



COHEN GARELICK & GLAZIER

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## Economic Loss Rule Bars Misrepresentation Claim

Where parties have entered into a contractual relationship and damage occurs occasioning merely economic losses, the economic loss rule bars the complaining party from asserting tort remedies and limits that person to the contract remedies that were bargained for and agreed upon. Economic losses are distinguished from physical harm or damage to property other than the defective property itself. The rationale for the rule is that parties to a contract should resolve disputes emanating from that contractual relationship under the legal remedy that is most appropriate and most in keeping with their expectations when they signed the contract.

After a couple purchased a home, they discovered that the home had some leaks in its roof, despite what they said were assurances given both verbally and in disclosure forms that the sellers had never had a problem with the roof. When the new owners experienced water damage to interior ceilings, walls, and flooring due to the leaky roof, they sued the sellers for negligent

misrepresentation. That theory ran aground on the economic loss rule, notwithstanding an argument against its application. The buyers argued to no avail that the rule should not apply because the claim was not for damage to the leaky roof itself, but to the resulting damage inside the home.

The court declined to split up the house, figuratively speaking, for purposes of the economic loss rule. As the court put it, the buyers purchased a finished home from the sellers, not a collection of component parts. Both the roof and the other damaged parts of the house were under the umbrella of the sales contract. Accordingly, any assurances that had been given by the sellers had to be examined and evaluated through the agreement, not on tort principles.

Cohen Garelick & Glazier's real estate practice group is available to review all documents and contracts vital to the purchase of residential or commercial property.