

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 28, 2008

Cornelia G. Clark
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. 2007AP2865

Cir. Ct. No. 2006CV210

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARY E. HAUSER,

PLAINTIFF-APPELLANT,

V.

MARK R. BOSMAN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Mary Hauser sued Mark Bosman individually in connection with a home inspection. Bosman moved to dismiss, contending if Hauser had any claims for failures in the inspection, whether in contract or tort, it was against Home Inspection Associates, LLC (“the LLC”), of which he is a

member.¹ The circuit court granted the motion to dismiss,² reasoning that it was clearly revealed at all times to Hauser that the LLC would be doing the inspection. We disagree. Whether Hauser contracted with Bosman or the LLC presents a question of fact necessitating reversal. Moreover, although an individual is personally responsible for his or her own tortious conduct, we remand for a determination of whether a viable tort claim may be presented for a negligent home inspection under the facts of this case.

¶2 This dispute arose when Hauser entered into an offer to purchase a cottage and decided to have the cottage inspected prior to closing. Hauser alleged in her complaint that she “hired the defendant, who held himself out to be a qualified home inspector, to inspect the cottage.” The inspection report discussed several minor issues, but found no major defects in the flooring system. The report commented, “The floors throughout the first floor of the home are not level and have a moderate amount of flex to them. Based on the very limited view into the crawl space it appears as if the flex is caused by the spacing of the floor beams.” The inspection report also indicated that “because of the very limited view of the crawl space, an evaluation of the floor system and the inner foundation walls could not be performed.” Sometime after closing, a guest stepped on a

¹ There is no dispute the LLC is a Wisconsin limited liability company organized under ch. 183 of the Wisconsin Statutes. References to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² Bosman filed a motion to dismiss, together with an affidavit. Hauser filed an affidavit in opposition. The circuit court issued a decision granting the motion to dismiss and a subsequent order. The notice of appeal purported to appeal “from the whole of the Order for summary judgment...” On appeal, the parties refer to the order interchangeably as stemming from a motion to dismiss and a motion for summary judgment. Although not referenced explicitly as summary judgment, the record demonstrates the court considered evidence outside the pleadings and, therefore, the matter was treated as one for summary judgment. *See* WIS. STAT. § 802.06(2)(b).

section of the living room floor and the floor gave way. Hauser subsequently alleged the entire flooring system in the building interior was rotted and had to be replaced.

¶3 In her complaint, Hauser alleged that Bosman was “negligent and failed to perform his responsibility as the home inspector in that he failed to discover and disclose the material defect of the flooring system to plaintiff prior to the closing of the real estate transaction.” Bosman answered, denied he was personally hired to inspect the cottage, and affirmatively alleged that he was “a qualified home inspector for Home Inspection Associates, LLC., who was retained by [Hauser].” Hauser now appeals from the order dismissing the case.

¶4 We review summary judgment decisions de novo, applying the same methodology as the circuit court. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). The methodology is well-established and need not be repeated. It is sufficient to say that the moving party is entitled to summary judgment only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751.

¶5 Hauser argues there is no evidence she knew she was dealing with a limited liability company at the time the contract was entered into. Hauser stated in an affidavit in opposition to the motion to dismiss that she “retained defendant to make the home inspection.” In that regard, we note Bosman merely alleged in the affidavit supporting his motion to dismiss that he performed the inspection as an agent of Home Inspection Associates, LLC. Bosman also stated in his affidavit that he sent Hauser a contract from the LLC, although she never signed it. It is unclear when Bosman sent Hauser the contract and it is undisputed that no written

contract was signed. As a result, we cannot sustain the circuit court’s finding that “it is apparent that at all times it was clearly revealed to the plaintiff that the LLC would be doing the inspection.” Whether Hauser had sufficient notice of the status of the LLC at the time of contracting is a question of fact precluding summary judgment. See *Benjamin Plumbing, Inc. v. Barnes*, 162 Wis. 2d 837, 852, 470 N.W.2d 888 (1991).

¶6 Hauser also contends there can be no “corporate shield” against tort liability. As the court explained in *Oxmans’ Erwin Meat Co. v. Blacketer*, 86 Wis. 2d 683, 692-93, 273 N.W.2d 285 (1979):

An individual is personally responsible for his own tortious conduct. A corporate agent cannot shield himself from personal liability for a tort he personally commits or participates in by hiding behind the corporate entity; if he is shown to have been acting for the corporation, the corporation also may be liable, but the individual is not thereby relieved of his own responsibility.

¶7 Whatever the contours of the above rule, it squarely applies to fraud, as *Oxmans’* itself involved a claim of intentional misrepresentations by a corporate officer and shareholder acting in the course of his corporate duties. However, Hauser cites no legal authority sustaining her argument that a home inspection would support an independent action in tort rather than solely in contract, and the circuit court did not reach the scope of this rule. Hauser merely suggests in her brief on appeal that she has a viable claim in tort because her lawsuit was brought claiming Bosman was “negligent in the performance of his duty and responsibility, which would include omissions, negligence, wrongful acts, misconduct and malpractice.” Hauser also states without citation to authority that:

If for example, an LLC held title to a car and failed to make its payments on the car loan, the LLC member would

presumably have no “personal liability” for those payments unless the member had signed the note or a separate guaranty. If however, the LLC member drove that car into the bank’s lobby through the front window there would likely be “personal liability”. [3]

¶8 Arguments unsupported by legal authority will not be considered, see *Kruczek v. DWD*, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286, and we will not abandon our neutrality to develop arguments. *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). On remand, the court may, after proper briefing, address the scope of the *Oxmans*’ rule as applied to the facts of this case.

¶9 Hauser also contends WIS. ADMIN. CODE § RL 134.03 required Bosman “to make the floor inspection defined therein,” notwithstanding the disclosure in the inspection report that an evaluation of the floor system and inner foundation walls could not be performed because of the very limited view of the crawlspace.⁴ This argument is undeveloped and we also will not consider it. See *M.C.I.*, 146 Wis. 2d at 244-45.

³ Conversely, Bosman contends without citation to authority, “The new law [Hauser] is attempting to create would extend to many specialized companies that require individually licensed employees to perform services, such as electrical companies, plumbing companies, heating companies, title insurance companies.” Bosman insists that if licensed individuals could be held personally responsible for the company’s services, “you would find companies such as Home Inspection Associates, LLC unable to hire individual licensed home inspectors.”

⁴ Bosman claimed he could not visually see the rot in the floor system without tearing apart the floor, which was contrary to his duties as a home inspector.

By the Court.—Judgment reversed and cause remanded with directions.

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

