

DA 21-0227

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 29N

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DOYLE LEE,

Plaintiff and Appellant,

v.

LITHIA CDH, INC., d/b/a LITHIA CHRYSLER DODGE  
JEEP RAM FIAT OF HELENA,

Defendant and Appellee.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. ADV-2018-633  
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian J. Miller, Morrison, Sherwood, Wilson, and Deola PLLP, Helena,  
Montana

For Appellee:

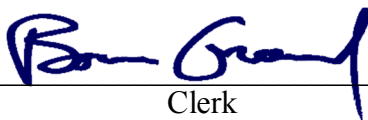
Roger T. Witt, Andrew T. Newcomer, Ugrin Alexander Zadick, P.C.,  
Great Falls, Montana

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Submitted on Briefs: January 12, 2022

Decided: February 8, 2022

Filed:

  
Clerk

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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 Appellant Doyle Lee (Lee) appeals the Order on Motions for Summary Judgment entered February 25, 2021, in the First Judicial District Court, Lewis and Clark County. The dispute involves alleged misrepresentations regarding the sale of a used motor vehicle between Lee and Appellee, Lithia CDH, Inc., doing business as Lithia Chrysler Dodge Jeep Ram Fiat of Helena (Lithia). The District Court's Order granted summary judgment for the Appellee based on a finding that the parties had previously entered into an enforceable Settlement Agreement on November 15, 2018, which barred the continued litigation of Lee's claims against Lithia. We affirm.

¶3 On September 12, 2017, Lee purchased a used 2008 Subaru Legacy from Lithia for \$9,293. At the time of purchase, the vehicle was eight years old and had almost 100,000 miles on it. Lee also purchased a two-year extended service agreement on the vehicle from First Extended Service Corporation (FESC) to cover the cost of any unexpected repairs to the vehicle.

¶4 In November 2017, Lee began experiencing problems with the vehicle's engine. In response, FESC—pursuant to its extended service agreement with Lee—paid the service department at Placer Subaru in Helena to rebuild a portion of the vehicle's engine.

Nevertheless, the engine continued to experience issues following this repair, at which point Lee took the vehicle back to the Lithia dealership. Lithia recommended a full engine replacement for the vehicle with a remanufactured engine, and FESC approved payment for this replacement engine under Lee's extended service agreement. However, Lee initially declined FESC's offer to have the engine replaced. The remanufactured engine had already been delivered to Lithia, so Lithia had to pay over \$1,000 to have the remanufactured engine returned to the dealer.

¶5 On June 25, 2018, Lee filed a Complaint and Jury Demand alleging that Lithia had committed "constructive fraud" and violated the Montana Consumer Protection Act (MCPA) by assuring Lee at the time of the sale that the Subaru was a "fine running vehicle with no problems." Lithia denied these allegations and argued that Lee had agreed to purchase the used vehicle "as is," subject only to the extended warranty agreement provided by FESC.

¶6 In August 2018, counsel for the parties began to communicate regarding the continued issues with the vehicle's engine. After Lithia's counsel inquired as to why Lee had declined the benefits of his extended service agreement with FESC, Lee changed his mind and agreed to allow FESC to pay for the installment of a remanufactured engine. The appointment to install the new engine was scheduled for November 2018. As this date approached, Lee's counsel advised Lithia that Lee was also experiencing issues with the vehicle's clutch. On November 14, 2018, Lithia's counsel telephoned Lee's counsel to discuss a prospective settlement agreement. During this call, Lithia offered to have its service department replace the clutch on Lee's vehicle—at Lithia's expense—in exchange

for a release of Lee's claims against Lithia. On November 15, 2018, Lee's attorney sent a one-line email to Lithia's counsel stating as follows: "Mr. Lee will accept the offer to have the clutch replaced in exchange for settling all his claims against Lithia." Later that day, Lithia's counsel sent a reply email stating that this was "Great news" and began to schedule the repair work for the clutch. In his reply, Lithia's counsel also promised to send a more formal release for Lee to sign at a later date.

¶7 In late November 2018, Lithia installed the remanufactured engine—at the expense of FESC—and replaced the clutch at its own expense. The total cost to FESC to replace the engine was \$7,352.06, while the cost to Lithia to replace the Subaru's clutch was \$1,293.99. On December 20, 2018, Lithia's counsel sent Lee's counsel a written release form to confirm the terms of their Settlement Agreement, but he did not hear back from Lee. Lithia's counsel followed up about the release twice more in January and April of 2019; however, Lee's counsel failed to respond for several months, and Lee never signed the release form. Eventually, Lee's counsel informed Lithia that Lee would be withdrawing from the Settlement Agreement, alleging that Lithia had failed to perform its end of the Agreement because the remanufactured engine had purportedly continued to experience issues.

¶8 After the clutch was replaced and the remanufactured engine was installed, Lee continued to drive the Subaru for nine more months for 17,349 miles. In August 2019, Lee claimed the engine on the vehicle began to experience issues once again. Upon taking the Subaru back to Lithia for inspection, Lee alleges that Lithia informed him that they would be "unable to do anything to fix the vehicle"; conversely, Lithia claims their inspection at

this time revealed “no significant issues” with the vehicle. Lee ultimately traded in the Subaru to Lithia; however, Lithia refused Lee’s demand for a full refund of the purchase price of the Subaru. Instead, Lithia offered to sell Lee a new vehicle—a Jeep Compass—at a discounted price, which Lee then purchased.

¶9 On October 2, 2019, Lee’s counsel sent a letter to Lithia which once again raised allegations of misrepresentation and MCPA violations regarding the sale of the Subaru. At this time, Lee requested \$11,000 in damages plus \$4,500 in attorney’s fees from Lithia. When Lithia refused to settle for this amount, Lee proceeded with his lawsuit against Lithia in the First Judicial District Court. On November 13, 2020, Lithia filed a Motion to Enforce Settlement, arguing that Lithia and Lee’s November 2018 correspondence had formed a binding Settlement Agreement in which Lee had waived his right to continue his lawsuit against Lithia. Later, on November 24, 2020, Lithia filed a Motion for Summary Judgment on Lee’s allegations of misrepresentation and MCPA violations, alleging that these claims must fail due to the terms of the parties’ Settlement Agreement. Lee opposed both motions, arguing that the Settlement Agreement could not be enforced because Lithia had breached its end of the Agreement.

¶10 On February 25, 2021, the District Court issued an Order on Motions for Summary Judgment. The Order granted summary judgment to Lithia on the ground that the parties’ November 2018 correspondence formed a valid settlement agreement which barred Lee’s continued litigation of his misrepresentation and MCPA claims against Lithia. The court held that it did not matter that Lee had not signed the formal release sent by Lithia on December 20, 2018, concluding “[i]t is established case law that an unconditional

acceptance may bind parties in a settlement agreement, even without a detailed agreement.” In particular, the court noted the clear similarities between Lee’s case and the controlling case of *Hetherington v. Ford Motor Co.*, 257 Mont. 395, 399, 849 P.2d 1039, 1042 (1993) (holding that the failure to execute a formal settlement agreement did not bar the formation of a valid agreement when shorter written correspondence between two parties—where one party agreed to release all legal claims in exchange for payment from the other party—constituted an “unconditional” offer and acceptance). Additionally, the District Court’s Order asserted that “[i]f Lee disputes whether Lithia performed its obligations[,]” then Lee’s proper remedy in this dispute “lies in contract.”

¶11 On May 12, 2021, Lee filed a notice of appeal. Lee’s appeal asks this Court to reverse the District Court’s summary judgment decision and requests a remand for further proceedings on Lee’s misrepresentation and MCPA violation claims.

¶12 “We review de novo a district court’s grant of summary judgment, using the same standards applied by the district court under M. R. Civ. P. 56.” *Smith v. BNSF Ry. Co.*, 2008 MT 225, ¶ 10, 344 Mont. 278, 187 P.3d 639. “The moving party must establish the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.” *Rich v. Ellingson*, 2007 MT 346, ¶ 12, 340 Mont. 285, 174 P.3d 491. If the moving party establishes that no genuine issue of material fact exists, then the burden shifts to the nonmoving party to establish that a genuine dispute does exist. *Becker v. Rosebud Operating Servs., Inc.*, 2008 MT 285, ¶ 13, 345 Mont. 368, 191 P.3d 435.

¶13 Furthermore, “[s]ettlement agreements are contracts, and are subject to the provisions of contract law.” *Murphy v. Home Depot*, 2012 MT 23, ¶ 8 364 Mont. 27,

270 P.3d 72. A settlement agreement “is binding if [it is] made by an unconditional offer and accepted unconditionally.” *Hetherington*, 257 Mont. at 399, 849 P.2d at 1042. A party may rescind a contract in the following cases only: (1) its consent to the agreement was given mistakenly or obtained through duress, menace, fraud, or undue influence; (2) if, through the fault of the party as to whom the other party rescinds, the consideration for the obligation of the party at fault fails in whole or in part; (3) if the consideration becomes entirely void from any cause; (4) if the consideration, before it is rendered to the rescinding party, fails in a material respect from any cause; or (5) if all the other parties consent. Section 28-2-1711(1)-(5), MCA.

¶14 On appeal, Lee does not contest the District Court’s finding that the parties’ November 2018 Settlement Agreement was a valid, binding contract. Indeed, we agree with the District Court’s determination that *Hetherington* controls. 257 Mont. at 399, 849 P.2d at 1042 (establishing that an unconditional acceptance will bind parties in a settlement agreement, even in the absence of a detailed agreement). Under this standard, the facts leave no doubt that the email sent by Lithia’s counsel on November 15, 2018—which stated that “Mr. Lee will accept the offer to have the clutch replaced in exchange for settling all his claims against Lithia”—constituted an unconditional acceptance of Lithia’s November 14, 2018 offer to settle under these terms.

¶15 Instead, Lee’s appeal argues that the District Court erred in granting summary judgment because it did not address Lee’s argument that the Settlement Agreement should not be enforced because Lithia “failed to perform the terms specified in the . . . [S]ettlement

[A]greement.”<sup>1</sup> Specifically, Lee argues that the Settlement Agreement does not require him to drop his lawsuit for misrepresentation and MCPA violations against Lithia because Lithia “materially breached the core of the [S]ettlement [A]greement” by “fail[ing] to provide him with a 2008 Subaru with a replaced engine that worked.” According to Lee, when the Subaru’s engine replacement proved unsuccessful and Lithia refused to remedy that defect at their own expense, Lithia failed to perform a “self-evident” duty that it owed to Lee under the parties’ Agreement. Because of this, Lee asserts that a genuine dispute of material fact exists regarding whether Lithia fully performed its obligations under the Settlement Agreement, precluding summary judgment in his case. However, Lee’s argument ignores that he expressly waived his claims under a legally binding contract.

¶16 As the District Court noted in its Order, “Lee released his claims under the terms of the Settlement Agreement. If Lee disputes whether Lithia performed its obligations in accordance with the contract, his remedy lies in contract.” Indeed, Montana Law establishes that the remedies available to a plaintiff who has settled, but who believes a defendant has breached the settlement agreement, are limited by contract law. *See Hetherington*, 257 Mont. at 399, 849 P.2d at 1042. A plaintiff’s available remedies are

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<sup>1</sup> Lee’s appeal also alleges that the District Court erred because its Order on Motions for Summary Judgment did not undergo any analysis regarding the applicability of the equitable doctrine of “specific performance.” According to Lee, the District Court’s grant of summary judgment for Lithia was actually an order for “specific performance” of the parties’ Settlement Agreement, which required the District Court to undergo an analysis under § 27-1-414, MCA (“Right to specific performance to be mutual”), to prove that Lithia had fully performed its end of the settlement contract before awarding this equitable remedy. However, we disagree that any such analysis was required in light of the District Court’s clearly articulated findings that a lawful settlement agreement existed and that Lee had expressly waived his right to sue under this contract. Moreover, even if such an analysis was required, there is no evidence to indicate that Lithia did not fully perform its end of the Settlement Agreement when it fixed the clutch on Lee’s vehicle.



an action to rescind that settlement agreement under § 28-2-1711(1)-(5), MCA (providing that a plaintiff may void a contract in specific scenarios, including if the contract was formed under duress, menace, or fraud), or, alternatively, a plaintiff may pursue an action for damages for breach of contract. *See Hinderman v. Krivor*, 2010 MT 230, ¶ 21, 358 Mont. 111, 244 P.3d 306 (citing § 28-2-1711, MCA). Here, Lee has not brought an action for rescission or breach of contract in the District Court. As the District Court concluded, the Settlement Agreement is binding, and Lee waived his claims that Lithia committed MCPA violations and misrepresentation in inducing the original sales contract for the Subaru.

¶17 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.

¶18 Affirmed.

/S/ LAURIE McKINNON

We concur:

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