

DA 19-0001

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 289

FLATHEAD MANAGEMENT PARTNERS, LLC,

Plaintiff and Appellee,

v.

ROBERT R. JYSTAD, as Personal Representative
for the Estate of Gary Jystad,

Defendant and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DV-17-193
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Marybeth Sampsel, Measure Law, P.C., Kalispell, Montana

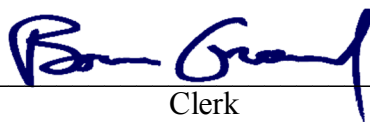
For Appellee:

Tyler Moss, O'Neill Law Office, PLLC, Polson, Montana

Submitted on Briefs: October 23, 2019

Decided: December 17, 2019

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 After a devastating fire destroyed Gary Jystad’s home, he entered into a contract with Flathead Management Partners (“FMP”)¹ to restore the property and facilitate the reconstruction of the main residence. Jystad subsequently declared the contract “null and void,” and FMP sued, claiming expectancy damages for the full contract price. Jystad claimed that the contract was void because it did not contain the statutorily required disclosures for a general contractor constructing a new residence. The Twentieth Judicial District Court held that FMP was not a general contractor, and the contract was not for the construction of a new residence. It awarded FMP \$191,876 in expectancy damages. Jystad appeals.² We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶2 In 2016, a fire destroyed Jystad’s home in Rollins, Montana. The property also contained a “garage/guest quarters” that were damaged, but not destroyed, in the fire. On February 22, 2017, Jystad entered into a written contract with FMP to oversee the property’s remediation and reconstruction. The contract expressed the following purpose:

Purpose of the agreement[:] After a devastating fire November 20, 2016 [i]t is necessary to remediate the site and repair the garage/guest quarters at

¹ FMP is a Montana limited liability company. James Stuart Williams and Richard Armstrong are the only members of FMP, and each holds a fifty percent ownership interest in FMP.

² Appellant Gary Jystad died during the pendency of this appeal. Robert Jystad was substituted for Gary Jystad by order of the Court. We refer to the appellant as Jystad in this Opinion.

Dr. Jystad's property located at 39187 Osprey Loop, Rollins, Mt. This contract witnesses agreement between the Parties that [FMP] will coordinate and facilitate that remediation and property repair and that FMP LLC will work at the exclusive direction of Dr. Jystad.

¶3 The contract provided a "preliminary schedule of tasks and work groups" regarding remediation of the property and the eventual reconstruction of the main residence. The tasks included securing permitting to begin remediation, installing environmental controls, removing damaged structural remnants and trees, remediating the landscaping, and repairing and modifying the guest quarters so Jystad could live in them.

FMP's tasks included, as pertinent to the issue on appeal:

8. Assist Dr. Jystad in selecting an appropriate design for a replacement of the main house,
9. Assist Dr. Jystad selecting and contracting with a general contractor to execute that work,
11. Supervise & coordinate the work and logistics of designers, contractors, vendors, permits and permit approval, and all else necessary to complete the agreed upon scope of work in a timely manner and within an agreed upon budget.

¶4 FMP and Jystad apparently worked well together for the first few months. FMP secured permits for remediation and facilitated finding a general contractor to begin reconstructing the main residence. Jystad entered into a contract with Montana Log Homes for the purpose of designing a replacement home. On June 9, 2017, Jystad's son Robert obtained power of attorney from Jystad. On June 10, 2017, at the conclusion of a meeting between Jystad, Robert, Jystad's daughter Sharon, and FMP, Jystad informed FMP that the contract was "null and void." Robert told FMP that the bidding process for the work under the contract was being "opened." FMP ceased work and filed a construction lien against Jystad's property. FMP later filed a complaint against Jystad

alleging two counts: breach of contract and foreclosure of lien.³ FMP sought damages based on the work it would have performed had the contract not been breached. Jystad counterclaimed for breach of contract and conversion of \$8,547.45—money Jystad paid FMP that remained on account for the duration of FMP’s involvement with the project.

¶5 Jystad filed a motion for judgment on the pleadings pursuant to M. R. Civ. P. 12(c), which the District Court denied. The court held a bench trial at which Stuart Williams, one of FMP’s two owners, was the only witness. Neither Jystad nor his son Robert appeared at trial, except through counsel.⁴ The District Court issued written findings of fact, conclusions of law, and judgment. The District Court determined that FMP was not a general contractor but a project manager under the contract. It held that the contract was for coordinating and facilitating the remediation and property repair, not for building a new residence. It found that during the parties’ course of performance of the contract, Jystad made all significant decisions with respect to the contractors required for the inspection, cleanup, repair, and rebuilding, and personally entered each contract for work performed on the property. It further concluded that Jystad repudiated the contract on June 10, 2017, when he stated that “all contracts were null and void and terminated.” The court found that the intentional language in the contract stating FMP was to work exclusively with Jystad in the performance of the contract was a material

³ FMP’s claim for foreclosure of the construction lien was dismissed by stipulation in the final pretrial order.

⁴ Jystad’s counsel moved to continue the trial and to withdraw when his client failed to appear. The District Court denied the motions, and its rulings are not at issue on appeal.

term and held that Jystad materially breached the contract when he transferred control over management of the contract to Robert.

¶6 The District Court entered judgment in favor of FMP and awarded it \$191,876 for expectancy damages arising from Jystad's breach. Jystad appeals, asserting that the court erred when it found the contract was enforceable. Jystad asserts that because FMP was a general contractor and the contract involved building a new residence, the contract did not meet the statutory requirements for a contract with a general contractor building a new residence. Section 28-2-2201, MCA.

STANDARDS OF REVIEW

¶7 This Court reviews a district court's findings of fact to determine whether they are clearly erroneous. *James Talcott Constr., Inc. v. P&D Land Enters.*, 2006 MT 188, ¶ 26, 333 Mont. 107, 141 P.3d 1200. A finding is clearly erroneous if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if our review of the record convinces us that a mistake has been made. *James Talcott*, ¶ 26 (citing *Fiedler v. Fiedler*, 266 Mont. 133, 137-38, 879 P.2d 675, 678 (1994)). A district court's decision on a motion for judgment on the pleadings is a conclusion of law, which we review for correctness. *Firelight Meadows, LLC v. 3 Rivers Tel. Co.*, 2008 MT 202, ¶ 12, 344 Mont. 117, 186 P.3d 869 (citing *Brown v. State*, 2002 MT 58, ¶ 18, 309 Mont. 106, 46 P.3d 42). We review questions of statutory interpretation under the same standard. *Firelight Meadows*, ¶ 12 (citing *State ex rel. Montana DOT v. Asbeck*, 2003 MT 337, ¶ 10, 318 Mont. 431, 80 P.3d 1272). Finally, we apply the abuse of discretion

standard to our review of a damages award. *Weimar v. Lyons*, 2007 MT 182, ¶ 17, 338 Mont. 242, 164 P.3d 922.

DISCUSSION

¶8 Section 28-2-2201, MCA, requires that an owner and a general contractor contracting to build a new residence enter into a written agreement with specific provisions, including general liability and workers' compensation disclosures, provisions establishing the payment schedule, procedures for handling change orders by the owner, and statements of all inspections conducted and that the general contractor is providing an express warranty. Section 28-2-2201, MCA, reads, in part:

(1) For the purposes of this section, "residential construction contract" means a contract between a general contractor and an owner for the construction of a new residence.

(2) All residential construction contracts that are subject to the provisions of this section must be in writing and must contain [the required provisions]

The parties do not dispute that the statute applies only to new home construction, not to repairs or remodeling. In *Mandell v. Ward*, 2016 MT 205, ¶ 21, 384 Mont. 377, 377 P.3d 1228, we held that an oral contract for construction of a new residence was void when it did not satisfy § 28-2-2201, MCA, and the general contractor could not recover contract-based expectancy damages.

¶9 *1. Did the District Court err when it denied Jystad's motion for judgment on the pleadings?*

¶10 Jystad first contends that the District Court erred in denying his motion for judgment on the pleadings because it failed to accept the allegations of FMP's complaint as true. He asserts that, because FMP's complaint admitted FMP was a general

contractor and the contract was to rebuild the home, the court should have determined that the contract was between a general contractor and an owner to construct a new residence. Lacking the specific statutorily required disclosures, the contract violated § 28-2-2201, MCA, and was void. FMP responds that the contract is the controlling document. It argues that the District Court was not required to defer only to the allegations in the complaint; the court properly considered the contract as part of the pleadings and interpreted the contract as a matter of law when it found that the contract was not one for the construction of a new residence.

¶11 Any exhibits and materials referred to in a pleading are incorporated into the pleading and may be considered by a court for purposes of deciding a motion under M. R. Civ. P. 12(c). *Firelight Meadows*, ¶ 15; M. R. Civ. P. 10(c). The District Court properly considered the contract as a part of the pleadings when it decided Jystad’s motion for judgment on the pleadings.

¶12 To grant a motion for judgment on the pleadings, the material facts must be undisputed so that the moving party is entitled to judgment as a matter of law. *Firelight Meadows*, ¶ 11. Jystad argues that FMP’s factual allegations in its complaint must be considered as true, and those factual allegations necessitate the conclusion that the contract was one for the construction of a new residence and thus invalid under § 28-2-2201, MCA, and *Mandell*, ¶ 21. When deciding a motion for judgment on the pleadings, the court is confined to considering “well-pleaded *factual* allegations.” *Firelight Meadows*, ¶ 18 (emphasis added). Construing contract terms and interpreting statutes are matters of law. For purposes of ruling on the Rule 12(c) motion, the District

Court was not required to accept as true legal conclusions involving contract and statutory interpretations. Based on the language in the contract, the District Court did not err when it denied the motion.

¶13 2. *Did the District Court err when it concluded that the contract was enforceable?*

¶14 Jystad contends that the District Court erred when it did not apply § 28-2-2201, MCA, to the contract between Jystad and FMP. Jystad argues that the parties plainly contracted for FMP to serve as general contractor for the construction of Jystad's new residence, and the testimony at trial established that FMP acted as such. He asserts that the contract is subject to § 28-2-2201, MCA, and is void because it did not satisfy the statute's requirements. He argues that he fully compensated FMP for the work it actually performed before the breach, and the court erred when it awarded FMP the full amount it would have received under the contract.

¶15 The contract language and testimony at trial demonstrate two phases of remediation: (1) the environmental remediation and repairs to the guest house, and (2) reconstruction of the main house. We address each in turn.

¶16 The District Court found that FMP was not a general contractor under the contract, and the contract was not for the construction of a new residence but for remediation. The contract's express purpose was to "coordinate and facilitate [the] remediation and property repair." In addition to "execut[ing]" modifications and repairs to the guest quarters, FMP was to "facilitate" hiring another general contractor to reconstruct the main residence. The District Court noted that, "[h]ad FMP been selected as the general contractor, then a residential construction contract would have been required."

¶17 We agree with the District Court. FMP contracted with Jystad to remediate the property, to ensure Jystad had a living space in the guest house, and to begin the process of rebuilding the main residence. The contract expressly contemplated that FMP would assist Jystad in finding a general contractor for the main house; it did not provide that FMP would serve as the general contractor. FMP did not contract to build the new main residence. The requirements of § 28-2-2201, MCA, thus do not apply to the contract's scope, and the District Court correctly held that the contract was valid. Jystad does not argue that he did not breach the contract, only that it is invalid. Based on the uncontested evidence, the District Court correctly determined that Jystad breached the contract.

¶18 The contract reveals plainly that Jystad's ultimate goal was to rebuild the main residence. Jystad argues that, even if the contract is valid as it applied to the remediation portion, FMP actually assumed general contractor services for the construction of the new residence, at which point it proceeded without a written contract in violation of § 28-2-2201, MCA, and the District Court thus erred when it awarded anticipated lost profits. He contends that the situation is identical to *Mandell*. In *Mandell*, ¶ 21, this Court held that an oral contract for construction of a new home was void in light of § 28-2-2201, MCA, and thus was unenforceable. An unenforceable contract prevents the nonbreaching party from seeking contract damages.⁵ FMP responds that the contract expressly reserved from FMP's list of duties the design and construction of a replacement home when it stated that FMP would assist Jystad in "selecting and contracting with a

⁵ It does not preclude *quantum meruit* recovery, as we held in *Mandell*, ¶ 21.

general contractor to execute” the replacement of the main residence and that FMP did not act as general contractor for the new residence.

¶19 Williams testified at trial that he had become friends with Jystad when Williams was a Rollins volunteer firefighter and Jystad served on the board. Williams helped fight the fire at Jystad’s residence. Williams said Jystad wanted to reconstruct a log home to match the one destroyed, which had been his late wife’s “dream house.” Jystad asked Williams to find suitable contractors and to manage the project “to make sure that [Jystad didn’t] get screwed.” Williams worked to see that the project could be completed within the amount of money Jystad would be paid by his homeowner’s insurance.

¶20 At the time of the breach, Jystad and Montana Log Homes had entered into a contract for the log home “shell” of the new residence. Williams testified that the “structure, cutting[,] and assembly” of the log home would constitute the bulk of the general contractor’s work. Jystad wanted to hire local contractors to finish the residence with insulation, plumbing, and similar tasks. Williams testified that, when the breach occurred, FMP was still in the process of working out the details with Montana Log Homes or another general contractor to bring in smaller contractors. Williams said that FMP was to manage the project but did not assume the reconstruction. Having worked in construction since the age of seventeen, Williams said he had been moving “into the management side” because of injuries that made it difficult for him to perform the manual labor. FMP’s detailed billing summary, admitted without objection at trial, shows that, in addition to performing work on the guest house remodel, it undertook tasks such as scheduling meetings for Jystad with the contractors; working with the homeowner’s

association, government officials, and insurance company; meeting with neighbors “to facilitate a productive relationship”; scheduling at Jystad’s direction; and communicating with and preparing documents for Jystad’s children at their request. The District Court found from this evidence that FMP had not assumed responsibility as general contractor for the reconstruction of Jystad’s home at the time of the breach. Jystad has not shown clear error in the court’s findings. On this record, we cannot conclude that FMP performed services that required a contract meeting the terms of § 28-2-2201, MCA.

¶21 In a breach of contract action, the nonbreaching party may recover all of the damage proximately caused by the breach. Section 27-1-311, MCA. “The proper objective of an award of damages for wrongful breach of contract is to place the party wronged in as good position as if the contract had been performed.” *Stensvad v. Miners & Merchs. Bank*, 196 Mont. 193, 206, 640 P.2d 1303, 1310 (1982). “[L]oss of profit ‘where it is shown that such loss is the natural and direct result of the act of the defendant’ is a foreseeable consequence of breach.” *Hostetter v. Donlan*, 221 Mont. 380, 382, 719 P.2d 1243, 1245 (1986) (quoting *Cruse v. Clawson*, 137 Mont. 439, 448, 352 P.2d 989, 994 (1960)).

¶22 Jystad contests the District Court’s damage award exclusively on the basis that the contract was void under § 28-2-2201, MCA. “Once liability is shown, that is the certainty that damages are caused by the breach, then loss of profits on a reasonable basis for computation and the best evidence available under the circumstances will support a reasonably close estimate of the loss by a District Court.” *Hostetter*, 221 Mont. at 383, 719 P.2d at 1245 (quoting *Stensvad*, 196 Mont. at 206, 640 P.2d at 1310). Williams

testified to FMP's calculation of damages, and Jystad offered no evidence to contest it. We have upheld the District Court's determination of liability, and we conclude that the assessment of FMP's damages was within the trial court's discretion.

¶23 Jystad finally argues that because the District Court should have concluded that the contract was void, and FMP retained \$8,547.45 of Jystad's money, the District Court erred in denying his conversion claim. Because we have concluded that the District Court did not err when it declared the contract enforceable, and the District Court deducted that amount from FMP's recovery, we decline to address Jystad's conversion allegation.

CONCLUSION

¶24 The District Court did not err when it determined that the contract was not for the construction of a new residence and that FMP was not a general contractor. It did not abuse its discretion in the award of damages. The judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JAMES JEREMIAH SHEA