation.” Rowan asserts that *Below v. Norton*, 2008 WI 77, 310 Wis. 2d 713, 751 N.W.2d 351, was decided six months after her accrual date and thus “should not be applicable to this case.” However, the transaction in *Below* occurred in February 2004. *Id.*, ¶8. In a published decision in that case decided in 2006, we held that the economic loss doctrine applied to residential real estate transactions. *See id.*, ¶17. Our decision was subsequently affirmed by our supreme court. *See id.*, ¶4. Accordingly, even assuming for the sake of argument that Rowan’s cause of action accrued in January 2008, the economic loss doctrine barred her misrepresentation claims.

⁴ Realtor Miriam Bourget is the spouse of Truman Bourget.

By the Court.—Judgment affirmed.

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

