COURT OF APPEALS
DECISION
DATED AND FILED

December 29, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP119 **Cir. Ct. No. 2010CV416**

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

PIERCE COUNTY,

PLAINTIFF,

V.

JAMES LADNER,

DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT-CROSS-RESPONDENT,

V.

PAUL MOSBY,

THIRD-PARTY
DEFENDANT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Pierce County: JOSEPH D. BOLES, Judge. *Affirmed*.

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

¶1 PER CURIAM. James Ladner appeals a summary judgment dismissing his third-party claims against Paul Mosby. Ladner's claims were based on misrepresentations Mosby allegedly made regarding a property he sold to Ladner. We conclude Ladner's claims fail because his reliance on the alleged misrepresentations was unreasonable as a matter of law. We therefore affirm the judgment dismissing Ladner's third-party claims.

¶2 Mosby cross-appeals, arguing the circuit court erred by permitting Ladner to amend his third-party complaint and by granting Ladner's request for a jury trial. Because we affirm the judgment dismissing Ladner's third-party claims, Mosby's cross-appeal is moot, and we need not address it.

BACKGROUND[1]

¶3 Mosby purchased property on the St. Croix River, just north of Prescott, in October 1990. The property consisted of two lots, "Lot 2" and "Lot 3." When Mosby acquired the property, Lot 3 contained a house, a small storage shed on the beach, stairs leading from the house to the beach, and a dock. Lot 2 was vacant. During the time he owned the property, Mosby made various improvements to it, including a rock riprap project, an erosion control project, two retaining walls, two storage sheds, two firewood storage structures, and a garage.

¶4 In 2007, Mosby contracted with Albert Burney, Inc. to sell the property at auction. In early October, Ladner received a brochure from Albert Burney about the property. Ladner subsequently visited the property, at which

[1] Because this case is before us on summary judgment, we construe all facts and reasonable inferences in the light most favorable to Ladner, the nonmoving party. *See* ***Thomas ex rel. Gramling v. Mallett***, 2005 WI 129, ¶4, 285 Wis. 2d 236, 701 N.W.2d 523.

time he met and spoke with Mosby. Ladner contends he asked Mosby about "regulations that governed and affected the [p]roperty[,]" and in response, Mosby explained "the history and development of applicable zoning setbacks, height restrictions and the like" and "explained in great detail what modifications could potentially be made to the cabin[.]" Ladner asserts this discussion "left the impression that [Mosby] had made an effort to thoroughly learn about and understand the various regulations and laws that applied to the [property] and made every effort to ensure that all was in strict compliance." In addition to visiting the property and speaking with Mosby, Ladner obtained information about the property from Albert Burney's website and the website www.stcroixserenity.com. He also obtained the "2007 Real Estate Parcel Summary" for the property.

¶5 Prior to the auction, Ladner received a Wisconsin Real Estate Condition Report (WRECR) that Mosby had completed. As relevant to this case, Mosby answered "no" to the following statements on the WRECR:

- C.11.: "I am aware that the property is located in a floodplain, wetland or shoreland zoning area."
- C.20.: "I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits."
- C.21.: "I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition."
- C.27.: "I am aware of other defects affecting the property."

¶6 Mosby answered "yes" to only two statements on the WRECR:

- C.14.: "I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway)."

- C.26.: "I am aware of subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses, rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements."

Mosby did not provide any explanation for these "yes" answers. Ladner contends he inquired with someone at Albert Burney about the "yes" answer to statement C.26., and he was told it had to do with easements over the property.

¶7 The property was auctioned on November 3, 2007, and Ladner was the winning bidder for Lot 3, the improved parcel.[2] The transaction closed one month later, with a purchase price of $858,000. Paragraph 14 of the purchase agreement provided, in relevant part:

> B. (i) That Purchaser has had the opportunity prior to execution of this Contract to make any and all independent inspections of the Property to Purchaser's complete and total satisfaction. … (ii) That Purchaser conducted and relied solely upon his/her own investigation of the Property; that Purchaser examined the Property and is familiar with the physical condition thereof and has conducted such investigation of the Property as Purchaser has considered appropriate; that neither Broker, Auction Marketing Company, Auctioneer[,] their Agents, Employees, Officers or Representatives has made any verbal or written representation, warranties, or guarantees with respect to the physical condition, operation, or any

[2] Lot 2 was purchased at the November 3, 2007 auction by a different buyer.

> other matter or thing affecting or related to the Property or the offering for sale of the Property. …
>
> C. Purchaser has fully inspected the property, as represented in P.14(B) above, and/or waived their rights to do so and that the conveyance and delivery of the Property contemplated by this agreement is "AS-IS, WHERE-IS and WITH ALL FAULTS"; and no warranty has arisen through trade, custom or course of dealing with Purchaser.
>
> D. That Purchaser's inspection of the Property (or waiver thereof) shall relieve and hold harmless and indemnify the Seller, Broker, Auction Marketing Company, Auctioneer[,] their Agents, Employees, Officers and Representatives of any liability to Purchaser whatsoever; from and against any claims, liabilities, demands, or actions incident to, resulting from or in any way arising out of this transaction, or the possession, ownership, maintenance or use of the Property. Purchaser shall accept all liability.

Paragraph 16 of the purchase agreement stated, "This is the entire agreement between the parties. It replaces and supercedes any and all oral agreements between the parties, as well as any prior writings."[3]

¶8 The purchase agreement incorporated the WRECR. It also incorporated a document entitled "Real Estate Auction Terms and Conditions," which stated:

> Bidders acknowledge by their participation in the auction that they have had the opportunity to make any and all independent inspections of the Property prior to bidding and executing the Agreement to Purchase Real Estate. Bidders must conduct and rely solely upon their own investigation of the property, and not any information provided by the Seller, Auction Marketing Company, Broker and Auctioneer, or their respective Agents, Employees, Officers, or Representatives.

[3] Ladner received a preliminary draft of the purchase agreement, which contained the provisions quoted above, five days before the auction.

¶9 About two months after the transaction closed, Ladner received a letter from Pierce County informing him that a shed located directly over the property's septic tank was in violation of "Pierce County Zoning Code, St. Croix Riverway in addition to State Plumbing Code standards." The letter further stated, "The previous property owner had erected a small accessory structure near this location in 1995 which was later permitted and moved to the top of the bluff near the garage. That action was based on St. Croix Riverway setback standards and county zoning code requirements."

¶10 In the ensuing months, Ladner worked with the County to address its concerns regarding the shed above the septic system. At the County's recommendation, Ladner removed the shed from its foundation and placed it on a wheeled trailer. This required the purchase of a suitable trailer, removal of a tree, and use of a crane to move the shed. By early August 2009, the County's concerns regarding the shed had been resolved.

¶11 Meanwhile, in May 2009, Ladner asked the County to examine the property to determine whether there were any other zoning issues, aside from those related to the shed above the septic tank. In June 2009, the County informed Ladner it had no other concerns about the property. However, in September 2009, the County reversed course and advised Ladner that a shed on the beach and a stairway from the house to the beach violated the County's zoning code. One year later, the County filed the instant lawsuit against Ladner, seeking an injunction requiring him to remove the beach shed and stairway. In March 2011, Ladner applied for and received a conditional use permit for the stairway, which required him to conceal its appearance with vegetation and reduce the size of the landing. The County then filed an amended complaint, seeking an injunction only with respect to the beach shed.

¶12 On July 15, 2011, Ladner filed a third-party summons and complaint against Mosby. Ladner asserted a breach of warranty claim, alleging that Mosby

> fail[ed] to disclose in the Real Estate Condition Report that he constructed or modified the stairway and storage sheds, that permits had not been obtained for the construction or modification of the stairway and storage sheds, that the property was located in a shoreland zoning area, and that the stairway and storage sheds may not comply with [the County's] zoning code.

Ladner also asserted Mosby was required to indemnify him for past and future damages associated with bringing the property into compliance. The circuit court ultimately concluded the beach shed violated the County's zoning ordinances, and, on February 22, 2012, it ordered Ladner to remove the shed.

¶13 On July 26, 2013, Mosby moved for summary judgment on Ladner's third-party claims. Ladner opposed the motion, but he also moved for leave to file an amended third-party complaint asserting a theft by fraud claim, pursuant to WIS. STAT. §§ 895.446 and 943.20(1)(d).[4]

¶14 On October 31, 2013, the circuit court issued an order granting Mosby summary judgment. Based on the language of the purchase agreement, the court determined Ladner waived his right to bring a breach of warranty claim against Mosby. In the alternative, the court held that the WRECR's disclosure of "zoning violations" "put, or should have put, Ladner on notice of the issues raised by Pierce County concerning the property[.]" The court reserved ruling on Ladner's motion for leave to amend the third-party complaint, pending further briefing.

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

¶15 Ladner subsequently moved for reconsideration of the court's summary judgment decision. On March 27, 2014, the court issued a decision and order denying Ladner's reconsideration motion, but granting his motion for leave to amend the third-party complaint.

¶16 Ladner filed an amended third-party complaint on April 10, 2014, reasserting his previously dismissed breach of warranty claim and also asserting a theft by fraud claim. The amended third-party complaint relied on the same basic facts as Ladner's original third-party complaint. However, it raised one new factual allegation—namely, that a brochure and promotional website Ladner reviewed before the auction "indicated that there was a road that traversed from Lot 3 across Lot 2 … ending approximately at the beach on Lot 2." In 2011, the County notified the owner of Lot 2 that the road violated the County's zoning code. The owner of that lot was then required to remove nearly all of the pavement and reseed the area.

¶17 After Ladner filed his amended third-party complaint, Mosby again moved for summary judgment. The circuit court granted Mosby's motion, concluding that, even if Mosby made the false statements alleged in the amended third-party complaint, Ladner's reliance on those statements was unreasonable, as a matter of law. This appeal follows.

DISCUSSION

¶18 We independently review a grant of summary judgment, using the same methodology as the circuit court. ***Malzewski v. Rapkin***, 2006 WI App 183, ¶11, 296 Wis. 2d 98, 723 N.W.2d 156. The purpose of summary judgment is "to avoid trials where there is nothing to try." ***Rollins Burdick Hunter of Wis., Inc. v. Hamilton***, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). Accordingly, summary

judgment is appropriate where 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).

I. Ladner's breach of warranty and theft by fraud claims regarding Mosby's "no" answers on the WRECR

¶19 Ladner's third-party complaint and amended third-party complaint asserted two primary claims against Mosby: breach of warranty and theft by fraud. These claims were premised largely on the same set of facts: Ladner alleged that Mosby's "no" answers to statements C.11., C.20., C.21., and C.27. on the WRECR were false, and that Ladner sustained damages due to his reliance on those false representations. Specifically, Ladner claimed he was forced to remove the beach shed, modify the stairway to the beach, and modify another storage shed in order to bring the property into compliance with the County's zoning code. He also asserted he incurred legal fees to defend himself against the County's enforcement action.

¶20 The elements of a breach of warranty claim are: "(1) an affirmation of fact; (2) inducement to the buyer; and (3) reliance by the buyer." ***Malzewski***, 296 Wis. 2d 98, ¶14. The elements of a theft by fraud claim are:

> (1) the defendant [here, Mosby] made a false representation to the owner of the property [here, Ladner, with the property being money]; (2) the defendant knew that the representation was false; (3) the defendant made the representation with the intent to deceive and defraud the property's owner; (4) the defendant got title to the property as a result of the false representation; (5) the owner of the property was deceived by the representation; and (6) the owner of the property was … defrauded.

See ***id.***, ¶21. Both breach of warranty and theft by fraud claims also require the plaintiff to prove that his or her reliance on the defendant's representation was reasonable. *See* ***id.***, ¶¶14, 18, 22.

¶21 Here, we agree with the circuit court that Ladner's reliance on Mosby's "no" answers to the above-referenced statements on the WRECR was unreasonable, as a matter of law. First, although the WRECR states that the disclosures made by the seller are made with the knowledge that prospective buyers may rely on the information in deciding whether to purchase the property, the form also expressly states, "[T]his is not a warranty."

¶22 Second, Ladner signed the purchase agreement, which stated four times, in capital letters, that the property was being sold "AS-IS," and three times "WITH ALL FAULTS" or "WITH ALL FAULTS AND DEFECTS." In addition, the purchase agreement expressly stated Ladner "had the opportunity prior to the execution of this Contract to make any and all independent inspections of the Property to [his] complete and total satisfaction." By signing the purchase agreement, Ladner agreed that he had "conducted and relied solely upon [his] own investigation of the Property[,]" had "examined the Property[,]" and had "conducted such investigation of the Property as [he] … considered appropriate[.]" Elsewhere, the agreement stated Ladner had "fully inspected the Property … and/or waives [his] rights to do so." The agreement also incorporated "Real Estate Auction Terms and Conditions," by which Ladner acknowledged that he "had the opportunity to make any and all independent inspections of the Property prior to bidding and executing the Agreement to Purchase Real Estate[.]" The Auction Terms and Conditions further stated, "Bidders must conduct and rely upon their own investigation of the property, and not any information provided by the Seller, Auction Marketing Company, Broker and Auctioneer, or their respective Agents, Employees, Officers, or Representatives." In light of this contractual language, no reasonable buyer could have concluded he or she could

rely on Mosby's "no" answers on the WRECR, rather than conducting an independent investigation of the property.

¶23 Third, Mosby's "yes" answer to statement C.26. on the WRECR should have put Ladner on notice of potential zoning violations. Specifically, Mosby indicated he was aware of "subdivision homeowners' associations, common areas co-owned with others, *zoning violations or nonconforming uses*, rights-of-way, easements or another use of a part of the property by nonowners, other than recorded utility easements." (Emphasis added.) This disclosure put Ladner in a position to make an informed choice about the transaction. He could have asked Mosby to submit a revised WRECR, providing a specific explanation for the "yes" answer to statement C.26.[5] He could have conducted his own investigation—for instance, by contacting the County to see if there were any unresolved zoning issues or asking it to inspect the property. Alternatively, he could have decided not to bid on the property unless a satisfactory explanation for the positive response to statement C.26. was provided.

¶24 Ladner makes much of the fact that he asked a representative of Albert Burney about Mosby's positive response to statement C.26., and he was told it related to "easements." However, Ladner's decision to rely on this explanation, without requesting confirmation in a revised WRECR or conducting any additional investigation, was unreasonable as a matter of law. The purchase

[5] In his reply brief, Ladner notes that Section B.3. of the WRECR states, "If the owner responds to any statement with 'yes', the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the statement is 'yes'." Mosby did not provide any additional information explaining his "yes" answers. However, Ladner chose to bid on the property despite Mosby's failure to provide an explanation for the defects. Under these circumstances, Ladner cannot now complain that Mosby failed to provide the required explanation.

agreement Ladner signed specifically disclaimed oral representations, stating, "[N]either Broker, Auction Marketing Company, Auctioneer[,] their Agents, Employees, Officers or Representatives has made any verbal or written representation, warranties, or guarantees with respect to the physical condition, operation, or any other matter or thing affecting or related to the Property or the offering for sale of the Property." The purchase agreement further stated that it was the entire agreement between the parties and superseded previous oral agreements. Given these contractual provisions, Ladner could not reasonably rely on the Albert Burney representative's statement. This is particularly true given that Ladner is an attorney who had been in practice for over twenty years at the time of the sale.[6]

¶25 Ladner nevertheless argues his reliance on Mosby's "no" answers on the WRECR was reasonable, pursuant to ***Hennig v. Ahearn***, 230 Wis. 2d 149, 601 N.W.2d 14 (Ct. App. 1999). There, Hennig negotiated an employment agreement with Ahearn. ***Id.*** at 154. At the last minute, Ahearn altered a crucial provision in the final draft of the agreement, but he failed to point out the alteration, and neither Hennig nor his attorney noticed it. ***Id.*** at 154, 156. Hennig signed the contract and, as a result of the alteration, received substantially less compensation than he expected. ***Id.*** at 156. Hennig then sued Ahearn, asserting claims for intentional, negligent, and strict responsibility misrepresentation. ***Id.*** at 164. The

[6] Ladner argues the Albert Burney representative's statement was parol evidence clarifying the contract. We agree with Mosby that the statement cannot be parol evidence clarifying the contract because the contract specifically disclaimed oral representations. In addition, the contract is not ambiguous. Mosby answered statement C.26. on the WRECR in the affirmative. Ladner now claims Mosby's affirmative response was not sufficiently specific because statement C.26. contains multiple parts. However, Ladner provided a clear answer to the question asked, and, as noted above, Ladner chose to proceed with the transaction without asking Mosby to clarify his response.

circuit court dismissed Hennig's claims, concluding he had failed to present any credible evidence that he justifiably relied on a false representation. ***Id.*** at 164-65.

¶26 On appeal, Ahearn argued Hennig's reliance was unreasonable, as a matter of law, because "a failure to read proposed contract terms is presumptively negligent and unreasonable." ***Id.*** at 169. We rejected Ahearn's argument, stating, "The general rule in Wisconsin, as elsewhere, is that the recipient of a fraudulent misrepresentation is justified in relying on it, unless the falsity is actually known or is obvious to ordinary observation. And, whether falsity is obvious is usually a question of fact." ***Id.*** at 170 (citations omitted). Applying this principle, we concluded the obviousness of Ahearn's last-minute alteration was a question of fact requiring a jury determination. ***Id.***

¶27 Based on ***Hennig***, Ladner argues his reliance on Mosby's misrepresentations was reasonable unless their falsity was actually known or obvious to ordinary observation. And, as in ***Hennig***, Ladner asserts this determination is a question of fact for a jury to decide. We disagree. Instead, we conclude this case is controlled by the standard set forth in ***Malzewski***.

¶28 In ***Malzewski***, the Malzewskis offered to purchase a house from the Rapkins. ***Malzewski***, 296 Wis. 2d 98, ¶2. The offer stated the seller had no knowledge of conditions affecting the property other than those listed in the seller's WRECR. ***Id.*** In the WRECR, the Rapkins represented that they were aware of basement or foundation defects, including "cracks, seepage and bulges[.]" ***Id.*** They further stated "there might be a little seepage in the walls/floors" during very heavy rainstorms, but they had "regraded to correct this[.]" ***Id.*** The Malzewskis' offer included an inspection contingency. ***Id.***, ¶3.

However, despite the Rapkins' disclosure of foundation defects, the Malzewskis waived their right to an inspection and purchased the home. ***Id.***, ¶4.

¶29 Less than one year after the sale, the Malzewskis observed peeling paint and cracks on the basement walls. ***Id.***, ¶5. They hired an expert to evaluate the walls, who informed them the cracks had been there for many years and it would cost $25,600 to correct the problem. ***Id.*** The Rapkins later admitted that, while they owned the home, the basement walls had twelve-foot-long, three-eighths-inch-wide cracks, which they filled in with masonry cement ten to twenty times. ***Id.***, ¶7.

¶30 The Malzewskis sued, asserting various causes of action. ***Id.***, ¶6. The circuit court granted the Rapkins summary judgment on the Malzewskis' breach of warranty and theft by fraud claims, and we affirmed those rulings on appeal. ***Id.***, ¶¶1, 10, 16, 22. We explained:

> [A] buyer aware of the "true nature" of defects, or who has the right to discover the "true nature" of defects *that are disclosed*, cannot later complain when he or she goes ahead with the purchase: (1) despite knowing about the defects, or (2) after giving up a right under the contract to discover their "true nature."

Id., ¶15. Applying this principle, we concluded the Malzewskis could not establish justifiable reliance on the Rapkins' misrepresentation because the WRECR put them on notice of a potential defect regarding the basement walls, but they nevertheless declined to exercise their contractual right to have the house inspected. ***Id.***, ¶¶16, 18, 22.

¶31 The same analysis applies in this case. The WRECR Mosby completed gave Ladner notice of potential zoning violations. Ladner could have attempted to investigate this disclosure; however, the only step he took was

contacting a representative of Albert Burney. He then signed a purchase agreement that: (1) specifically stated it was his responsibility to investigate the property; and (2) disclaimed any reliance on statements by Albert Burney representatives. Like the Malzewskis, Ladner had notice of a defect and had the opportunity to discover its true nature, but he did not exercise that opportunity. Under these circumstances, Ladner's reliance on Mosby's "no" answers on the WRECR cannot be deemed reasonable.

¶32 Ladner argues he was not required to investigate Mosby's disclosure of potential zoning violations because any such investigation would have been futile. We disagree. Ladner received the WRECR before the auction. Before bidding on the property, he or a representative could have gone to the Pierce County courthouse to review the public records pertaining to the property. He could have attempted to contact Pierce County to inquire into any zoning issues. Alternatively, if he felt no investigation was possible, he could have chosen not to bid on the property. Instead, he elected to bid on the property and ultimately signed a purchase contract that repeatedly stated he had an adequate opportunity to conduct an investigation.

¶33 Under these circumstances, Ladner's reliance on Mosby's "no" answers on the WRECR was unreasonable, as a matter of law. Accordingly, the circuit court properly granted Mosby summary judgment on Ladner's breach of warranty and theft by fraud claims pertaining to the WRECR.

II. Ladner's theft by fraud claim pertaining to the promise of an easement over Lot 2

¶34 In his amended third-party complaint, Ladner added a new factual allegation that a brochure and promotional website he reviewed before the auction

promised an easement over a paved road traversing Lot 2. Ladner contends he was deprived of the use of this easement when the County required the owner of Lot 2 to remove the pavement. On appeal, Ladner asserts these facts provide an independent basis for his theft by fraud claim. Again, to prevail on a theft by fraud claim, Ladner must show reasonable reliance on a false representation. *See* ***id.***, ¶¶18, 22.

¶35 As noted above, the purchase agreement Ladner signed specifically stated it superseded all prior oral and written agreements. During the hearing on Mosby's summary judgment motion, the circuit court observed that the easement described by the promotional materials was not included in the purchase agreement or title work. The court then stated:

> [R]eal estate demands writing. Writing demands some type of agreement on an easement that would be recorded, okay? Recording gives notice to the world that this exists, this encumbrance exists on this property, these rights or, again, liabilities exist on this property. Without that, you don't—you don't have it.
>
> And so [Ladner's] thinking it's there, but it doesn't show up on the title work so he would have to—you would think he would complain about it at the closing; that he would say, look, this easement that I thought was there does not show up on the record. I don't like that. That's not what I understand, that's not what I bought, I'm not closing until that's taken care of. But, apparently that didn't happen.

¶36 For the first time in his reply brief on appeal, Ladner contends the legal description in the warranty deed expressly included "an undescribed driveway easement, which presently crosses Lots 1, 2, 3, 4, 5 and 6 of said plat." Our review of the record confirms the truth of this assertion. Because the easement over Lot 2 was, in fact, described in the deed, Ladner contends there is a

genuine issue of material fact as to whether it was reasonable for him to rely on the promotional materials' promise of an easement.

¶37 Ladner did not, however, raise this argument in the circuit court. Ladner's amended third-party complaint simply alleged the easement was promised by a brochure and website. The complaint did not allege that the warranty deed included an easement, much less that Ladner relied on the warranty deed's grant of an easement when deciding to go through with the transaction. Nor did Ladner produce any affidavit in opposition to Mosby's summary judgment motion stating that he reviewed the deed before signing the purchase agreement and relied on it with respect to the easement. Even after the circuit court commented during the summary judgment hearing that Ladner could not reasonably rely on any false representations about the easement in the promotional materials because the easement was not described in the title work or purchase agreement, Ladner failed to point out that the easement was included in the warranty deed.

¶38 Arguments raised for the first time on appeal are generally deemed forfeited. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997). We do not "blindside trial courts with reversals based on theories which did not originate in their forum." ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995). In addition, on appeal, Ladner raised his argument regarding the warranty deed for the first time in his reply brief. "It is a well-established rule that we do not consider arguments raised for the first time in a reply brief." ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661.

¶39 Based on the facts presented to the circuit court, Ladner's reliance on the promotional materials' promise of an easement over Lot 2 was unreasonable as a matter of law. As discussed above, the purchase agreement specifically disclaimed these prior representations and stated that it was the entire agreement between the parties. Consequently, the circuit court properly granted Mosby summary judgment on Ladner's theft by fraud claim with respect to the easement.

By the Court.—Judgment affirmed.

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