DA 20-0504

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 146N

SANDRA JORGENSEN,

Plaintiff and Appellant,

v.

CRAZY CARLS, INC., d/b/a AUTO RESOURCE,

Defendant and Appellee.

APPEAL FROM: District Court of the Fourteenth Judicial District,
In and For the County of Musselshell, Cause No. DV 20-18
Honorable Randal I. Spaulding, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Sandra Jorgensen, Self-Represented, Roundup, Montana

For Appellee:

Rodd A. Hamman, Alex W. Hamman, Calton Hamman & Wolff, P.C., Billings, Montana

Submitted on Briefs: May 19, 2021

Decided: June 8, 2021

Filed:

Clerk

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 Sandra Jorgensen, appearing pro se, appeals an order from the Fourteenth Judicial District Court, Musselshell County, granting summary judgment in favor of Crazy Carls, Inc., d/b/a Auto Resource (Auto Resource). We affirm.

¶3 Jorgensen entered into a Purchase Agreement (Agreement) and Contract and Security Agreement (Contract) with Auto Resource on January 7, 2020, for the purchase of a 2018 Jeep Grand Cherokee for $44,194. Auto Resource gave Jorgensen until February 21, 2020, to pay the purchase price plus interest for a total of $44,465.88. Pursuant to the Agreement and Contract:

> If for any reason you and we do not complete the Vehicle sale and purchase . . . [y]ou will return the Vehicle to us. You will pay us on demand all reasonable charges and expenses for any damage to the Vehicle. You will pay us the greater of $.30 per mile of $20 per day for your use of the Vehicle.

It further states, "you agree to pay us all reasonable expenses we incur in connection with retaking the Vehicle, including attorneys' fees and other expenses to the extent permitted by applicable law."

¶4 Jorgensen never made a payment to Auto Resource. Instead, Jorgensen filed a complaint seeking an injunction preventing Auto Resource from repossessing the Jeep,

requesting a release of the lien against the car, and declaring title to the vehicle. Auto Resource filed a counterclaim alleging Jorgensen breached the Contract and Agreement by not paying the purchase price. Auto Resource subsequently moved for summary judgment to enforce the Agreement and Contract. Jorgensen moved for oral argument, which was held on June 16, 2020. The District Court granted Auto Resource's motion for summary judgment and ordered Jorgensen to deliver possession of the vehicle, as well as pay $10,200, plus 7.75% interest, attorney's fees, and costs.

¶5 On appeal, Jorgensen asserts the District Court erred by granting summary judgment to Auto Resource. In particular, Jorgensen alleges the Contract was a promissory note subject to a condition of presentment, the Contract and Agreement were fraudulently prepared, and the statute of frauds was violated because the Contract and Agreement were not in writing.

¶6 We review de novo a district court's grant or denial of summary judgment. *Crane Creek Ranch, Inc. v. Cresap*, 2004 MT 351, ¶ 8, 324 Mont. 366, 103 P.3d 535. Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Borges v. Missoula Cty. Sheriff's Office*, 2018 MT 14, ¶ 16, 390 Mont. 161, 415 P.3d 976. To determine whether a genuine issue of material fact exists, we view all evidence and draw all reasonable inferences in the light most favorable to the non-moving party. *McLeod v. State*, 2009 MT 130, ¶ 12, 350 Mont. 285, 206 P.3d 956. If the moving party satisfies its burden by demonstrating there are no genuine issues of material fact and the party is

entitled to judgment as a matter of law, the burden then shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue does exist. *Valley Bank v. Hughes*, 2006 MT 285, ¶ 14, 334 Mont. 335, 147 P.3d 185. The non-moving party cannot create a genuine issue of material fact by putting its own interpretations and conclusions on an otherwise clear set of facts or by making conclusory statements. *Sprunk v. First Bank Sys.*, 252 Mont. 463, 466, 830 P.2d 103, 105 (1992) ("conclusory statements do not rise to the level of genuine issues of material fact . . . ."). "If no genuine issues of material fact exist, a court must determine whether the facts entitle the moving party to judgment as a matter of law." *Borges*, ¶ 16. We review conclusions of law for correctness. *Valley Bank*, ¶ 15.

¶7 The construction and interpretation of a contract are questions of law. *Brothers v. Home Value Stores, Inc.*, 2012 MT 121, ¶ 10, 365 Mont. 196, 279 P.3d 157. Where the language of the contract is "clear and unambiguous, there is nothing for the court to construe; the duty of the court is simply to apply the language as written to the facts of the case, and decide the case accordingly." *Carbon County v. Dain Bosworth, Inc.*, 265 Mont. 75, 87, 874 P.2d 718, 726 (1994). This Court reviews a district court's interpretation of a contract for correctness. *Estate of Richerson v. Cincinnati Ins. Co.*, 2011 MT 266, ¶ 7, 362 Mont. 324, 264 P.3d 1087.

¶8 The District Court held Auto Resource, as the moving party, met its burden of establishing there were no genuine issues of material fact and it was entitled to judgment as a matter of law. The burden then shifted to Jorgensen to demonstrate by affidavit or testimony that a contested issue of material fact existed. Jorgensen filed an affidavit with

the court in opposition, however, she did not contest the material facts and instead asserted the Contract was a promissory note that was subject to presentment. The concept of presentment does indeed apply to promissory notes. However, the Contract between Auto Resource and Jorgensen was a written contract for the sale of a good—the Jeep—and a security agreement; the concept of presentment does not apply to either.

¶9 Furthermore, Jorgensen alleged the Contract and Agreement were forged copies and thus should be excluded as evidence. However, Jorgensen did not raise a genuine issue as to the authenticity of the original documents. The District Court correctly noted that pursuant to M. R. Evid. 1001(5) and 1003, copies of business records are clearly admissible when no genuine question as to the authenticity of the originals was raised. As to Jorgensen's claim of forgery, the District Court correctly noted that Jorgensen only provided conclusory and speculative statements and did not address the existence of a contract. The use of conclusory and speculative statements is not enough to overcome the non-moving party's burden to defeat summary judgment.

¶10 The District Court correctly concluded the language of the Contract and Agreement was clear and that Auto Resource was entitled to repossession of the vehicle following a failure to deliver the purchase price by February 21, 2020. Additionally, the District Court correctly found Jorgensen had not met her burden under M. R. Civ. P. 56(e) in establishing a genuine issue with a material fact. We conclude the District Court correctly granted summary judgment in favor of Auto Resource.

¶11 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.

¶12 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ JIM RICE