

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 20, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-0472

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

FRED BROWN,

PLAINTIFF-APPELLANT,

V.

**FRIENDS OF MAZO BEACH, AN UNINCORPORATED
ASSOCIATION,**

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

¶1 PER CURIAM. Fred Brown appeals from the trial court's order dismissing his complaint against Friends of Mazo Beach (Mazo), an unincorporated association. Brown sought access to Mazo's financial records, contending that he was entitled to review the records as a member of the

association. He also contended that Mazo had misrepresented the purposes for which it was collecting money and asked the trial court to impose a constructive trust on Mazo. We affirm.

¶2 As summarized by the trial court, the complaint alleges that:

[Mazo] is an unincorporated association that collects, maintains, and disburses funds under the direction of a steering committee.

[Brown] was “a founding member of, and has held positions on the ad hoc and official Steering Committees of [Mazo] since 1992.”

[Brown] learned from other steering committee members: that [Mazo] was registered with the Department of Regulation and Licensing; that funds collected for [Mazo] were dedicated to goals and activities agreed upon by the committee; and that [Mazo] was audited, which plaintiff assumed involved assessing whether, indeed, funds were dedicated to such goals and activities.

Brown raised money for [Mazo] and contributed substantial money, time and goods to [Mazo].

Members of the [Mazo] steering committee stopped communicating with [Brown] about [Mazo] when he raised questions concerning [Mazo]’s funds and sought access to [Mazo] records.

[Mazo] is not registered with the Department of Regulation and Licensing. [Mazo] raised more than \$5,000 in 1993, 1994, and 1995.

[Brown] has requested a financial review of [Mazo]. [Mazo] has refused to permit such a review.

¶3 We review a trial court’s decision to grant or deny a motion to dismiss for failure to state a claim de novo. *See Town of Eagle v. Christensen*, 191 Wis. 2d 301, 311-12, 529 N.W.2d 245 (Ct. App. 1995). The purpose of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the complaint. *See id.* at 311. We assume that the facts alleged in the complaint are

true and liberally construe the pleadings, dismissing only if “it is quite clear that under no conditions can the plaintiff recover.” *Id.* (citation omitted).

¶4 We conclude that Brown has not stated a claim for access to Mazo’s records. Brown has not provided authority for his argument that an unincorporated association has an obligation to show its books to its members or to former members of its steering committee. As aptly explained by the trial court:

[Brown] has not identified any authority in support of his claim that he is entitled to a review of [Mazo]’s finances. The statutory scheme suggests that there is no support for the proposition that he is entitled to a review of [Mazo]’s books. Chap. 185, Stats., contains a section regulating the examination of a cooperative’s books and records by a member. Wis. Stat. 185.47. Similarly, Wis. Stat. 180.1602 sets forth the requirements for a shareholder’s examination of the records of a corporation. See also Wis. Stat. 181.[1601] (nonstock corporate records) and Wis. Stat. 183.0405 (limited liability company records). Chap. 184, Stats., is silent on the subject of examination of the records of an association such as [Mazo]. There is no statutory support for [Brown]’s action. I am unaware of any case law that supports his position. He has provided none.

¶5 In his reply brief, Brown contends that there was such a right at common law. The case he cites, however, provides no support because it concerns the right of a *shareholder* to look at the books of a *corporation*. *State ex rel. Dempsey v. Werra Aluminum Foundry Co.*, 173 Wis. 651, 182 N.W. 354 (1921).

¶6 We also conclude that Brown has not stated a claim for misrepresentation. Brown makes only one claim that a misrepresentation occurred: he alleges that other Mazo members informed him the group was

registered with the Department of Regulation and Licensing but, in fact, it was not. Again, we agree with the trial court's analysis:

The sole misrepresentation set forth in the complaint is the claim that [Mazo] was registered with the department. Mr. Brown makes no claim that his contributions were based on that representation. He claims in the Complaint that he raised and contributed money, goods and time to [Mazo] based on multiple understandings, not just based on the representation that defendant was registered with the department. He makes no claim that the other "understandings" upon which he relied were false.

The bases of responsibility in the[] three classifications of [misrepresentation] torts have at least three elements in common: (1) The representation must be of a fact and made by the defendant; (2) the representation of fact must be untrue; and (3) the plaintiff must believe such representation to be true and rely thereon to his damage. *Gauerke v. Rozga*, 112 Wis. 2d 271, [277 n.3], 332 N.W.2d 804, 810 n.3 (1983).

Mr. Brown's Complaint does not satisfy these elements for a misrepresentation action, whether it be intentional, negligent, or based on strict responsibility.

¶7 Brown has not adequately alleged a claim for misrepresentation because he does not claim that he relied on the representation that Mazo was registered with the department to his damage. He states that he raised money for Mazo based on multiple "representations concerning the tracking and use of ... funds and the operations of [Mazo]," only one of which he contends was untrue. He does not allege that he would not have raised money for or contributed to Mazo had he known that Mazo was not registered with the department. Therefore, we affirm the order dismissing the case.

By the Court.—Order affirmed.

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

