COURT OF APPEALS
DECISION
DATED AND FILED

July 31, 2015

Diane M. Fremgen
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. 2014AP1273 **Cir. Ct. No. 2013CV87**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

NEW LIFE OF CRIVITZ, LP AND NEW LIFE SENIOR WELLNESS CENTER, LLC,

PLAINTIFFS-APPELLANTS,

V.

PESHTIGO RIVER INN AT CRIVITZ, LLC, H. J. MARTIN & SON, INC. AND EDWARD N. MARTIN,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Marinette County: JAMES A. MORRISON, Judge. *Affirmed*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. New Life of Crivitz, LP and New Life Senior Wellness Center, LLC (collectively "New Life"), appeal an order dismissing each of their claims against Peshtigo River Inn at Crivitz, LLC ("PRI"), H. J. Martin &

Son, Inc. ("H. J. Martin"), and Edward Martin ("Edward") (collectively "the Respondents"). The order denied New Life's motion for summary judgment, partially granted the Respondents' motion to dismiss, and partially granted the Respondents' motion for summary judgment. New Life argues that the circuit court erroneously dismissed its claims against H. J. Martin and Edward, and that it is entitled to summary judgment on those claims. We reject New Life's arguments and affirm.

BACKGROUND

¶2 In February 2011, New Life, through one of its principals, Zoe Makhsous, discovered that the Peshtigo River Inn was listed for sale on a website. Makhsous submitted an email inquiry about purchasing the inn, which she desired to convert into a senior assisted-living facility known as a community-based residential facility (CBRF). The negotiations following this initial inquiry involved Edward, who was a member of PRI.

¶3 After performing some due diligence, New Life submitted a Commercial Offer to Purchase with an attached addendum (the "Initial Offer") on April 5, 2011. The Initial Offer was contingent upon PRI and New Life agreeing to construction plans and specifications for converting the property into a CBRF. PRI was required to secure governmental approvals for use of the property as a CBRF. The Initial Offer required PRI, "promptly upon … receipt of a building permit … [to] cause construction of the Project to commence in accordance with the approved Plans and Specifications." Edward, on behalf of PRI, followed with a counter offer modifying certain dates and other provisions not at issue here, which counter offer was accepted by Makhsous on behalf of New Life on April 15, 2011.

¶4 The Initial Offer identified a $2 million purchase price for the inn, $800,000 of which was budgeted to cover the anticipated cost of the planned construction. A provision in the Initial Offer permitted either party to terminate the Initial Offer upon notice by May 31, 2011, if the projected costs of construction in accordance with the plans and specifications exceeded that sum. On August 29, 2011, Edward, who was also a principal with construction contractor H. J. Martin, emailed Makhsous to notify her that both H. J. Martin and another contractor, Smet Construction, had provided estimates that exceeded the $800,000 renovation budget. Edward opined that the "renovation is doable and makes sense," and he offered to pay any amount required in excess of $800,000.

¶5 On September 22, 2011, New Life and PRI agreed to another addendum to the Initial Offer (the "Second Addendum"). The Second Addendum contained the following relevant provisions pertaining to the construction project:

> 4. **Approval of Plans and Specifications: Construction Contract.**
>
> Buyer acknowledge[s] receipt, and gives its approval, of the Plans and Specifications for converting the Property to the Intended Use ("Projects"), not exceeding $800,000 ("Construction Costs"). The approval construction plan overview sheet and conversion cost breakdown by LaPlant Architect and H.J. Martin & Sons, Inc., respectively, are attached as Exhibit "A" and incorporated herein.
>
> 5. **Construction of Project.**
>
> Promptly upon Seller's receipt of a building permit for the Project but no earlier than January 1st, 2012, Seller shall cause construction of the Project to commence in accordance with the approved Plans and Specifications, in accordance with the overview plan previously identified as Exhibit "A".

(Formatting altered.) The Second Addendum called for New Life, upon being notified that its foreign investors were approved for entrepreneur visas, to have on deposit a total of $100,000. A further payment of $1.1 million was required at the commencement of construction, followed by reimbursement at the completion of construction for renovation costs not to exceed $800,000.

¶6 Exhibit A to the Second Addendum consisted of a one-page proposed floor plan for the inn prepared by LaPlant Architecture and a two-page quote dated August 24, 2011, from H. J. Martin to Makhsous and New Life. The quote projected the cost of the renovations at $942,600. Edward signed and initialed each page of the quote. Each page requested that New Life "sign and fax back so we can process the order" if the "contract is acceptable." It is undisputed that no one from New Life signed the quote, either before or after it was incorporated into the Second Addendum.

¶7 PRI and New Life ultimately closed on the sale of the inn on March 15, 2012, but on terms that materially differed from those of the Initial Offer and the Second Addendum. The one-page agreement the parties signed on that date (the "Closing Agreement") stated the purchase price of the inn was $1.2 million, and that New Life was taking on renovation responsibilities. Specifically, the agreement provided that "[t]he terms and conditions within the Offer dealing with Seller's conversion of the Premises to an assisted living facility and Buyer's payment for the conversion is hereby terminated. Buyer agrees to pay all future conversion costs of the premises." Ultimately, the facility was not renovated into a CBRF.

¶8 The Closing Agreement also included mutual releases. As relevant to this appeal, New Life agreed to release PRI and its "agents and partners" from

"any and all claims, causes of action and damages, which [New Life] has or which it may have … arising out of the Offer's terms and conditions regarding [PRI's] conversion of the Premises to an assisted living facility." Edward signed the closing agreement on behalf of PRI. H. J. Martin was not a named signatory to the Initial Offer, the Second Addendum, or the Closing Agreement.

¶9 New Life filed the present action in March 2013 against the Respondents. The complaint included thirty-seven paragraphs under the heading "General Allegations." These allegations largely restated the history of the parties' relationships. The complaint then summarily asserted forty-eight claims against the Respondents, not all of which are relevant for purposes of this appeal.[1] At issue in this appeal are claims for breach of contract; promissory estoppel; intentional, strict responsibility, and negligent misrepresentation; and deceptive trade practices under WIS. STAT. § 100.18(1).[2] These six causes of action were asserted against both Edward individually and H. J. Martin.

¶10 The Respondents filed a motion to dismiss on January 31, 2014. As relevant here, they argued that, pursuant to the Closing Agreement, New Life released the Respondents from all claims set forth in the complaint. They also argued New Life's claims for breach of contract, promissory estoppel, misrepresentation, and deceptive trade practices were either insufficiently supported by the pleaded facts or barred as a matter of law. On February 28,

[1] The circuit court dismissed claims related to mold and HVAC issues discovered after closing, as well as all claims against PRI. New Life does not challenge the dismissal of those claims on appeal.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

2014, both New Life and the Respondents filed motions for summary judgment. Among other things, the Respondents argued Edward and H. J. Martin were entitled to summary judgment on all of New Life's claims against them.

¶11 The circuit court held a hearing to entertain argument on all the motions. New Life argued that despite the release contained in the Closing Agreement, H. J. Martin was liable for breach of contract because the quote dated August 24, 2011, as incorporated into the Second Addendum, constituted an "offer" that New Life accepted by signing the Second Addendum with PRI. New Life asserted H. J. Martin breached this "contract" by failing to perform the renovations. The circuit court rejected this argument, concluding that neither Edward nor H. J. Martin was obligated under the Second Addendum because neither was a signatory to it. The circuit court further concluded that, regardless, responsibility to complete the renovation shifted to New Life under the Closing Agreement, and the release applied to Edward and H. J. Martin as PRI's partner and agent, respectively.

¶12 The circuit court then proceeded to address New Life's promissory estoppel claims. New Life's counsel asserted that Edward and H. J. Martin repeatedly promised, orally and in writing, and before, during and after the closing, to undertake the renovation for $800,000. Upon questioning by the court, New Life's counsel conceded that any promises made after closing could not have induced New Life to reasonably rely on the promises when closing the transaction. The court, observing that a third contractor had bid $1.8 million for the renovation project, determined that, as a matter of law, New Life could not demonstrate reasonable reliance on any statement made prior to closing that H. J. Martin would renovate the inn for $800,000—at least not without verifying at closing whether that was still a valid quote. New Life's counsel then asserted that an H. J. Martin

representative had orally promised at the closing it was "still going to do the renovation for cost." However, counsel conceded that this promise had not been pleaded in the complaint. The circuit court concluded that the promissory estoppel claims "are out on the pleading basis alone," and also because any asserted reliance on bare promises without a written note or memorandum was not reasonable "given the size of this transaction." The court also concluded equity did not favor relief because it was not reasonable for New Life to fail to commit H. J. Martin to any asserted promise in writing.

¶13 The circuit court dismissed New Life's deceptive trade practices claims under WIS. STAT. § 100.18(1) because no statements were allegedly made "to the public" as required under that section. New Life's counsel then accused the Respondents of a "bait and switch," theorizing that PRI "wanted to unload the inn" and conspired with H. J. Martin to accomplish the sale without completing the promised renovations. The court asked whether New Life at any time had a building permit or a CBRF license that would have permitted H. J. Martin to "go forward and do this work." Counsel did not directly answer that question, but instead responded that prior to closing "there were doubts by New Life as to [H. J. Martin's] architect's abilities, and the architect's plans were actually rejected when … a party from [the Wisconsin Department of Health Services] reviewed them for the CBRF license." The court then concluded, as an alternative basis for dismissing the deceptive trade practices claim, that New Life could not demonstrate reliance because it was aware prior to closing, and based on an independent architectural analysis, that the proposed renovation might not be permitted.

¶14 Finally, the circuit court addressed New Life's misrepresentation claims. New Life's counsel asserted that "[t]he misrepresentations lie exactly in

the bait and switch scenario that I explained." The court observed that misrepresentation claims must be pleaded with specificity, to which counsel responded that New Life had done so by making thirty-seven general allegations and attaching "a little over a dozen exhibits." The court rejected this notion, asserting that the special pleading requirement for fraud exists so that a defendant understands immediately what is alleged to be false without having to sift through "[thirty-seven] paragraphs … and all my exhibits and figure out what I think is false." When New Life's counsel was asked to point out "one thing that is in your complaint that you allege either of those defendants said that was false when it was said," counsel conceded that he could not do so because the falsity lied in the entire "set of circumstances." The court determined this was insufficient: "You've got to say, you lied when you said the car was red and, in fact, it was yellow." The court concluded that all the misrepresentation claims were insufficiently pleaded, because "there's no pleading here that would put the defendant[s] on notice as to what false statements were allegedly made," and also because New Life failed to allege any asserted representations regarding the renovation were false when made.

¶15 At the conclusion of the hearing, the circuit court stated it was "granting [the Respondents'] motion to dismiss for failure to state a claim across the board for all of the reasons that I've stated." The court stated it was granting the Respondents' summary judgment motion "with respect to … the misrepresentations and the [WIS. STAT. § 100.18] claims," as well as upon the release contained in the Closing Agreement. Later, in a written order, the circuit court denied New Life's motion for summary judgment and partially granted the Respondents' motions to dismiss and for summary judgment "for the reasons set forth on the record."

DISCUSSION[3]

¶16 New Life seeks reinstatement of, and summary judgment on, only a small number of the forty-eight claims asserted in its complaint. New Life argues the circuit court erroneously dismissed causes of action numbers twenty-five through thirty, all of which were asserted against H. J. Martin. These alleged, respectively, breach of contract; promissory estoppel; intentional, strict responsibility, and negligent misrepresentation; and deceptive trade practices under WIS. STAT. § 100.18. New Life also argues the circuit court erroneously dismissed the same legal claims against Edward personally, which the complaint denominated as causes of action numbers forty-three through forty-eight.

¶17 We summarily reject New Life's challenges to the circuit court's decision as they pertain to Edward's alleged personal liability in causes of action numbers forty-three through forty-eight. Members of limited liability companies are not ordinarily personally liable to third parties for their actions made on the companies' behalf. *See* WIS. STAT. § 183.0304. Similarly, a corporation like H. J. Martin is, by legal fiction, "a separate entity and is treated as such under all ordinary circumstances." ***Marlin Elec. Co. v. Industrial Comm'n***, 33 Wis. 2d 651, 658, 148 N.W.2d 74 (1967).

[3] New Life's appendix violates WIS. STAT. RULE 809.19(2)(a) because it omits both the order at issue in this appeal and, more importantly, the circuit court's oral ruling, in which the court provided its various rationales for dismissing all of New Life's claims. We also observe the appendix certification, in which counsel for New Life specifically states that the appendix contains "the findings or opinion of the circuit court," is false. Given the voluminous complaint in this case, New Life's omission had the potential to significantly hamper this court's efficient review of the case, which potential was only unrealized thanks to the Respondents' decision to include the circuit court's order and oral ruling in a supplemental appendix. We admonish New Life's counsel that future violations of the Rules of Appellate Procedure will likely result in monetary or other sanctions. *See* WIS. STAT. RULE 809.83(2).

¶18 New Life's brief-in-chief fails to explain how or why Edward was personally liable under any of the legal theories advanced in the complaint.[4] Although New Life attempts to remedy this omission in its reply brief, its cursory, two-paragraph argument on this point comes too late.[5] *See* ***Roy v. St. Lukes Med. Ctr.***, 2007 WI App 218, ¶30 n.6, 305 Wis. 2d 658, 741 N.W.2d 256 (we do not consider arguments raised for the first time in a reply brief). Even overlooking New Life's failure to timely raise this issue, New Life's scant analysis in its reply brief consists only of general statements and legal conclusions. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (We need not review inadequately briefed issues.). We therefore affirm the dismissal of the claims denominated in the complaint as causes of action numbers forty-three through forty-eight.

¶19 We now turn to New Life's appeal of the claims involving H. J. Martin. These claims were dismissed based upon the Respondents' motions to dismiss and for summary judgment. As an initial matter, the Respondents argue New Life's brief-in-chief addressed only the motion to dismiss and almost entirely ignored "the circuit court's explicit grant of summary judgment on a number of issues directly related to New Life's renovation-based claims." The Respondents

[4] New Life's complaint alleged Edward acted "in an individual capacity," but in the same paragraph New Life also stated Edward "is and was an agent acting on behalf of and in the course and scope of his employment with the principals, Peshtigo River Inn at Crivitz LLC and H.J. Martin & Son, Inc." The complaint fails to specify *which* acts Edward was alleged to have undertaken on his own behalf, versus those on behalf of the various businesses in which he was involved. This failure is fatal to New Life's claims against Edward.

[5] In any event, New Life points only to the fact that Edward concluded a February 19, 2011 email to Makhsous by writing his name without identifying on whose behalf he was writing. However, in that email Edward remarked only that New Life's proposal for the purchase and renovation of the inn "seems fair" but required more vetting.

assert that this "explicit grant" of summary judgment dispensed with all of New Life's claims against H. J. Martin, and that New Life's failure to address the summary judgment motion therefore "constitutes a concession of the ruling's validity." *See* ***West Capitol, Inc. v. Village of Sister Bay***, 2014 WI App 52, ¶49, 354 Wis. 2d 130, 848 N.W.2d 875, *review denied*, 2014 WI 122, 855 N.W.2d 696.

¶20 We reject the Respondents' assertion that we can summarily affirm the circuit court because New Life has failed to adequately address the circuit court's reasoning. As an initial matter, the Respondents' brief unreasonably abbreviates its quotation of the circuit court's relevant remarks at the motion hearing, by which the court clarified it was granting summary judgment on New Life's misrepresentation and WIS. STAT. § 100.18 claims. Moreover, New Life's brief repeatedly asserts that it has raised a genuine issue of material fact as to a number of its claims, which argument implicates the standards for granting summary judgment. Finally, it does not appear the Respondents themselves are clear regarding the precise grounds on which each of New Life's claims were dismissed, as the order they prepared following the motion hearing generally stated that each of the Respondents' motions were partially granted.

¶21 For purposes of our review, it makes no practical difference which of the Respondents' motions the circuit court granted as to each claim. We review de novo decisions on both a motion to dismiss and a motion for summary judgment. *See* ***Meyers v. Bayer AG, Bayer Corp.***, 2007 WI 99, ¶21, 303 Wis. 2d 295, 735 N.W.2d 448 (whether a complaint states a claim upon which relief can be granted is a question of law); ***Chapman v. B.C. Ziegler & Co.***, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425 (we review a ruling on summary judgment de novo). The first step of the summary judgment analysis requires that we determine whether the complaint has stated a claim upon which relief can be

granted, ***Chapman***, 351 Wis. 2d 123, ¶2, which is the same analysis we use to evaluate a motion to dismiss, ***Below v. Norton***, 2007 WI App 9, ¶9, 297 Wis. 2d 781, 728 N.W.2d 156, *aff'd*, 2008 WI 77, 310 Wis. 2d 713, 751 N.W.2d 351. If the complaint states a valid claim, and the answer joins issue, we must then determine whether there are any genuine issues of material fact remaining for trial, and whether the party seeking summary judgment is entitled to judgment as a matter of law. *See* ***id.***; *see also* WIS. STAT. § 802.08(2). We apply this methodology to each of New Life's claims against H. J. Martin.

Cause of action number twenty-five: Breach of contract

¶22 Cause of action number twenty-five asserts that H. J. Martin is liable to New Life for breach of contract. The complaint alleged that H. J. Martin and New Life had an "agreement … to renovate the [inn] facilities … to a [CBRF]." New Life alleged that H. J. Martin "failed to perform the terms and conditions of the agreement by not renovating the [inn] facilities." These allegations arguably suffice as the bare minimum necessary to state a claim for common law breach of contract, *see* ***Steele v. Pacesetter Motor Cars, Inc.***, 2003 WI App 242, ¶10, 267 Wis. 2d 873, 672 N.W.2d 141, so we proceed to consider whether this claim could be resolved on summary judgment.

¶23 We conclude the circuit court appropriately granted summary judgment to H. J. Martin on this cause of action. It is undisputed that H. J. Martin was not a signatory to the Initial Offer, the Second Addendum, or the Closing Agreement. Accordingly, none of these agreements obligated H. J. Martin to do anything. Moreover, both the Initial Offer and the Second Addendum required PRI, not H. J. Martin, to renovate the inn into a CBRF, and the Closing Agreement released PRI from that obligation.

¶24 New Life nevertheless argues H. J. Martin was obligated to complete the renovation despite it not having been a signatory to any of the applicable agreements in this case. Under New Life's theory, the two-page quote from H. J. Martin, dated August 24, 2011, constituted an "offer" to New Life to renovate the inn at a cost not greater than $800,000. New Life asserts it "accepted" this offer "by both signing the [Second Addendum] and undertaking acts of acceptance." New Life contends the agreement was supported by adequate consideration because New Life would receive the benefit of the renovation in exchange for a promise of future payment to H. J. Martin.

¶25 Even if we assume the quote was an "offer"—a matter we need not decide—we disagree that New Life could accept that offer by signing a separate agreement with a different party, even if that agreement purports to incorporate by reference the "conversion cost breakdown" in the quote. Each page of the August 24, 2011 quote included the following language: "If the contract is acceptable, please sign and fax back so we can process the order. This proposal may be accepted within 30 days of its date, and will become a binding contract upon such acceptance by purchaser subject to review by seller." It is undisputed that neither page of the quote was further signed by New Life (or by anyone else) or returned by fax to H. J. Martin within thirty days. "As a general rule, where an offer prescribes the time and manner of acceptance, its terms must be complied with in order to create a contract." ***Nelson Inc. of Wis. v. Sewerage Comm'n of Milwaukee***, 72 Wis. 2d 400, 419, 241 N.W.2d 390 (1976), *abrogated on other grounds by* ***James Cape & Sons Co. v. Mulcahy***, 2005 WI 128, 285 Wis. 2d 200, 700 N.W.2d 243. Thus, by the plain terms of the "offer," no agreement could be established in the manner New Life suggests.

¶26 Further, the circuit court concluded New Life's contract claim against H. J. Martin was barred by the release provisions of the Closing Agreement. The release broadly exonerated PRI and its "agents and partners" from all claims arising from the "Offer's terms and conditions regarding [PRI's] conversion of the Premises" to a CBRF. The circuit court reasoned the release covered H. J. Martin because, in this context, H. J. Martin could only have been acting as a partner or agent of PRI. This is because PRI was the only entity obligated to renovate the facility pursuant to the Initial Offer and the Second Addendum, which obligation the parties eliminated by virtue of the Closing Agreement.

¶27 New Life argues the release does not apply to H. J. Martin because there is no evidence showing that H. J. Martin was a partner or agent of PRI. New Life asserts these were "separate parties engaged in dissimilar, separate businesses." However, the conclusion that H. J. Martin could only be contractually liable for the renovation if it was PRI's agent or partner does not require further evidentiary proof of such a relationship between H. J. Martin and PRI. Rather, we reach this conclusion based on our interpretation of the acknowledged agreements between PRI and New Life, which are part of the record on appeal and undisputedly establish that, at least prior to the Closing Agreement, PRI alone was responsible for renovating the facility. As such, to the extent H. J. Martin would have had any role in the renovation, it would have been at PRI's behest.

¶28 Citing an unpublished case for its persuasive value, New Life also argues the release is void because it is "entirely unclear," presumably with respect to its identification of the released parties. *See* ***C & M Hardware, LLC v. True Value Co.***, No. 2011AP1047, unpublished slip op. (WI App May 9, 2013), *review*

denied, 2013 WI 87, 350 Wis. 2d 727, 838 N.W.2d 635. However, ***C & M Hardware*** merely applied the rule of ***Yauger v. Skiing Enterprises, Inc.***, 206 Wis. 2d 76, 557 N.W.2d 60 (1996), in which our supreme court "concluded that an exculpatory contract provision was void because the provision failed to specify the specific tort the provision sought to disclaim." ***C & M Hardware***, unpublished slip op., ¶14. By contrast, the circuit court here applied the release to bar New Life's *contract* claim against H. J. Martin. Because this application did not involve New Life's tort claims, the release at issue here is not analogous to an exculpatory clause. *See* ***Merten v. Nathan***, 108 Wis. 2d 205, 211-12, 321 N.W.2d 173 (1982) (emphasizing that rules governing exculpatory contract reflect "the uneasy balance between [freedom] of contract and tort law").

¶29 Finally, New Life argues that ambiguities in the release are to be construed against the Respondents, "as the release was drafted by someone on their behalf." New Life does not provide any record citation establishing that the Respondents were responsible for drafting the agreement, and the parties appeared uncertain about the identity of the drafting party at the motion hearing. In any event, we conclude the release is not in any way ambiguous and precludes New Life's contract claim against H. J. Martin.

Cause of action number twenty-six: Promissory estoppel

¶30 New Life asserts the circuit court erroneously dismissed its promissory estoppel claim against H. J. Martin. The precise contours of New Life's arguments regarding promissory estoppel, and the extent to which these arguments were adequately raised in the circuit court, are both difficult to discern. As best as we can tell, New Life principally argues on appeal that H. J. Martin "promised to have the renovation happen for cost of materials at or around

closing," but it concedes that the complaint fails to allege this fact. The Respondents argue that any attempt to hold H. J. Martin liable for promises made orally by representatives at the closing must fail because those particular promises were not sufficiently pleaded in the complaint. We agree with the Respondents.[6]

¶31 New Life's cause of action for promissory estoppel generally alleged that H. J. Martin "promised to the plaintiffs to renovate the [inn] facilities … [and] should have reasonably expected to induce action or forbearance of a definite and substantial character on the part of the plaintiffs." New Life further alleged that this promise "induced the plaintiffs to perform acts and expend monies to their detriment" and that "injustice can be avoided only by enforcement of the promise."

¶32 As our supreme court recently explained in ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, 356 Wis. 2d 665, 849 N.W.2d 693, when reviewing whether a complaint has stated a valid legal claim, "we accept as true all facts well-pleaded in the complaint and the reasonable inferences therefrom." ***Id.***, ¶19. Under WIS. STAT. § 802.02, the plaintiff must provide a short and plain statement of the claim, identifying the "transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." It is the sufficiency of the facts alleged that control the determination of whether a claim for relief has been properly pleaded. ***Strid v.***

[6] The Respondents alternatively argue that New Life's promissory estoppel claims are barred by the statute of frauds. This argument is meritless. "[T]he statute of frauds cannot be used to bar a claim for promissory estoppel." ***U.S. Oil Co. v. Midwest Auto Car Servs., Inc.***, 150 Wis. 2d 80, 91, 440 N.W.2d 825 (Ct. App. 1989).

Converse, 111 Wis. 2d 418, 422-23, 331 N.W.2d 350 (1983), *cited with approval in* ***Data Key Partners***, 356 Wis. 2d 665, ¶30.

¶33 New Life's promissory estoppel claim, as with most of its claims, is long on legal conclusions and short on facts. Legal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a complaint to withstand a motion to dismiss. ***Data Key Partners***, 356 Wis. 2d 665, ¶19. In the portion of the complaint asserting promissory estoppel against H. J. Martin, New Life generally alleged the existence of a promise, relying on its thirty-seven "General Allegations" to inform the Respondents as to both the general nature and specifics of its claim. However, the principal "promise" on which it now relies—an H. J. Martin representative's supposed statement at closing that H. J. Martin would perform the renovations "at cost"—was undisputedly not pleaded. This omission in the pleading clearly was not because that alleged representation was unknown to New Life at the time it filed the complaint; indeed, the affidavit on which New Life relies to establish this alleged representation was from one of its principals, Makhsous, who was present at the closing. Under these circumstances, we conclude New Life failed to adequately plead the promise on which it now relies.

¶34 Moreover, given the facts of record, H. J. Martin was entitled to summary judgment as a matter of law. To prevail on a promissory estoppel claim, the plaintiff must demonstrate the existence of a promise that the promisor could reasonably expect to induce action or forbearance "of a definite and substantial character," and action or forbearance consistent with that expectation. ***Tynan v. JBVBB, LLC***, 2007 WI App 265, ¶13, 306 Wis. 2d 522, 743 N.W.2d 730.

¶35 Assuming without deciding that H. J. Martin did promise New Life that it would complete the renovation project for $800,000, New Life does not clearly explain what "action or forbearance of a definite and substantial character" on its part such a promise would have produced or, in fact, did produce. *See* ***id.*** New Life could not have relied on any promise by H. J. Martin during the negotiations that culminated in the Initial Offer and Second Amendment, as those agreements allocated to PRI exclusively the obligation to complete the renovation at a cost to New Life of no more than $800,000. In other words, even if H. J. Martin was not able to complete the renovation at that price, PRI would have been responsible under those agreements for finding another contractor who could or PRI would bear the excess costs. Under the terms of the Initial Offer and Second Addendum, New Life held all the cards, and it could have held PRI to the contract, regardless of any promises H. J. Martin might have made.

¶36 Rather than holding PRI to its bargain, New Life decided, by virtue of the Closing Agreement, to relieve PRI of its renovation obligations and assume those responsibilities itself. We agree with the circuit court that, as of the closing, any reliance on an oral promise that predated the closing, without verification that the promise was still valid, was unreasonable as a matter of law—particularly in light of the fact that New Life was aware other contractors' quotes were substantially higher than the $800,000 for which H. J. Martin was apparently willing to complete the renovation. New Life argues H. J. Martin orally reaffirmed at closing that it would renovate the inn into a CBRF for $800,000, but, again, this promise was not adequately pleaded and therefore cannot support the claim in this context.

¶37 New Life must also demonstrate that injustice can be avoided only by enforcement of the purported promise. ***Tynan***, 306 Wis. 2d 522, ¶13. This is a

policy decision by the court, and one that "necessarily embraces an element of discretion." ***Hoffman v. Red Owl Stores, Inc.***, 26 Wis. 2d 683, 698, 133 N.W.2d 267 (1965). In this regard, we note that the manner in which New Life, seemingly a sophisticated business entity, handled this transaction does not cry out for equitable relief. The notion that New Life would proceed blithely through a transaction of this magnitude based on H. J. Martin's alleged representation without ever attempting to reduce the purported promise to writing defies rationality.

Cause of action numbers twenty-seven, twenty-eight, and twenty-nine: Tortious misrepresentation

¶38 Each of New Life's misrepresentation claims against H. J. Martin generally alleged that H. J. Martin made "representations of fact" to the effect that H. J. Martin would renovate the inn into a CBRF. Each cause of action generally alleged that these representations were untrue, and that New Life relied on them to its detriment. At no point were the specific representations identified in the complaint, nor were the date or circumstances of their making. New Life's counsel conceded as much during the motions hearing, stating only that the falsity lied in the entire "set of circumstances."

¶39 WISCONSIN STAT. § 802.03(2) is an exception to Wisconsin's notice pleading rules and requires that "the circumstances constituting fraud … shall be stated with particularity." "That rule 'requires specification of the time, place, and content of an alleged false representation.'" ***Rendler v. Markos***, 154 Wis. 2d 420, 428, 453 N.W.2d 202 (Ct. App. 1990) (quoting ***New England Data Servs., Inc. v. Becher***, 829 F.2d 286, 288 (1st Cir. 1987); *accord* ***Putnam v. Time Warner Cable of Se. Wis., Ltd. P'ship***, 2002 WI 108, ¶26, 255 Wis. 2d 447, 649 N.W.2d 626 ("[A]llegations of fraud must specify the particular individuals involved, where

and when misrepresentations occurred, and to whom misrepresentations were made."). This particularity requirement serves dual purposes: it puts defendants on notice so they can meaningfully respond to such claims, and it protects against casual allegations of serious wrongdoing. ***Putnam***, 255 Wis. 2d 447, ¶26. Here, New Life has failed to plead any of its misrepresentation allegations with the specificity required by WIS. STAT. § 802.03. The dismissal of these causes of action was therefore warranted.

Cause of action number thirty: Deceptive trade practices

¶40 Cause of action number thirty asserted that H. J. Martin was liable for making an untrue, deceptive or misleading representation under WIS. STAT. § 100.18(1). New Life alleged that H. J. Martin "made representations to the plaintiffs" that it would renovate the motel to a CBRF, that these representations were "untrue, deceptive and misleading," and that New Life sustained monetary loss as a result.

¶41 We conclude these allegations did not sufficiently state a claim for relief under WIS. STAT. § 100.18(1). At a general level, that subsection prohibits a person or business from making, in any manner, an "advertisement, announcement, statement or representation of any kind to the public" which is "untrue, deceptive or misleading." ***Id.***; *see also* ***Below***, 297 Wis. 2d 781, ¶12 (reciting elements of the cause of action under § 100.18(1)). While New Life alleged H. J. Martin made representations specifically to New Life regarding renovation of the inn, New Life failed to allege that H. J. Martin made representations to "the public" within the meaning of WIS. STAT. § 100.18(1).

¶42 This is a critical point, as the case law "recognize[s] the difficulty of defining 'public' and the necessity of looking to each case's own [particular] facts

and circumstances." ***State v. Automatic Merchandisers of Am., Inc.***, 64 Wis. 2d 659, 664, 221 N.W.2d 683 (1974). The number of people involved is not controlling; in certain circumstances, "the public" may only be one person. ***Id.*** "The important factor is whether there is some particular relationship between the parties." ***Id.*** (citing ***Cawker v. Meyer***, 147 Wis. 320, 326, 133 N.W. 157 (1911)). In ***Automatic Merchandisers***, for example, the court determined that although the allegedly untrue or deceptive representations were made orally in face-to-face conversation with prospective customers, the statements were nonetheless made to "the public" because the customers simply responded to notices in newspapers' classified sections and there was no "peculiar relation" between the customers and the defendant. ***Id.***

¶43 New Life argues that it sufficiently pleaded a claim under WIS. STAT. § 100.18(1) because the complaint's factual allegations establish that there was no "particular relationship" between it and H. J. Martin at the time the alleged representations were made. New Life argues that the inn was advertised online for sale to the general public. While apparently true, this allegation was *not* pleaded in the complaint, and we therefore reject New Life's argument that it has sufficiently pleaded a violation of WIS. STAT. § 100.18(1). Even overlooking this omission, H. J. Martin's allegedly deceptive representations related not to the sale of the property, but only to the renovation of the property into a CBRF facility pursuant to New Life's specifications. Only the sale of the inn, generally, was advertised online; it was New Life who first prompted any notion of having that sale also relate to a renovation of the property into a CBRF. Accordingly, summary judgment was warranted because, as a matter of law, any representations related to the proposed renovation were not made to the "public."

¶44 New Life also argues it adequately pleaded that H. J. Martin was involved in a fraudulent scheme. New Life relies on ***State v. American TV & Appliance of Madison, Inc.***, 146 Wis. 2d 292, 430 N.W.2d 709 (1988), as authority for the elements necessary to establish a claim for a fraudulent scheme under WIS. STAT. § 100.18(9)(a). However, the complaint is wholly insufficient in this regard, as it neither cites § 100.18(9)(a) nor alleges any factual basis that would have given PRI notice that New Life intended to assert such a claim.

¶45 In sum, we conclude the circuit court properly dismissed all claims. New Life has supplied no legal basis under which Edward is liable for any of the alleged claims. Further, the circuit court properly granted H. J. Martin summary judgment on New Life's breach of contract claim. Finally, New Life failed to adequately plead its promissory estoppel, misrepresentation and deceptive trade practices claims against H. J. Martin.

By the Court.—Order affirmed.

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