COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2018

Sheila T. Reiff
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. 2017AP993 **Cir. Ct. No. 2015CV82**

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

DOW FAMILY, LLC,

PLAINTIFF-APPELLANT,

V.

SAWYER COUNTY ABSTRACT & TITLE CO., INC., STEWART TITLE GUARANTY COMPANY, ABC INSURANCE COMPANY AND JO Y. SULLIVAN,

DEFENDANTS,

WILLIAM E. SULLIVAN,

DEFENDANT-THIRD-PARTY PLAINTIFF-RESPONDENT,

CNA INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

V.

C. THOMAS DOW,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment of the circuit court for Barron County: J. MICHAEL BITNEY, Judge. *Affirmed*.

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

¶1 PER CURIAM. Dow Family, LLC ("Dow Family"), appeals a summary judgment entered in favor of CNA Insurance Company ("CNA") and William Sullivan ("Sullivan"). In 2009, Dow Family's principal, C. Thomas Dow ("Dow"), purchased certain real estate, commercial interests, and other property from Sullivan.[1] Dow Family later discovered an unsatisfied mortgage on one of the condominium units Dow had purchased. It incurred expenses in litigating and ultimately settling a subsequent foreclosure action regarding that mortgage. Dow Family contends its claim for legal malpractice against CNA's insured, and its various claims against Sullivan, were improperly dismissed by the circuit court based on the court's conclusion that Dow Family had failed to submit evidence creating a triable issue as to its damages.

[1] Dow was the named purchaser in the contract relevant to this appeal, and signed the agreement in his personal capacity and on behalf of Island of Happy Days, Inc. Dow Family, on the other hand, was the grantee of the Sullivan deed.

The parties dispute whether Dow and Dow Family should be treated as one party for purposes of our analysis. CNA has filed a motion to strike certain portions of Dow Family's reply brief, suggesting they should be treated separately. Because our analysis does not depend upon whether certain of Dow's assets and liabilities should be attributed to Dow Family, and vice versa, we have no need to decide this question. *See* ***Water Well Sols. Serv. Grp. v. Consolidated Ins. Co.***, 2016 WI 54, ¶33 n.18, 369 Wis. 2d 607, 881 N.W.2d 285. We therefore deny CNA's motion. To the extent Dow Family attempts to argue that the distinction between Dow and Dow Family should matter for purposes of its malpractice claim, we deem any such argument undeveloped and decline to address it.

¶2 We reject Dow Family's arguments and affirm. First, we conclude the proper measure of damages in a legal malpractice lawsuit such as this one requires us to compare the former client's position now against the position the client would have been in but for the alleged negligence. Dow Family avers Dow would not have entered into the purchase transaction had he known of the existence of the unsatisfied mortgage. Thus, for purposes of proving damages, Dow Family must submit some evidence that the assets it acquired in the transaction are worth less than the total amount it spent to obtain those assets—in other words, that it is in a worse position than it would have been had it walked away from the transaction.

¶3 Based on our review of the record and the parties' arguments, we conclude Dow Family has failed to present sufficient evidence on this point. Contrary to Dow Family's arguments, the circuit court properly determined the transaction was not an arm's-length deal. As a result, the purchase price of the property interests Dow Family acquired does not establish their fair market values. Dow Family has failed to put in other evidence of value at the time of purchase to rebut CNA's submissions showing that the value of the assets Dow Family acquired exceeds the total amount it spent to procure those assets, including the amount spent in connection with satisfying the remaining mortgage. Consequently, there is no issue to try in that regard.

¶4 We also reject Dow Family's arguments seeking to reverse the grant of summary judgment in Sullivan's favor. Although Sullivan has not filed a response brief in this appeal, Dow Family's briefing on this point is insufficient because it does not reflect any legal reasoning and the arguments are supported only by general statements without citation to legal authority. We affirm the circuit court in all respects.

BACKGROUND

¶5 Stout's Island Lodge is a resort and condominium association located on two connected islands in Red Cedar Lake in Barron County, Wisconsin. The islands are together known as the "Island of Happy Days." The west island contains the resort, consisting of a large main lodge with apartments that form a cooperative association. The west island also includes several cabins, which are structured as condominium units. The east island is undeveloped.

¶6 Four main entities own and operate Stout's Island Lodge. Stout's Island Lodge owns much of the real estate. The Island of Happy Days Properties, Inc., operates the resort. The Island of Happy Days Condominium Association manages the condominium units. Finally, the Stout's Island Cooperative Association manages the apartment units in the main lodge. The parties refer to these entities as the "Stout Island Entities," and we will do likewise.

¶7 Approximately three decades ago, Sullivan purchased a cabin and the vacant lot next to it on the Island of Happy Days, which are now known as condominium units four and five, respectively. Sullivan later purchased interests in each of the four entities that own and operate Stout's Island Lodge. After that transaction, Sullivan, Dow, and another party each held one-third ownership interests in the four entities. In addition, Sullivan also owned a portion of the east island.

¶8 In 2008, Sullivan was experiencing adverse health and financial issues, and he began to discuss with Dow the possibility of selling his various island interests. These discussions culminated in a May 20, 2009 agreement between Dow and Sullivan. Dow received all of Sullivan's interests in the Stout Island Entities, condominium units four and five, and the east island, as well as

some of Sullivan's personal property. In exchange, Sullivan received $276,000. Out of that amount, Sullivan remained liable in the amount of $196,000 for two outstanding mortgages on the condominium units, $30,000 for past-due condominium fees, and approximately $10,000 in delinquent real estate taxes. Sullivan received approximately $39,000 in net cash from the deal. Dow also broadly agreed to indemnify Sullivan and hold him harmless for any other debts he owed relating to the island and the Stout Island Entities. Dow was represented in the transaction by attorney David Anderson of the Ruder Ware law firm.

¶9 Prior to closing, Dow obtained a title commitment that showed condominium unit four was subject to two U.S. Bank mortgages, one from 2001 in the amount of approximately $146,000, and one from 2003 in the amount of $140,000.[2] Sullivan represented to Dow's attorney that the 2001 mortgage secured the same debt as the 2003 mortgage, and at closing Dow satisfied a single mortgage to U.S. Bank in the amount of approximately $143,000. However, in November 2009, the lender took the position that the 2001 note was outstanding and delinquent, and the loan servicer initiated a foreclosure against Dow Family. Matters relating to the foreclosure were litigated up to the Wisconsin Supreme Court, which ruled against Dow Family. *See generally* ***Dow Family, LLC v. PHH Mortg. Corp.***, 2014 WI 56, 354 Wis. 2d 796, 848 N.W.2d 728. Dow Family then settled the foreclosure claim for approximately $211,000. Dow Family represents it expended approximately $27,000 on attorney's fees in the foreclosure litigation.

[2] The title commitment also showed that Community First National Bank held a mortgage in the original amount of $95,000. That mortgage was satisfied at closing, and there is no issue presented regarding it on appeal.

¶10 Dow Family commenced the present action in 2015 against several parties, including Sullivan; CNA, Ruder Ware's malpractice insurance carrier; and various title companies.[3] Dow Family alleged it had "been damaged substantially by reason of the failed title commitment, and negligence by defendants herein"; that the title companies had breached their contracts with Dow Family; that Sullivan had made "representations that were untrue"; and that Dow Family's attorney had failed to "exercise that degree of care, skill and judgment usually exercised by counsel in such circumstances as were present in 2009." Dow Family subsequently filed an amended complaint adding breach of warranty and unjust enrichment claims against Sullivan.

¶11 A flurry of summary judgment motions ensued. As relevant here, Dow Family sought partial summary judgment against Sullivan, claiming it was undisputed that Sullivan had breached a warranty in the condominium deed requiring him to "provide a title free and clear of all encumbrances, including mortgages." Sullivan sought summary judgment on all of Dow Family's claims against him, on various bases: the fraud claim, based on Dow Family's asserted failure to plead the claim with sufficient particularity; the misrepresentation claims, based on the absence of reasonable reliance on Dow's part; and all claims, because Dow Family had not demonstrated that it was damaged in the transaction.

¶12 This latter argument of Sullivan's echoed a summary judgment motion CNA filed, which maintained that Dow Family had not sustained any

[3] Stewart Title Guaranty Company was dismissed as a party following a stipulation by the parties. Sawyer County Abstract & Title Co. was dismissed as a party by the circuit court. There are no appellate issues presented as to those entities. Jo Sullivan was also named as a defendant because of her interests in the property by marriage to William Sullivan.

actual damages as a result of the alleged malpractice. CNA reached this conclusion because "the original price paid by [Dow] to purchase the corporate interests and land was so low that, even after the additional monies expended to redress the risk, [Dow] held 'far more' in assets than the sums he paid." CNA asserted that, based on appraisals and tax records, the value of the condominium units alone was between $425,000 and $564,900. CNA further argued that, according to deposition testimony, Sullivan would not have sold his interests had he remained liable for the additional mortgage, and Dow would not have purchased the property if he had to pay for the additional mortgage. CNA concluded that Dow Family could not prove damages because "the evidence shows that [Dow] is much better off economically now than he would have been if he had been aware of the … mortgage and did not do the deal."

¶13 These motions came before the circuit court for a hearing on January 31, 2017. The hearing transcript is not present in the appellate record. However, the circuit court later entered a written order for judgment that contained its findings of undisputed fact and conclusions of law. The court agreed with CNA's and Sullivan's assertions that Dow Family had failed to show how it was damaged by the transaction. Regarding the proper measure of damages, the court found it significant that Dow Family had asserted Dow would not have proceeded with the transaction if he had known the additional mortgage remained outstanding. The court therefore stated the proper measure of damages in this malpractice action was "determined by comparing where [Dow Family] is as a result of the transaction with where Dow Family would have been if it had not done the transaction."

¶14 The circuit court observed that Sullivan, believing that Dow and others had a right of first refusal over the sale of any of his interests, had not listed

any of his property on the open market.[4] For this reason, and also given Sullivan's acute financial and health predicaments, the court concluded the transaction "cannot be considered an 'arm[']s-length' transaction in which a willing seller and a willing buyer negotiated in good faith and at arm[']s-length regarding the value of the interests being transferred." Given its conclusion about the absence of an arm's-length transaction, the court also determined "the amount paid in the transaction is not reliable evidence of the value of the assets Dow acquired."

¶15 The circuit court acknowledged that Dow had spent more than he originally anticipated in connection with his purchase from Sullivan. The court noted, however, it was undisputed that "[a]t no point did anyone involved in the transaction commission an appraisal or valuation of any of the assets and interests to be transferred in the transaction." Citing CNA's various evidentiary submissions regarding the value of the properties and other ownership interests obtained, the court concluded "that even under the most conservative estimates, the value of the assets Dow acquired far exceeded the amount Dow paid, even accounting for the pay-off of the third mortgage and attorneys' fees incurred by Dow in the PHH litigation."

¶16 Based on the foregoing, the circuit court concluded Dow Family had failed to establish an essential element of its cause of action for malpractice against CNA—namely, it had "failed to provide any evidence from which it could be concluded that the alleged malpractice caused it to incur any damage." As to Sullivan, the court concluded that not only had Dow Family failed to demonstrate

[4] The parties do not cite to documentary evidence of the right of first refusal, only to Sullivan's deposition testimony in which he stated he believed the other one-third owners held such a right.

any damages, there was also no evidence of actual fraud committed by Sullivan or anyone acting on his behalf. All of Dow Family's causes of action against Sullivan and CNA were dismissed with prejudice. Dow Family now appeals.

DISCUSSION

¶17 We review a grant of summary judgment de novo. ***Fortier v. Flambeau Plastics Co.***, 164 Wis. 2d 639, 651, 476 N.W.2d 593 (Ct. App. 1991). A circuit court must grant a summary judgment motion if the record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2015-16).[5] Whether summary judgment is appropriate is a question of law. ***Fortier***, 164 Wis. 2d at 651-52. The summary judgment methodology is well established, and we need not restate it here. *See* ***Tews v. NHI, LLC***, 2010 WI 137, ¶4, 330 Wis. 2d 389, 793 N.W.2d 860.

¶18 As an initial matter, Dow Family appears to dispute the proper measure of damages for attorney malpractice generally. Dow Family, relying on ***Gyldenvand v. Schroeder***, 90 Wis. 2d 690, 697, 280 N.W.2d 235 (1979), contends the proper measure of damages is the "benefit of the bargain," which is the difference between the value of the property as it was when purchased and what the value would have been had the property been as represented. However, ***Gyldenvand*** states this rule of damages applies to "cases of fraudulent misrepresentations," which is not Dow Family's basis for suing CNA.

[5] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶19 Dow Family sued CNA for Anderson's alleged legal malpractice, which sounded in negligence. The plaintiff bears the burden in such a suit of showing "the existence of the relation of attorney and client, the acts constituting the alleged negligence, that the negligence was the proximate cause of the injury, and the fact and extent of the injury alleged." ***Lewandowski v. Continental Cas. Co.***, 88 Wis. 2d 271, 277, 276 N.W.2d 284 (1979) (citation omitted). "The last element mentioned often involves the burden of showing that, but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action." ***Id.*** In effect, a malpractice suit in the context of failed litigation requires the plaintiff to "prove two cases in a single proceeding"—that is to say, the requirements of causation dictate that the merits of the legal malpractice action depend upon the merits of the original claim. ***Id.***

¶20 The question of what damages arise for legal malpractice becomes more amorphous in a transactional setting. *See* ***Estate of Campbell v. Chaney***, 169 Wis. 2d 399, 406, 485 N.W.2d 421 (Ct. App. 1992). As Dow Family recognizes, ***Lewandowski*** cautioned against a one-size-fits-all approach to legal malpractice damages. *See* ***Lewandowski***, 88 Wis. 2d at 281 (courts should "fashion a remedy as best they can" to achieve "a fair balance between the rights and burdens of both the client and the lawyer who negligently conducts litigation on his client's behalf."). However, "[r]egardless of the approach used to resolve the issue of liability and damages in a legal malpractice case[,] the ultimate goal should be to determine what the outcome should have been if the issue had been properly presented in the first instance." ***Id.***

¶21 Although neither party cites a case directly involving alleged negligence in the acquisition of a property with an unsatisfied mortgage, ***Widemshek v. Fale***, 17 Wis. 2d 337, 117 N.W.2d 275 (1962), on which CNA

relies, comes closest to answering the damages question here. Widemshek had acquired an apartment building in exchange for his interests in a tavern. ***Id.*** at 338. As part of the transaction, the owners of the apartment building executed and delivered to Widemshek a $30,000 note secured by a mortgage on the tavern. ***Id.*** Prior to the exchange of the properties, a judgment of approximately $2900 against the other party to the exchange was docketed. ***Id.*** at 338-39. The judgment became a first lien on the tavern property, superior to Widemshek's security interest. ***Id.*** at 339. Widemshek brought a legal malpractice action against his attorney, asserting the attorney had failed to bring the judgment lien to his attention prior to the transaction closing. ***Id.***

¶22 However, before bringing suit against his attorney, Widemshek had commenced a foreclosure action based on his mortgage against the tavern. ***Id.*** At the foreclosure sale, Widemshek bid approximately $31,000 for the tavern, subject to the judgment lien and real estate taxes in a total amount of approximately $5000. ***Id.*** On appeal, our supreme court found that "[t]he payment of the judgment and tax liens did not cause [Widemshek] any actual damage for he had knowledge of them before submitting his bid and had the opportunity to adjust his bid accordingly." ***Id.*** at 342-43. The court observed that only if someone had submitted a bid of less than the amount of the Widemshek's mortgage and then consummated the transaction would Widemshek have sustained actual damage, because the bid would not have been sufficient for him to recover his mortgage interest. ***Id.*** at 343. The upshot of ***Widemshek*** is that the plaintiff "by his own bid established a value of $35,960.82, adequate to satisfy all the liens, including that of the mortgage which the plaintiff owns." ***Id.***

¶23 Dow Family's argument is straightforward, but, ultimately, is too simplistic and incorrect. It claims to have been "damaged" in two conversely

stated ways: (1) "as a result of the unsatisfied mortgage at closing, Dow [paid] more than originally anticipated for the purchase of the Stout Island Entities from Sullivan"; and (2) "had [Dow] been aware of the third mortgage, [he] would have avoided the deal and saved over $500,000." There are two problems with either of these characterizations of Dow Family's "damages." First, Dow Family entirely ignores all of the value in the assets it obtained due to the purchase having occurred. Second, such a framing of malpractice damages runs afoul of the above-stated legal principles for determining the necessary "fact and extent of" a client's alleged loss. Stated differently, neither characterization addresses whether Dow Family is now in a worse-off economic situation because of Anderson's alleged negligence.

¶24 Sullivan testified at his deposition that he could not have afforded to sell his island interests if he had retained the additional $140,000 liability. Thus, it is undisputed that Sullivan would have charged more had he realized the 2001 and 2003 U.S. Bank mortgages secured separate debts. Dow, for his part, testified that he knew Sullivan "wanted to have his debt covered" and that Dow would not have paid the additional amount for the interests necessary to satisfy the second U.S. Bank mortgage. Thus, assuming Anderson had not been negligent in providing legal services, it is undisputed the transaction would not have occurred at all. It is this "no sale" position that Dow Family would have been in but for the alleged negligence, and against which its current position must be measured in order to determine if Dow Family has been damaged and, if so, by how much.

¶25 Against Dow's assertion of "what would have happened," we must survey the evidence the parties presented in their summary judgment submissions regarding what actually occurred subsequent to the sale and the value of what Dow obtained in order to determine if there is a triable issue as to damages.

Again, Dow Family's argument on this point is simply that Dow has, between the purchase price and the foreclosure litigation, spent approximately $504,000 to acquire Sullivan's island interests. Dow Family asserts that, because Dow "would not have paid even $425,000 for the property, the damage is far greater than any claimed benefit Dow received." It further argues that, if Dow had walked away from the transaction, he would have "saved" over $500,000.

¶26 We agree with CNA that this reasoning entirely ignores the other side of the ledger. While Dow and Dow Family would have not spent over $500,000 by walking away from the transaction, they also would have gained nothing. Yet Dow and Dow Family undisputedly received valuable property in exchange for the approximately $500,000 they ultimately spent. The question of what that "something" is worth—and whether the parties have presented sufficient evidence of such value so as to create a triable issue—is at the heart of the parties' dispute on appeal.

¶27 Dow Family maintains that the purchase price of approximately $276,000 establishes the fair market value of the assets it received. *See* ***Steenberg v. Town of Oakfield***, 167 Wis. 2d 566, 572, 482 N.W.2d 326 (1992) (observing the value of property for tax purposes is fair market value). Thus, Dow Family contends, it was "damaged" by any unanticipated expenses associated with the acquisition exceeding this amount. Dow Family concedes, however, that a property's purchase price establishes its fair market value only when the transaction occurs at arm's length.

¶28 The parties agree the tax method of determining whether a transaction is at arm's length should be applied here. This standard consists of six requirements, the first of which is that the property "must have been exposed to

the open market for a period of time typical of the turnover time for the type of property involved." ***Id.*** Dow Family argues, essentially, that the first requirement does not apply because "[t]he property was subject to a right of first refusal and did not have to be put on the open market."

¶29 We disagree that the first requirement can be so easily dismissed. Access to the open market is a hallmark of an arm's-length transaction. It is undisputed Sullivan did not list any of his interests for sale on the open market. Furthermore, no one involved in the transaction commissioned an appraisal or valuation of any of the assets or interests to be transferred. Sullivan's stated goal in the sale was merely to generate a minimum amount of cash. Dow Family develops no argument to explain how the right of first refusal overcomes the requirement of market exposure, especially given that such rights generally permit a party to match any offer made by willing buyers only after the assets' placement on the open market. Given the undisputed record, and the limited nature of Dow Family's argument, we conclude the circuit court correctly determined the transaction did not occur at arm's length.

¶30 Because the purchase price was not evidence of the value of the property interests Dow Family received in the transaction, the question remains whether there was other evidence from which a reasonable factfinder could conclude that Dow Family was damaged by Anderson's alleged negligence. Dow Family acknowledges that it bore the burden of presenting "sufficient evidence to enable a reasonable jury to award damages to the company in an amount that is supported by the evidence." ***AccuWeb, Inc. v. Foley & Lardner***, 2008 WI 24, ¶21, 308 Wis. 2d 258, 746 N.W.2d 447.

¶31 CNA presented compelling evidence that the value of the property interests Dow Family acquired surpassed the total amount it spent to acquire those interests. Dow Family has not put forth sufficient evidence to contest this point so as to require a trial. Dow Family's brief-in-chief relies on the vague notion that "[t]he property as a whole … has varying values." Even in its reply brief, Dow Family admits the "value of the Stout Island [E]ntities is uncertain." Dow Family merely contends that the "value of the property has been a point of contention in this matter." But merely saying that it disputes CNA's evidence of value is not enough to forestall summary judgment. "The mere allegation of a factual dispute will not defeat an otherwise properly supported motion for summary judgment." *See* ***Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.***, 229 Wis. 2d 751, 756, 601 N.W.2d 318 (Ct. App. 1999).

¶32 Dow Family's brief-in-chief points to some evidence that it contends creates a triable issue as to the value of the property interests it acquired. First, Dow Family relies on Dow's conclusory deposition testimony that "[t]here's a lot of extenuating circumstances," and "[i]t's worth what it was purchased for." As we have explained, this was not an arm's-length transaction, and therefore the purchase price is not necessarily indicative of actual value. For these same reasons, we reject Dow Family's reliance on Dow's testimony that the condominium units were not worth $425,000 because, given the real estate environment, "it was worth what somebody was willing to pay for it."

¶33 Second, Dow Family points to Anderson's deposition testimony opining that Dow "has been damaged, and I feel badly that he has suffered any damage." However, Anderson also stated repeatedly that he "couldn't give an exact dollar amount." By contrast, Dow Family concedes that the value of the islands has been estimated at over $2 million and that, during Dow Family's

ownership, the islands have been listed for as much as $17 million.[6] Dow testified he believed the $2 million figure was "unconscionably low."

¶34 Finally, Dow Family asserts CNA and the circuit court ignored debt encumbering the acquired assets. Dow Family notes Dow is liable for approximately $1.1 million in debt.[7] However, none of the record evidence Dow Family has directed us to shows that all or even some of this debt was assumed as a consequence of the transaction. On this record, any jury determination would be purely speculative regarding whether Dow took on additional debt in the transaction, and the amount of that debt. There is insufficient evidence to show that Dow's debt load reduced the value of the property interests he acquired to the point where he has a viable claim for damages as a result of Anderson's negligence.

¶35 Given the foregoing, we reject Dow Family's assertion that it is entitled to the amount it expended in connection with the foreclosure action. Dow Family otherwise asserts it is entitled to approximately $504,000, which is the amount Dow and Dow Family would have saved by avoiding the transaction in its entirety. For similar reasons as stated above, we perceive no basis for this latter damages request. Dow Family never sought rescission of the purchase contract. Dow Family undisputedly gained property interests of considerable value to which

[6] Dow Family contends the $17 million figure "was just a lark, a huge number thrown out on a German fellow's website which garnered zero interested parties." Be that as it may, this offer price underscores our point that the evidence of value supporting Dow Family's position is insufficient to create a factual issue for trial.

[7] The record is unclear as to with what Dow's $1.1 million debt is associated. Dow Family asserts that it is Dow's share of the condominium association's $1.4 million debt. Dow's affidavit states the debt is associated with all of the Stout Island Entities. Dow Family's brief is also inconsistent in this regard.

it retains ownership. It has not directed us to any legal authority permitting it to retain these property interests (and their corresponding value) at CNA's expense.

¶36 Dow Family's final argument is that Sullivan "breached his Warranty … by failing to pay the unsatisfied mortgage." Dow Family observes that in the condominium deed, Sullivan warranted "that the title is good, indefeasible in fee simple and free and clear of encumbrances," with certain exclusions.[8] Dow Family argues that, based on this warranty, Sullivan was "obligated … to provide notice of all the mortgages, liens, and encumbrances" on the condominium units, that he failed to provide clear title as the deed required, and that this failure constituted fraudulent conduct.

¶37 As an initial matter, Dow Family faults the circuit court for failing to address its fraud claim. To the contrary, the court specifically found no triable

[8] Dow Family also argues that, aside from the condominium deed, the 2009 agreement contained a provision that required Sullivan to pay the 2001 U.S. Bank mortgage and that also warranted that there were no mortgages against the property other than the 2001 Community First mortgage and the 2003 U.S. Bank mortgage. However, the language Dow Family cites to in the 2009 agreement does not support its arguments in this regard. Section 1 of the agreement, in pertinent part, states as follows:

> All property transferred hereunder is transferred "as is," "where is," and "with all faults." Subject to approval of the title commitment to be provided to Dow, all property transferred hereunder shall be subject to all mortgages, liens, and encumbrances currently encumbering the ownership interests in the Stout Island Entities and the Property, except certain mortgages held by U.S. Bank and Bank of the West in the amount of approximately $196,000 owed by Sullivan. Dow hereby agrees to assume all other mortgages, liens, and encumbrances, subject to approval of the title commitment to be provided by Dow.

Dow Family fails to explain how this language constitutes a warranty on Sullivan's part or a promise to pay *all* outstanding mortgages. We therefore do not address this argument further.

issue regarding Sullivan's alleged fraud. To the extent Dow Family is suggesting the court failed to adequately address its fraud claim or some other claim it might have been attempting to make (including a contract claim), we lack sufficient record materials to evaluate such an argument. Dow Family failed to include in the appellate record a transcript of the January 31, 2017 summary judgment hearing. Without it, it is not clear whether and to what extent the court addressed Dow Family's various claims outside its written order, which was quite brief as to its analysis of the claims against Sullivan.

¶38 This omission is critical because Dow Family made a significant number of claims against Sullivan based on the same facts regarding the additional mortgage on the condominium units, including a "breach of warranty" claim and claims for both negligent and intentional misrepresentation. The brevity of the court's written order suggests at least some of these claims were addressed at the summary judgment hearing; at a minimum, the manner in which Dow Family's claims were argued to the court is relevant for our purposes to our analysis of the nature of its claims. *See* ***State v. Bons***, 2007 WI App 124, ¶27, 301 Wis. 2d 227, 731 N.W.2d 367 (Brown, J., concurring) (observing that oftentimes the formal written findings of fact and conclusions of law do not contain the circuit court's complete reasoning and lack the information necessary to decide an issue). It was Dow Family's burden to ensure that the appellate record was adequate to ensure review of the issues it raised, and we assume the missing transcript supports the court's dismissal of its claims. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

¶39 As to the fraud claim, we decline to reverse the circuit court on this issue because Dow Family fails to craft a cogent argument that would compel such a result. Although Dow Family variously frames its claim as a breach of contract,

failure of warranty, and fraud, nowhere in its roughly two-page argument regarding Sullivan does it discuss the elements of any of these theories of liability. It does not describe the factual matters that remain for resolution, nor do the contract provisions it cites clearly demonstrate that Sullivan breached a promise *to pay* the 2001 U.S. Bank mortgage.[9] Rather, Dow Family summarily contends that the case "ought to be remanded and tried to determine the full extent of damages suffered by Dow." We deem Dow Family's briefing insufficient because it does not reflect any legal reasoning, its arguments are supported only by general statements, and it cites no legal authority in support of its argument. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).[10]

By the Court.—Judgment affirmed.

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

[9] On this point, we note that, at best, Sullivan had warranted the condition of the condominium units as being "free and clear of encumbrances." Dow Family appears to assume this warranty functioned as a promise to pay the note secured by the 2001 U.S. Bank mortgage.

[10] Sullivan failed to file a brief despite being named a respondent to this appeal. Even so, we decline to reverse given Dow Family's inadequate briefing.