

DA 18-0435

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 95N

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PATRICK HACKLEY,

Plaintiff and Appellant,

v.

WILLIAM HACKLEY,

Defendant and Appellee.

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APPEAL FROM: District Court of the Seventh Judicial District,  
In and For the County of Richland, Cause No. DV-17-44  
Honorable Katherine M. Bidegaray, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Terry F. Schaplow, Terry F. Schaplow, P.C., Bozeman, Montana

For Appellee:


Ben Sather, Sather Law PLLC, Billings, Montana

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Submitted on Briefs: March 13, 2019

Decided: April 23, 2019

Filed:

  
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Justice Laurie McKinnon 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 Patrick Hackley (Patrick) appeals from an order of the Seventh Judicial District Court, Richland County, granting William Hackley (William) summary judgment. We affirm.

¶3 William owned 1,535.23 acres of real property—cropland and pastureland—in Richland County, Montana. In 2009, William agreed to lease the property to his cousin's son, Ricky Hackley (Ricky), for four years, from 2009 to 2012, and William drafted a contract. The contract provided that William would lease the cropland to Ricky for a base rate, plus an additional amount that varied depending on the price of wheat. An initial payment for the cropland of \$8,500 was due April 15th, with the remainder due November 1st. Further, a payment of \$1,500 for the pastureland was due November 1st. All payments were subject to a late fee of \$50 per day. William and Ricky signed the document. Patrick, Ricky's son, asserts he subsequently subleased the property from Ricky, but no party produced a written sublease for the property between 2009 and 2012.

¶4 In 2013, William and Ricky executed another four-year lease contract for the years 2013 to 2016, which was similar to the parties' 2009 contract. It provided variable prices for the cropland, with an initial payment of an unspecified amount due April 15th and

another payment due November 30th. It also provided that the pastureland payment was \$1,500, with the payment due November 30th.

¶5 Patrick and Ricky also executed a contract in 2013. The contract was entitled “Lease Contract – Patrick J. Hackley and Ricky P. Hackley.” The contract provided that “[t]he cropland will be leased” at varying prices, with \$8,500 due April 15th and the second payment due November 30th. The contract further provided that “pasture rent” was \$300. The contract did not state a due date for the pasture rent but provided, “There will be a \$50/day late fee after December 1st.” The contract concluded, “This lease will be for 4 years, crop years 2013, 2014, 2015, and 2016.” While the contract between Patrick and Ricky did not specify what cropland or pastureland it was referring to, it undisputedly refers to the property William leased to Ricky.

¶6 In 2013 and 2014, Patrick paid William the lease fee directly—money did not pass through Ricky. In 2014, Patrick applied for the Conservation Stewardship Program (CSP). William signed an Owners Certification, on which he named Patrick an “Applicant/Producer,” and stated that Patrick would have control over the property until December 31, 2018. In 2015, Ricky started to pay William the lease fees instead of Patrick. On June 10, 2015, William notified Patrick that he was not allowed to run livestock on William’s pastureland.

¶7 On April 9, 2016, William told Ricky that Patrick was not permitted to farm William’s land. Ricky reported the news to Patrick. At that time, Patrick was farming 464 acres of William’s cropland and Ricky was farming the remainder. That same spring, William stated he would not extend or renew the 2013 lease, set to expire that

year. In a July 2016 letter, CSP notified Patrick that he had been removed as a farm operator of William's property. Patrick believed William wrongfully prohibited him from using the property.

¶8 On December 1, 2017, Patrick filed his First Amended Complaint and Demand for Jury Trial, naming William as the defendant and alleging breach of contract, breach of the implied duty of good faith and fair dealing, negligence, negligent misrepresentation, infliction of mental distress, and constructive fraud. Patrick also requested punitive damages. Later that month, William filed an answer and counterclaim, alleging breach of contract. The District Court eventually granted summary judgment in William's favor and dismissed the case with prejudice. Patrick appeals.

¶9 We review a district court's summary judgment ruling de novo, using the same M. R. Civ. P. 56 criteria. *Melton v. Speth*, 2018 MT 212, ¶ 5, 392 Mont. 409, 425 P.3d 700. The moving party is entitled to summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." M. R. Civ. P. 56(c)(3). A material fact is one that involves the elements of the cause of action or defense at issue to such an extent that it requires resolution of the issue by a trier of fact. *Williams v. Plum Creek Timber Co.*, 2011 MT 271, ¶ 14, 362 Mont. 368, 264 P.3d 1090; *see also Contreras v. Fitzgerald*, 2002 MT 208, ¶ 23, 311 Mont. 257, 54 P.3d 983 (explaining that summary judgement is an "extreme remedy" and, accordingly, "should never be substituted for trial if a material factual controversy exists" (internal quotations and citations omitted)). The court must view the evidence in

the light most favorable to the non-moving party; it must draw all reasonable inferences in favor of the party opposing summary judgment. *Malpeli v. State*, 2012 MT 181, ¶ 12, 366 Mont. 69, 285 P.3d 509.

¶10 On appeal, Patrick generally opposes the District Court’s order granting William summary judgment and specifically alleges eleven separate errors. Instead of analyzing each alleged error separately, we apply M. R. Civ. P. 56(c)(3) to the facts of this case and ask whether “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Viewing the evidence in the light most favorable to Patrick and drawing all reasonable inferences in his favor, we conclude there are no genuine issues as to any material facts and that William is entitled to judgment as a matter of law.

¶11 Patrick alleges the District Court’s order granting William summary judgment contains abundant factual discrepancies, errors, and omissions (he faults it for failing to consider certain affidavits). We do not need to address any of those allegations to resolve the issue before us. The material facts of this case are simple and undisputed. William leased his property to Ricky. Ricky then permitted Patrick to use William’s property. William eventually decided he did not want Patrick using his property. There are no genuine issues as to any of those material facts.

¶12 William may only obtain summary judgment if he is also entitled to judgment as a matter of law. Regarding Patrick’s breach of contract and implied covenant of good faith and fair dealing claims, whether William is entitled to judgment as a matter of law

depends on whether there was privity of contract between William and Patrick. If there was no privity of contract, William did not have any contractual obligations to Patrick and is entitled to judgment as a matter of law. *See Irwin v. Marvel Petroleum Corp.*, 139 Mont. 413, 423, 365 P.2d 221, 226 (1961) (explaining that there is no privity of contract between an original lessor and a sublessee under a sublease). Patrick alleges there was privity of contract for various reasons, such as: the 2013 contract between Ricky and Patrick was an assignment of Ricky's 2013 lease from William, not a sublease; an implied contract existed between William and Patrick; and William is contractually obligated to Patrick based on the CSP Owners Certification where he stated Patrick would have control over the land until December 31, 2018.

¶13 We are unconvinced by Patrick's arguments. The record supports a conclusion that the arrangement between William and Patrick was that of original lessor and sublessee; Ricky did not assign his lease from William to Patrick—Ricky also used William's land during the lease period. *See Irwin*, 139 Mont. at 423, 365 P.2d at 226 (stating that an assignment under a contract carries with it the whole interest of the assignor). Because there was an express contract regarding Patrick's interest in the property, there can be no implied contract. *See Keith v. Kottas*, 119 Mont. 98, 101, 172 P.2d 306, 308 (1946) ("There cannot be an express and an implied contract for the same thing existing at the same time." (internal quotations omitted)). Further, William's CSP Owners Certification in which he stated that Patrick had control over the land was based on William's understanding that Ricky subleased the property to Patrick—William was not contractually obligated to Patrick based on the certification. There was no

privity of contract between William and Patrick and, accordingly, Patrick's breach of contract and implied covenant of good faith and fair dealing claims against William fail. William is entitled to judgment as a matter of law based on those claims.

¶14 William is also entitled to judgment as a matter of law on Patrick's claims of negligence, negligent misrepresentation, infliction of mental distress, and constructive fraud. When a party's claim is based solely upon an alleged breach of the specific terms of an agreement, the action sounds in contract. *Billings Clinic v. Peat Marwick Main & Co.*, 244 Mont. 324, 338, 797 P.2d 899, 908 (1990). "Separate tort liability depends on whether the breaching party violated a legal duty that would exist in the absence of a contract." *Dewey v. Stringer*, 2014 MT 136, ¶ 8, 375 Mont. 176, 325 P.3d 1236. "As a general rule, there must be some active negligence or misfeasance to support tort. There must be some breach of duty distinct from breach of contract." *Garden City Floral Co. v. Hunt*, 126 Mont. 537, 543, 255 P.2d 352, 356 (1953) (internal quotations omitted). "[E]ven if an action sounds in contract, tort-type damages are available for traditional contract-related torts such as fraud, fraudulent inducement, and tortious interference with a contract." *Dewey*, ¶ 14 (internal quotations, omissions, and citations omitted).

¶15 In this case, the undisputed facts in the record do not support finding that William owed a separate duty of care to Patrick or that William's conduct amounted to fraud or fraudulent inducement. Patrick's lawsuit is rooted in his belief that William breached a contract with Patrick. Patrick does not identify any other duty of care that William owed to him in the absence of a contract and, accordingly, no viable negligence claims exist. Patrick's remaining claims of infliction of mental distress and constructive fraud are in no

way supported by the undisputed facts before us. William leased his property to Ricky. Ricky let Patrick use William's property. William later decided that he did not want Patrick using his property. Those simple facts support the legal conclusion that William is entitled to judgment as a matter of law on all of Patrick's claims. Because there are also no genuine issues as to any material facts, the District Court's order granting William summary judgment is affirmed.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH  
/S/ DIRK M. SANDEFUR  
/S/ BETH BAKER  
/S/ JAMES JEREMIAH SHEA