DA 22-0700

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 182N

JEREMY LOOK,

Cross-Claimant and Appellant,

v.

CASEY McGOWAN, MEGAN McGOWAN and KAREN SPAWN McGOWAN,

Cross-Defendants and Appellees.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Glacier, Cause No. DV-21-60
Honorable Robert G. Olson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jeremy Look, Self-Represented, Porter Ranch, California

For Appellees:

Jason T. Holden, Katie R. Ranta, Faure Holden Attorneys at Law, P.C., Great Falls, Montana

Submitted on Briefs: August 16, 2023

Decided: September 26, 2023

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Jeremy Look (Look) appeals from the April 4, 2022 dismissal of his crossclaim. We affirm.

¶3 Look and the Appellees (McGowans) entered into a buy-sell agreement for Look to purchase a parcel of real property. The contract contained a time-is-of-the-essence clause. On June 10, 2021, Look deposited $5,000 as earnest money with First American Title Company. On July 6, the parties agreed to extend the closing date from July 9 to July 21. The closing did not take place on July 21. On July 23, the McGowans agreed to amend the contract once more—allowing Look to close on August 2, *if* he deposited $100,000 of the purchase price into escrow by the end of day, July 23. Look did not deposit the money.

¶4 On November 24, 2021, the title company filed an interpleader action pursuant to M. R. Civ. P. 22 to determine who should receive the earnest money. In response, Look filed a crossclaim against the McGowans, seeking specific performance of the contract.

¶5 The District Court dismissed Look's crossclaim upon the McGowan's M. R. Civ. P. 12(b)(6) motion to dismiss and awarded the earnest money to the McGowans.

¶6 Look contends that he did not materially breach the buy-sell agreement and should therefore be awarded specific performance of the contract.[1] In the alternative, Look contends that even if there were a material breach, the McGowans should be equitably estopped from benefiting from his breach, and therefore specific performance is proper.

¶7 The determination that a party has failed to state a claim is a conclusion of law, which is reviewed for correctness. *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 11, 325 Mont. 148, 104 P.3d 445. When reviewing an order dismissing a complaint under Rule 12(b)(6), we construe the complaint in the light most favorable to the plaintiff. *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247.

Material Breach

¶8 Whether a breach is material is generally a question of fact. *Ferdig Oil Co. v. ROC Gathering, LLP*, 2018 MT 307, ¶ 12, 393 Mont. 500, 432 P.3d 118. However, if no genuine issues of material fact exist, the determination is amenable to judgment as a matter of law. *Roe v. City of Missoula*, 2009 MT 417, ¶ 14, 354 Mont. 1, 221 P.3d 1200.

¶9 The failure to perform a condition precedent generally constitutes a breach of contract.[2] *Davidson v. Barstad*, 2019 MT 48, ¶ 21, 395 Mont. 1, 435 P.3d 640. The remedy depends on whether the failure was a material or non-material breach. *Davidson*, ¶ 21.

[1] Here, specific performance would require McGowans to sell the land to Look.

[2] There are two contracts at issue here, each of which had conditions precedent that Look had to perform before the McGowans were required to sell him the land. In the first contract at issue, Look would have had to close on July 21. In the second contract at issue, Look would have had to deposit $100,000 by the end of day, July 23.

Upon a material breach, the non-breaching party has the option to rescind the contract. *Davidson*, ¶ 22.

¶10 A material breach is a failure to do something so fundamental to a contract that it defeats the essential purpose of the contract. *Davidson*, ¶ 23. We have held that a material breach occurs when the parties have agreed that time is of the essence and one party fails to timely complete a condition precedent. *Carriger v. Ballenger*, 192 Mont. 479, 484, 628 P.2d 1106, 1109 (1981).

¶11 Look signed a buy-sell agreement that contained a time-is-of-the-essence clause. Look did not close on July 21, as required by the first contract at issue. Look then signed an amendment to that agreement on July 22, 2021, which specifically incorporated all other terms of the original contract and provided that Look would "deposit $100,000 *no later than* 7/23/2021 to First American Title" to be held in escrow. (Emphasis added.) Look failed to deposit $100,000 to escrow on or before July 23, 2021.

¶12 Considering the express terms of the parties' contract and amendment, Look's failure to timely close or deposit the funds was clearly a material breach, subject to termination of the agreement by the McGowans.

Specific Performance

¶13 Before equity allows for specific performance, there must be a valid and binding contract upon the parties against whom performance is sought—for specific performance is not applicable where there is no obligation to perform. *Schwedes v. Romain*, 179 Mont. 466, 471-72, 587 P.2d 388, 391 (1978).

¶14 Because Look materially breached the buy-sell agreement, the McGowans were relieved of their obligation to perform, and Look is not entitled to specific performance.

Equitable Estoppel

¶15 Look next contends that the District Court's finding on his equitable estoppel argument is erroneous. Equitable estoppel prevents a party from inducing another party to alter their position for the worse and then denying them the just and legal consequences of those acts. *MC, Inc. v. Cascade City-County Bd. of Health*, 2015 MT 52, ¶ 31, 378 Mont. 267, 343 P.3d 1208. Look contends that he only breached the contract due to the McGowans' misrepresentations.

¶16 A party must state any affirmative defense in their pleading, including equitable estoppel. M. R. Civ. P. 8(c). Affirmative defenses are waived if not timely raised pursuant to Rule 8. *Rolan v. New W. Health Servs.*, 2017 MT 270, ¶ 14, 389 Mont. 228, 405 P.3d 65. However, a district court may allow a party to amend their pleading to include an affirmative defense. *Rolan*, ¶ 14.

¶17 Look never pled equitable estoppel, nor did he ever seek leave in the District Court to amend his crossclaim. Look therefore waived this argument. However, even if the facts alleged were enough to put the McGowans on notice of his claim, and we were to treat this as a motion for summary judgment, Look's own evidence shows that he would not be entitled to prevail on the claim.

¶18 An essential element of equitable estoppel is that the party asserting it must prove that they relied on the other party's representation to change their own position for the worse. *See Kapor v. RJC Inv., Inc.*, 2019 MT 41, ¶ 33, 394 Mont. 311, 434 P.3d 869.

¶19 Look argues that he was prepared to close on July 21, and it was only the fact that the parties were negotiating a later closing date that prevented what would have been a timely closure. He further contends that the McGowans intentionally signed the amendment too late in the day on July 23 for him to comply with the terms of the amendment. Look says he relied on their good-faith negotiations to allow him to deposit the money the next business day. Look contends that he initiated the transfer but then canceled it when he thought the McGowans were acting in bad faith.

¶20 While Look attached text messages to his affidavit, he failed to establish that he changed his position for the worse in any reliance on the McGowans' alleged misrepresentations. Their contract before the July 23 amendment provided that: closing was to take place on July 21, 2021; time was of the essence; and cash was due at closing. However, on July 20, Look sent a text message to his real estate agent describing "revisions I would like to request in the closing documents before I sign and send the wire transfer." These changes did not take place on July 21, and Look texted on July 22: "At this point I don't feel comfortable signing the closing documents until these changes are made."

¶21 Look's own text messages belie his arguments. Look breached the contract because he was not yet comfortable signing the closing documents, not because he was acting in reliance on the McGowans to sign an amendment. Look cannot therefore prove this essential element of an equitable estoppel claim. *See Wurl v. Polson Sch. Dist. No. 23*, 2006 MT 8, ¶ 28, 330 Mont. 282, 127 P.3d 436 ("[I]f the party claiming estoppel fails to establish even one of the six elements, the doctrine of equitable estoppel cannot be invoked.").

¶22 Look then argues, post breach, that he relied on the McGowans to timely sign the amendment so he could transfer the money per the terms of the amendment. But the McGowans were not required to sign the amendment. Look was already in breach of contract, and the McGowans could have canceled the entire contract. That they gave Look one more opportunity—even if a very narrow window of opportunity—to purchase the property, and he failed to abide by those terms, does not establish the reliance necessary for an equitable estoppel claim.

¶23 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶24 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE