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**DISTRICT II**

June 24, 2026

*To*:

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Clerk of Circuit Court
Waukesha County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

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2025AP1776 Linda Lee v. Halen Homes I, LLC (L.C. #2024CV2141)

Before Gundrum, Grogan, and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Linda Lee appeals from the circuit court's dismissal of her complaint, with prejudice. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] Because documents that were incorporated by reference into Lee's complaint include a merger clause that precludes her claims, we affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

## BACKGROUND

According to Lee's complaint, on January 30, 2024, she signed a contract to purchase a condominium unit from Halen Homes I, LLC (Halen). Prior to the sale, Lee met with Janeen Wnuk, a sales agent employed by Halen. Lee voiced her requirements, including that she wanted to add a patio with steps and lights and to keep all three of her dogs. Wnuk assured her that those requirements would not be problematic. Lee alleged she relied on this assurance when she decided to purchase the unit and signed the contract.

Lee's initial offer to purchase allowed amendments to the contract, and indicated that only the initial offer and amendments were part of the agreement. Halen made a counteroffer which stated that all terms of the offer were the same as the initial offer except for several express additions. Lee rejected that counteroffer. Lee's agent drafted a second counteroffer stating that all terms of the offer were the same as the initial offer except for several express additions, one of which was to incorporate the construction of a shower bench and installation of a closet system into the contract. Another addition was to attach two documents, titled, respectively, "Disclosure Materials" and "Residential Condominium Addendum S[,]" (Addendum S) to the offer. Halen accepted the second counteroffer.

After closing the purchase in April 2025, however, the condominium association told Lee she would have to remove the patio and steps, pursuant to the Condominium Declaration, and that she was limited to two dogs in her unit, pursuant to the Bylaws. She filed suit against both Halen and Wnuk for common law intentional misrepresentation, for violation of WIS. STAT. §§ 895.446 and 943.20(1)(d) as civil theft by fraud, and for false advertising under WIS. STAT. § 100.18. She later amended her complaint to individualize the claims, suing Halen for

intentional misrepresentation and violation of §§ 895.446 and 943.20(1)(d) and Wnuk for intentional misrepresentation and violation of § 100.18.

Halen and Wnuk filed a motion to dismiss and contended that through the added documents, specifically the incorporation of Addendum S, Lee's contract contained a merger clause that excluded Wnuk's alleged oral representations from the terms of her purchase. The merger clause read:

> **ENTIRE OFFER:** The Offer expresses all agreements, understandings, representations and warranties between the Buyer and Seller concerning the subject matter hereof and supersedes all previous understandings and Offers relating thereto, whether oral or written, including proposals, draft plans and specifications, brochures, emails, texts and other information[.]

In addition to the merger clause in Addendum S, the Disclosure Materials receipt form included the statement: "**ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.**" The Disclosure Materials included the Condominium Declaration and Bylaws. The Condominium Declaration stated patio additions needed to be approved. The Bylaws included the pet limitation. Halen and Wnuk argued that Lee was bound to the Condominium Declaration by Addendum S, which included the statement: "[t]he buyer agrees Buyer has reviewed and understands the Declaration and agrees to comply with [the] Declaration."

When considering the motion to dismiss, the circuit court accepted several documents, not mentioned by Lee in the complaint, as incorporated by reference, and dismissed Lee's amended complaint on the basis that she could not prevail given the inclusion of the merger clause. Lee appeals the dismissal of her amended complaint, arguing that the court improperly

incorporated both counteroffers, the Disclosure Material receipt form, the Index, and the Executive Summary into her contract because her complaint did not mention these materials.[2]

## DISCUSSION

Because this appeal is based upon a motion to dismiss, we accept the facts as pled as true. *See* ***Doe v. Archdiocese of Milwaukee***, 2005 WI 123, ¶19, 284 Wis. 2d 307, 700 N.W.2d 180. "Whether a complaint states a claim upon which relief can be granted is a question of law for our independent review[.]" ***Data Key Partners v. Permira Advisers LLC***, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693. "A reviewing court 'accept[s] the facts pled as true for purposes of [its] review, [but is] not required to assume as true legal conclusions pled by the plaintiffs.' Although the court must accept the facts pleaded as true, it cannot add facts in the process of liberally construing the complaint." ***Archdiocese of Milwaukee***, 284 Wis. 2d 307, ¶19 (alterations in original; citations omitted).

Lee contends that because her complaint did not expressly mention either counteroffer, the Disclosure Materials receipt form, the Index, or the Executive Summary, the circuit court erred in considering those documents in its dismissal of her complaint. On motions to dismiss, courts may consider documents when they are referred to in the complaint, are central to the plaintiff's claims, and their authenticity is not disputed. ***Soderlund v. Zibolski***, 2016 WI App 6, ¶37, 366 Wis. 2d 579, 874 N.W.2d 561. Contracting parties may incorporate other documents through reference as long as there is evidence of mutual assent to do so. ***Little Chute Area Sch. Dist. v. Wisconsin Educ. Ass'n Council***, 2017 WI App 11, ¶31, 373 Wis. 2d 668, 892 N.W.2d

[2] Lee does not dispute that her complaint references the initial offer, Addendum S, the Condominium Declaration, or the Bylaws and regulations.

312. The incorporation-by-reference doctrine prevents a plaintiff from evading dismissal simply by failing to attach to his complaint a document that proves his claim has no merit. ***Badgerland Rest. & Remodeling, Inc. v. Federated Mut. Ins. Co.***, 2024 WI App 36, ¶13, 412 Wis. 2d 806, 8 N.W.3d 877.

We conclude the initial offer and the other enumerated documents are incorporated by reference in Lee's complaint and support the motion to dismiss on the basis that the merger clause precludes Lee's claims. The documents were referred to in the complaint, they are central to Lee's claims, and their authenticity is not disputed. The documents Lee claims not to have referenced were all expressly incorporated into the initial sale offer that Lee *did* reference. Any documents included in the contract itself are central to Lee's complaint because Lee cannot prevail on her misrepresentation claims unless she justifiably relied on Wnuk's oral statements, and contractual language may disclaim such statements. *See* ***Hennig v. Ahearn***, 230 Wis. 2d 149, 173, 601 N.W.2d 14 (Ct. App. 1999). Therefore, also because Lee does not raise any arguments against the authenticity of the documents, they are properly incorporated by reference in the motion to dismiss.

Even if we ignore all the allegedly improperly considered documents, dismissal is still appropriate. Lee does not dispute that her complaint referenced Addendum S, the Condominium Declaration, and the Bylaws. Addendum S contains the merger clause excluding previous oral representations, and the Condominium Declaration and Bylaws bar her from constructing a patio without permission and keeping more than two dogs, respectively.

Lee advances a number of arguments that her misrepresentation claims could proceed notwithstanding the merger clause, but these arguments all fail. Lee contends that the merger

clause contained in Addendum S is not specific enough to bar a misrepresentation claim. This argument is misguided. "[A] [merger] clause generally bars the introduction of extrinsic evidence to 'vary or contradict the terms of a writing.'" ***Peterson v. Cornerstone Prop. Dev., LLC***, 2006 WI App 132, ¶31, 294 Wis. 2d 800, 720 N.W.2d 716 (citation omitted). While a mere "as is" clause is too general to convey that oral statements cannot be relied upon, an explicit statement that prior discussions and negotiations have been merged into one offer and that the buyer has not relied on any representations made by the seller is sufficient. *See* ***Id.***, ¶37. Here, the language of the merger clause in Addendum S, as noted above, is not general and specifies that the offer "supersedes all previous understandings ... whether oral or written[.]" Accordingly, we conclude that the merger clause is sufficiently detailed to defeat Lee's misrepresentation claim.

Lee next presents two arguments that her reliance was justified even if the merger clause was valid. First, Lee cites ***Hennig***, which states: "[t]he general rule in Wisconsin, as elsewhere, is that the recipient of fraudulent misrepresentation is justified in relying on it, unless the falsity is actually known or is obvious to ordinary observation." ***Hennig***, 230 Wis. 2d at 170. But ***Hennig*** elaborates that a party "may not close [their] eyes to what is obviously discoverable by [them]." ***Id.*** at 172. Second, Lee's complaint alleges that she did not know she needed to seek a written amendment for her patio and dogs, and that the obviousness of a falsity to ordinary observation is a question of fact that cannot be determined in a motion to dismiss. We conclude that the alleged falsity of Wnuk's statements was obvious to ordinary observation as a matter of law. The patio and pet limitations were contained in the Condominium Declaration and Bylaws to which Addendum S explicitly binds Lee, and she does not dispute the authenticity of any of those documents. Because these terms were explicitly included in documents that were

incorporated-by-reference in the contract, these terms were obviously discoverable by Lee as a matter of law.

Lee finally argues that there was a disparity in knowledge that renders her reliance justified. She cites ***Peterson***, which states: "[i]f one party to a contract with a disclaimer, [merger] clause, or similar provision lacks the sophistication in business matters or possesses unequal bargaining power, this provides a basis for voiding that clause." ***Peterson***, 294 Wis. 2d 800, ¶40 n.10. However, ***Peterson*** concluded there was no disparity of knowledge in that case because the party arguing disparity of knowledge was represented by an attorney during disputed proceedings. ***Id.*** Here, Lee was represented by a real estate agent who was able to obtain alterations to the contract to include a shower bench and closet organization system. The patio approval process and pet limitation terms did not require any special expertise to understand, and amendments to memorialize the oral representations, if any, could have been made in the contract. For these reasons, we conclude the merger clause in Lee's contract is not void by disparity of knowledge.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*
*Clerk of Court of Appeals*