

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0656

SIDNEY and JULIAN HELVIK,
Plaintiffs, Counter-Defendants, and
Appellees,

v.

Appellants' Opening Brief

WESLEY and KAREN TUSCANO,
Defendants, Counter-Plaintiffs, and
Appellants.

WESLEY and KAREN TUSCANO,
Third-Party Plaintiffs and Appellants,

v.

JACQUELINE CONNER,
Third-Party Defendant and Appellee.

*On Appeal from the Sixth Judicial District Court, Sweet Grass County,
Cause No. DV 2021-39 Honorable Brenda Gilbert*

Hertha L. Lund
Peter B. Taylor
Lund Law, PLLC
662 S Ferguson Ave, Unit 2
Bozeman MT 59718
Telephone: (406) 586-6854
Fax: (406) 586-6259
lund@lund-law.com
taylor@lund-law.com

Attorneys for Appellants

Barbara C. Harris
P. O. Box 743
Helena, MT 59624
(406) 475-4251
bcharris@mtlsa.org

*Attorney for Appellees, Sidney and Julian
Helvik*

Michael F. McGuinness
Justin M. Oliveira
Patten Peterman Bekkedahl & Green, PLLC
2817 2nd Ave North, Suite 300
Billings, MT 59103
Telephone: (406) 252-8500
Fax: (406) 294-9500
mmcguinness@ppbglaw.com
joliveira@ppbglaw.com

Attorneys for Appellee, Jacqueline Conner

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Appellants' Brief

ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred by issuing a final order and judgment that rescinded the parties' April 30 2020, Agreement to Sell and Purchase Real Property (the "Agreement"), when the Jury verdict, entered after a weeklong trial, expressly found (1) that the parties were bound by the terms of the Agreement, (2) that the Agreement was not the result of undue influence, and (3) that the Agreement was not the result of fraud. Agreement, Trial Ex. DB, Appendix Ex. 9.

2. Whether the district court violated Tuscanos' right to a jury trial under the Montana Constitution by making findings of fact and entering judgment after a jury trial that were contrary to the Jury's findings.

3. Whether the district court erred by finding post-trial, that Tuscanos had never tried nor intended to make payments to Helviks, when the undisputed evidence at trial was that Wes Tuscano had tried to make payments that Sidney Helvik refused.

4. Whether the district court erred when it granted Helviks' motion in limine, excluding evidence of oral discussions and negotiations that preceded signing of the June 24, 2020, Gift Deed (the "Gift Deed"). Gift Deed, Trial Ex. DD, Appendix Ex. 10.

5. Whether the district court erred in granting Helviks' motion in limine precluding any evidence regarding Adult Protective Services Investigation.

6. Whether the district court erred in granting Third-Party Defendant Jacqueline Conner's motion for summary judgment on counts 1 and 2 of Tuscanos' third-party complaint for Tortious Interference with Contract and Abuse of Process.

7. Whether the district court erred in providing a jury instruction that was not sufficient for the Jury to specifically find that Tuscanos unduly influenced Helviks in relation to the Gift Deed.

STATEMENT OF THE CASE

This appeal arises from a real estate transaction between friends, Sidney Helvik ("Sidney") and Wesley Tuscano ("Wes"). After Wes and his wife, Karen, had been neighborly for years and assisted Sidney and his brother Julian with their ranch work and living circumstances, Sidney asked Wes several times over many months to buy his land. Trial Tr. 2, 266:22–25; 267:1–25; 268:1–15. Wes told him he could not afford to buy his property. Trial Tr. 2, 268:22–25; 267:1–25; 268:16–25; 269:1–125; 270:1–25. After many meetings, Wes and Sidney first negotiated and agreed to the Agreement. Trial Excerpts, Appendix Ex. 7; Agreement, Appendix Ex. 9.

After further meetings between Sidney and Wes, they agreed to transfer the property by using a gift deed so Tuscanos could purchase the infrastructure needed to bring the land back into production which would then enable Tuscanos to make enough income to make payments to Helviks. It took Tuscanos a long time to secure a loan after the Gift Deed was signed.

At some point in time, Sidney's stepdaughter, Jacqueline Conner ("Conner"), found out that Sidney had granted a gift deed to Tuscanos. She became involved and instigated an investigation by Adult Protective Services. When that investigation did not yield results, she arranged for Helviks to secure representation from Montana Legal Services to sue Tuscanos, filing their complaint on October 15, 2021.

On May 30, 2023:

- The court granted Third-Party Defendant Conner's motion for summary judgment on Counts 1 and 2 on Tuscanos' third-party complaint for tortious interference with contract and abuse of process. Decision and Or. re: Third-Party Def. Mot. for Summary Judgment [Doc. 199], Appendix Ex. 4.
- The court granted Helviks' motion in limine precluding any evidence regarding the oral negotiations between Wes and Sidney prior to signing the Gift Deed. Or. re: Helviks' Mot. in Limine & Third-Party Def. Mot. in Limine re: Improper Evid. [Doc. 201], Appendix Ex. 5.
- The court granted Helviks' motion in limine precluding any evidence regarding an Adult Protective Services investigation that was initiated by Conner. Or. re: Helviks' Mot. in Limine & Third-Party Def. Mot. in Limine re: Evidence of Adult Protective Services Investigation [Doc. 202], Appendix Ex. 6.

The case was tried before a jury for one week and a verdict was reached on June 15, 2023. At which point Tuscanos believed that they retained title to the property with the obligation to pay \$150,000 in damages to Helviks, which they tendered. Then on October 11, 2023, four months after the Jury verdict, the court issued its Findings of Fact, Conclusions of Law, Final Order, and Judgment. [Doc. 273], Appendix Ex. 3. directly contradicting the Jury's findings and verdict.

STATEMENT OF THE FACTS

During the ten years prior to April 30, 2020, when Sidney and Julian Helvik (“Helviks”) entered into the Agreement to Sell and Purchase Real Property with Wesley and Karen Tuscano (“Tuscanos”), the Helviks and Tuscanos were neighbors and friends. Tuscanos’ Am. Answer & Counterclaim, p. 11 [Doc. 43]. Sidney asked Wes to come over and fix things at the house for him, which he did. *Id.* After Helviks sold property to CW Bar Machinery, LLC in 2018, Sidney asked Wes to consider purchasing Helviks’ remaining property. *Id.*, pp. 11–12.

From 2018 to April 30, 2020, Sidney and Wes met multiple times to negotiate the terms of the property transaction. *Id.*, p. 12. Wes was not able to finance the Agreement; instead, he and Sidney moved forward with the transaction pursuant to the Gift Deed. *Id.*, pp. 12–13, Appendix Ex. 10. The terms of payment did not change, even though Helviks and Tuscanos executed the Gift Deed on June 24, 2020. *Id.*, p. 12, Appendix Ex. 10.

During trial, Sidney testified that Wes tried to pay him. Trial Tr., 31:17–19; Trial Tr. 2, 538:5–11. Similarly, at trial Wes testified that he intended to make payments once the necessary infrastructure was built on the property, as agreed upon with Helviks. Trial Tr. 2, 300:7–25; 301:1–5. Wes further testified that he was prepared to pay Helviks and went to their house with a check, but Sidney refused to accept it. Trial Tr. 2, 301:6–10. Indeed, Wes testified that their attorney at the time offered to send two checks, each for \$25,000, along with a signed Promissory Note to Helviks. Trial Tr. 2, 322:9–20. Letter, Appendix Ex. 8. Additionally, Karen

Tuscano (“Karen”) testified at trial that she believed that she and her husband had a duty to pay the Helviks \$500,000 after the Gift Deed was signed because it is what she and Wes had promised to do. Trial Tr. 2, 413:21–25; 414:1–6. Trial Excerpts, Appendix Ex. 7.

Sometime after the Gift Deed was signed and recorded, Sidney’s stepdaughter, Conner, became concerned about Sidney “giving the property away,” and Sidney changed his mind about his real estate transaction with Tuscanos. The Jury found that “the Helviks and Tuscanos [are] bound to follow the terms of the Agreement to Sell and Purchase Real Property dated April 30, 2020.” Jury Verdict, ¶ 1, [Doc. 254], Appendix Ex. 1. The Jury also awarded Helviks \$150,000 for damages due to the Tuscanos’ breach of contract, which was the exact amount of the missed payments. *Id.*, ¶ 5.

Two weeks after the Jury verdict, on June 30, 2023, Tuscanos filed a Notice of Compliance with Jury Verdict and Motion for Entry of Judgment and Satisfaction of Judgment. [Doc. 262]. Tuscanos proposed paying the Helviks a payment of \$150,000 and an additional \$25,000 that was due by July 1, 2023, in compliance with the Jury verdict. *Id.*, ¶ 1. The district court failed to respond to Tuscanos’ Motion. Instead, the court ordered the parties to appear for a status conference. Or. Setting Status Conf. [Doc. 263]. Next, the court ordered the parties to file findings of fact and conclusions of law, “[t]hereafter, the Court will consider the post-verdict matters further.” Or. Following Status Conf., p. 2, [Doc. 270].

On October 11, 2024, the court issued its Findings of Fact, Conclusions of Law, Final Order, and Judgment (“FOFCOL and Judgment”) stating that the “Court

determined that, following the jury trial, further consideration of the Plaintiffs' claims for declaratory relief and quiet title would be necessary." FOFCOL and Judgment, p. 1, Appendix Ex. 3. Further, the court stated that it had "considered the testimony and evidence submitted at trial, the Jury verdict, the parties' post-trial filings, the record herein and applicable legal authority. Good cause exists for entry of the Findings of Fact, Conclusions of Law, and Order that follows." *Id.*, p. 2.

In the court's after-trial findings of fact and conclusions of law, the court reaffirmed that it had denied Tuscanos' ability to present facts to the Jury related to evidence of the oral agreement that both Sidney and Wes agreed they had regarding the Gift Deed. *Id.*, p. 4 (¶¶ 9–11). The court found that Tuscanos had never intended to make payments to Helviks; however, failed to account for the evidence from Sidney, Wes, and an exhibit of a letter that all indicated that Tuscanos had attempted to pay several different times, and Helviks refused payment. *Id.* p. 4, (¶ 12), p. 8 (¶ H). Further, the court made findings regarding Tuscanos' intentions that were beyond the Jury's findings and that was contrary to evidence presented at trial. *Id.*, p. 5.

In its conclusions of law, the court determined that it had the authority to decide the case in equity after the Jury's verdict. *Id.*, p. 7 (¶ B). The court the Jury verdict and decided that Helviks were entitled to judicial recession of the Agreement. *Id.*, pp. 8–9 (¶¶ K, M).

The court vacated the Jury verdict. *Id.*, p. 10 (¶ R). The court proceeded to grant new remedy to Helviks beyond the Jury’s verdict. *Id.*, p. 10 (¶¶ Q-W). Contrary to the Jury’s verdict, the court found that Tuscanos have no rights to the property at issue and ordered title be transferred to Helviks. *Id.*, p. 12 (¶ S).

Also, the court vacated the Jury verdict to enforce the Agreement and award of damages from Tuscanos to Helviks. *Id.*, p. 13 (¶ IX).

STANDARD OF REVIEW

This Court reviews “a district court's conclusions of law de novo to determine if they are correct, 10 P.3d 794, 798, citing *Steer, Inc. v. Dep’t of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990); *Citizen Advocates for a Livable Missoula, Inc. v. City Council*, 2006 MT 47, ¶ 17, 331 Mont. 269, 130 P.3d 1259. “This Court is not bound by the trial court's conclusions and remains free to reach its own based on the record before it.” *McCauley v. Thompson-Nistler*, 301 Mont. 81, ¶ 18, 10 P.3d 794, (citing *Baertsch v. Cnty. of Lewis & Clark*, 256 Mont. 114, 119, 845 P.2d 106, 109 (1992)).

This Court reviews the district court’s order in limine for abuse of discretion. *Rubin v. Hughes*, 2022 MT 74 at ¶ 26, 408 Mont. 219, 507 P.3d 1169; *see also State v. Edwards*, 2011 MT 210, at ¶ 12, 361 Mont. 478, 260 P.3d 396 ; *Boude v. Union Pac. R.R. Co.*, 2012 MT 98, ¶ 9, 365 Mont. 32, 277 P.3d 1221, ¶ 9. This Court finds an abuse of discretion when a “trial court act[s] arbitrarily without employment of conscientious judgment or exceed[s] the bounds of reason resulting

in substantial injustice.” *Ryffel Fam. P’ship v. Alpine Country Constr., Inc.*, 2016 MT 350, ¶ 20, 386 Mont. 165, 386 P.3d 971 (citing *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 27 304 Mont. 356, 22 P.3d 631).

A district court's findings of fact are reviewed to determine if they are clearly erroneous, and its conclusions of law are reviewed for correctness. *McCulley v. U.S. Bank*, 2015 MT 100, ¶ 19, 378 Mont. 462, 347 P.3d 247. And, when the Court reviews a district court's grant or denial of a summary judgment motion, it reviews it *de novo*, meaning "anew." *Cole v. Valley Ice Garden, L.L.C.*, 2005 Mont. 115, ¶ 4, 327 Mont. 99, 113 P.3d 275.

SUMMARY OF ARGUMENT

Even though Tuscanos at trial and in their legal briefing argued that the Agreement was never implemented hence not enforceable, they fully accepted the Jury verdict. Still, the district court, after trial, overrode the Jury verdict to find material breach of contract. This issue of material breach was not alleged by plaintiffs nor tried by the Jury, and hence was not decided by the Jury, as it should have been.

The district court adopted Helviks’ Jury verdict form and added a new number one, asking the Jury to find: “1. Are the Helviks and Tuscanos bound to follow the terms of the **Agreement to Sell and Purchase Real Property** dated April 30, 2020 (**Agreement**)?” Jury Verdict (emphasis in original), Appendix Ex. 1. The

Jury found yes, they were bound by the Agreement. *Id.* The Jury found that Tuscanos breached the Agreement and that the damages due to Helviks was the six missed payments totaling \$150,000. *Id.*

Tuscanos filed a motion for entry of judgment to enforce the Jury verdict, which the district court did not rule on. Not. Of Compliance with Jury Verdict & Mot. for Entry of Judgment [Doc. 262]. After trial, Helviks' counsel expressed her desire to submit proposed findings of fact and conclusions of law. Tr. of Proceedings 223:4–5.

Four months after the trial, the district court revoked the Jury's verdict and found facts inconsistent with the facts presented at trial. FOFCOL and Judgment, Appendix Ex. 3. Tuscanos believe the district court's findings of fact and conclusions of law is an error as a matter of law and fact.

Helviks did not present facts relating to material breach in front of the Jury, and the Jury did not decide this factual determination. Instead, the Jury found the Agreement in force and issued a verdict requiring Tuscanos to pay Helviks their missed payments of \$150,000. Helviks chose the remedy of money damages. The district court erred by finding facts regarding material breach that Helviks should have presented to the Jury and for allowing Helviks to violate the doctrine of the election of remedies.

Further, rescission is improper because the court had the duty to return both parties, not just Helviks, to the position they were in prior to the Agreement. Lastly, on the issue of breach of contract, Helviks refused payment and Tuscanos

attempted to perform their duties pursuant to the Agreement and then sued Tuscanos. As a matter of law, Helviks cannot avail themselves of the non-performance that Helviks themselves caused.

Tuscanos also argue that the district court violated their right to a jury trial, when the court revoked the Jury's verdict, made factual findings and issued an order contrary to the Jury's verdict. Additionally, the court erred in its factual finding that Tuscanos never intended to pay Helviks; based on both Wes' testimony, Karen's testimony, Sidney's testimony, and Trial Exhibit DAA, a letter to Helviks' attorney from Tuscanos' attorney offering to pay, pursuant to the Agreement. Excerpts from Trial, Appendix Ex. 7; Trial Ex. DAA, Appendix Ex 8.

Tuscanos argue that the district court erred when it granted the following motions in limine:

- Helviks' motion in limine excluding oral negotiations between Wes and Sidney prior to the Gift Deed; and,
- Helviks' motion in limine precluding any evidence regarding Adult Protective Services Investigation.

Tuscanos argue that the court erred as a matter of law when it granted Conner's motion for summary judgment on counts 1 and 2 on Tuscanos' third-party complaint for tortious interference with contract and abuse of process. In that ruling, as a basis for its decision, the court found there was no contract, which is in complete contradiction with the Jury's verdict and the court's after-trial findings of fact and conclusions of law that there was a contract, which Tuscanos had breached and which the court then rescinded.

Lastly, Tuscanos argue that the district court erred in the jury instructions that were not sufficient regarding the issue of undue influence.

ARGUMENTS

I. The district court erred as a matter of law, both substantively and procedurally, by judicially rescinding the Agreement after the Jury verdict found the parties were bound by its terms.

A. The Jury's verdict was clear and the district court was not vested with the authority to review that verdict after it was issued.

In this case the district court's posttrial FOFCOL and Judgment, in effect, acted as an appellate review of the Jury's verdict. "An appellate court's review of a jury verdict in a civil case is necessarily limited, out of deference to the jury's constitutionally sanctioned decisional role." *Mont. Petroleum Tank Release Comp. Bd. v. Crumleys, Inc.*, 2008 MT 2, ¶ 87, 341 Mont. 33, 174 P.3d 948. "The appellate court's task on review is simply to determine whether the verdict is supported by substantial credible evidence, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.*

The Jury's verdict in this case was clear, and it announced the Jury's intention to have the real property at issue transferred to Tuscanos in exchange for Tuscanos making the required payments to Helviks along with other obligations under the Agreement. The Jury's verdict was issued on the district court's special verdict form, and there was substantial credible evidence at trial to support that the Jury's

conclusion was reasonable.¹ Following trial, there was no need for the Court to undertake any additional analysis of supposedly outstanding equitable claims, as all remaining issues could be answered by fulfilling the clear intent behind the Jury’s verdict. The district court’s posttrial FOFCOL and Judgment was, therefore, an inappropriate appellate review of the Jury’s findings and made additional and contrary factual findings, under the auspices of resolving outstanding equitable claims.

B. The Jury Did Not Determine Material Breach

Montana law provides that material breach is an issue of fact which properly belongs to the jury when trial on a breach of contract claim is by jury. *Sjoberg v. Kravik*, 233 Mont. 33, 38, 759 P.2d 966, 969 (1988) (“the determination of whether a breach exists is a question of fact”); *Gray v. Billings*, 213 Mont. 6, 10, 689 P.2d 268, 270 (1984) (observing that breach of contract is a claim at law to which the right to a jury trial attaches); Mont. Code Ann. § 26–1-202 (providing that when a trial is by jury, the jury decides all questions of fact). In this case, Helviks asked for

¹ In fact, the Jury sent a note to the Court, attempting to absolutely clarify what the special verdict form seemed to set forth in plain language, i.e. that if the Jury found the Agreement binding that the parties would be required to fulfill their obligations under the Agreement. The Jury’s inquiry read, “if we feel the April 30, 2020 contract is a binding contract will the seller and buyer be required to complete all terms?” While the Court refused to answer this inquiry, it provided the Court with clear insight into how the jury regarded the special verdict form and the intention of its findings. Jury Question, Appendix Ex. 2.

a jury trial. They had the opportunity to present evidence to the Jury on all issues and relief they claimed. Nowhere did Helviks present any evidence that the Tuscanos' alleged breach was material or ask the Jury to make any such finding.

During trial, Helviks did not put on any evidence as to the materiality of Tuscanos' alleged breach of the Agreement. At the conclusion of the trial, despite the opportunity and burden to do so, Helviks did not propose any instruction on materiality of breach. Jury Instructions [Doc. 250]; Helviks' Proposed Jury Instructions [Doc. 246]. *See also*, Mont. Code Ann. § 25–7-301; M. R. Civ. P. 51; Unif. Dist. Ct. R. 7. Except for one question, the Jury verdict form adopted by the district court was adopted from Helviks' proposed special verdict form. *See* Helviks' Proposed Verdict Form [Doc. 210]; Jury Verdict, Appendix Ex. 1; Pl. Amended Compl., pp. 9–10 (¶¶ 89–95) [Doc. 37]. The verdict form contained no question as to the materiality of any breach.

Unlike in *Chambers v. Pierson*, 266 Mont. 436, 880 P.2d 1350 (1994), Helviks did not request that the court give a jury instruction on materiality. Therefore, the court's insertion of the issue of materiality post-trial and the Jury verdict grants Helviks a jury instruction they never asked for and assumes what the Jury would have decided on that issue.

The Jury found that the Agreement was valid and binding on the Helviks and Tuscanos. Jury Verdict, Appendix Ex. 1. "Was the Agreement the result of undue influence on the part of the Tuscanos? **No.**" *Id.* (emphasis added); "Was the Agreement the result of fraud committed by the Tuscanos? **No.**" *Id.* The Jury was

specifically asked whether Tuscanos had breached the Agreement, to which they answered “Yes.” *Id.* There was no evidence presented, argument during or prior to trial, or finding, that the damages were material.

Breaches that “go[] to only part of the consideration [are] incidental” rather than material and are compensable in damages; which is what the Jury awarded here. *Norwood v. Serv. Distrib., Inc.*, 2000 MT 4, ¶ 29, 297 Mont. 473, 994 P.2d 25; Jury Verdict, ¶ 5. Here, the Jury found breach. Jury Verdict, ¶ 4. This breach went only to part of the consideration—the six missed payments—and was compensated with damages. *Id.* Once the damages are paid and a promissory note is executed, per the Agreement, and as Tuscanos attempted to do prior to, and immediately after, the verdict, the parties will both be returned to the positions that were mutually agreed upon even prior to the Agreement.

It is the jury’s job to assess the credibility of witnesses and to weigh the evidence. “Weighing and resolving conflicts in the evidence, judging the credibility of the witnesses and finding the facts is uniquely within the province of the jury.” *Durden v. Hydro Flame Corp.*, 1998 MT 47, ¶ 27, 288 Mont. 1, 10, 955 P.2d 160, 165. The court after trial, without the Jury ruling on the issue, made a finding of fact that Tuscanos’ breach of the Agreement was material and warranted rescission. FOFCOL and Judgment, p. 6 (¶ 23), pp. 9–10 (No. O-Q), Appendix Ex. 3. The court acknowledged that the Jury had instead awarded damages but stated: “Given that the Court has determined the contract should be rescinded, the jury’s

damage award ... must be vacated.” *Id.*, p. 10 (¶ R). The court erred as a matter of law because the Jury was not presented evidence of and did not decide that the breach was material.

C. The breach was not material.

Even if Helviks had included material breach in their allegations and presented evidence at trial, the breach was not material and the court erred as a matter of law in making this determination and rescinding the Agreement. As a matter of law, rescission is an extraordinary remedy, justified only when a breach of contract is material, which is a matter of fact in the province may be an alternative remedy for breach, as a matter of law, rescission of a contract is warranted only when any breach is material.

A breach which goes to only a part of the consideration, is incidental and subordinate to the main purpose of the contract, and may be compensated in damages does not warrant a rescission of the contract; the injured party is still bound to perform his part of the agreement, and his only remedy for the breach consists of the damages he has suffered therefrom. A rescission is not warranted by a mere breach of contract not so substantial and fundamental as to defeat the object of the parties in making the agreement.

Reinke v. Biegel (1979), 185 Mont. 31, 35–36, 604 P.2d 315, 317 (citations omitted). Pursuant to *Reinke*, the Burtons' breach provides Cady grounds to seek contract damages, but not rescission. Accordingly, we hold that the court erred in rescinding the contracts on the basis of material breach.

Cady v. Burton, 257 Mont. 529, 538, 851 P.2d 1047, 1053 (1993).

In *Cady*, the Court held that the trial court (in a bench trial) erred in finding the breach to be material and thus erred in rescinding the contract. Similarly, in the case at bar, the court erred both in declaring the breach to be material and also in rescinding the contract. As this Jury found after trial, the breach could be and was remedied by the award of monetary damages.

This ordinary breach of contract gives the non-breaching party “grounds to seek contract damages, but not rescission.” *Id.* The Agreement which the Jury upheld here provided for a total payment of \$500,000.00 to be made in 20 semi-annual installments of \$25,000.00. *See* Appendix Ex. 8. The evidence at trial showed that Tuscanos’ breach consisted of their failure to make six of these twenty installments, putting them behind a total of \$150,000.00, the precise amount the Jury awarded in damages. After trial and the Jury verdict, the court decided upon the inconsistent remedy of rescission although Helviks neither pled nor proved material breach at trial.

Simply put, the law is clear that breach does not give rise to rescission unless the breach is material. Whether a breach is material is a question of fact to be decided by the jury. The party seeking rescission on the grounds of material breach has the burden of proving at trial both the breach and its materiality, two separate necessary elements.

D. The Helviks elected to follow the remedy of damages, which meant they were precluded from rescission.

Under Montana law, a party can plead inconsistent counts or remedies at the beginning of a case, but must elect between inconsistent remedies at least by trial. This precept that inconsistent remedies cannot be sought is known as the election of remedies doctrine. *Brothers v. Home Value Stores, Inc.*, 2012 MT 121, ¶ 15, 365 Mont. 196, 279 P.2d 157.

Here, Helviks elected the remedy of damages for their claim that Tuscanos breached the Agreement. They did seek rescission of the Agreement, but only on the grounds of fraud and undue influence, which the jury rejected. To obtain rescission for breach, Helviks must have alleged, proved, argued, and obtained a jury verdict that the breach was material. They did not, as their proposed Jury Instructions demonstrate.

To determine whether the election of remedies doctrine applies, this Court considers (1) whether there are two or more remedies, (2) whether they are inconsistent, and (3) if a choice between them has been made. *Id.* A choice is deemed to have been made “when a remedy is pursued to a final conclusion.” *Brothers*, ¶ 16. The facts of this case clearly satisfy the requirements of the election of remedies doctrine. First, both rescission (in some cases) and damages for breach are remedies that can be sought due to a breach of contract. *Advance-Rumley Thresher Co. v. Terpening*, 58 Mont. 507, 193 P. 752, 754 (1920). Second, the remedies are inconsistent in that they cannot both be granted. *Id.* Third, the choice

has been made. The chosen remedy has been pursued to its final conclusion: the Jury award of \$150,000 for breach of contract, which was a final verdict. Jury Verdict, ¶ 5, Appendix Ex. 1.

The Jury held the Agreement to be binding on all parties, but after trial, the court granted rescission, a remedy in conflict with the elected remedy of damages for breach. FOFCOL and Judgment, pp. 11–13, Appendix Ex. 3. Accordingly, the district court erred in substituting its own remedy for Helviks’ elected remedy; the remedy that was awarded by the Jury.

E. The district court erred in granting rescission because rescission is improper and fails to put both parties back to their original positions.

The objective of rescission is “that the parties be returned to their respective positions as if the contract had not been entered.” *Brunner v. LaCasse*, 234 Mont. 368, 371, 763 P.2d 662, 664 (1988). Both parties “should not be left in a worse position than they were in when the contract was executed” after rescission. *Jorgensen v. Trademark Woodworks, LLC*, 2018 MT 291, ¶ 32, 393 Mont. 381, 431 P.3d 29.

Based on the facts of this case, rescission is an inappropriate remedy. First, the Tuscanos’ reliance on the Agreement caused them to incur significant debts by mortgaging the property, which they cannot afford to pay back without the future production from the property. Trial Tr. 287:1–7. Further, the Tuscanos needed to purchase over \$50,000 worth of hay in 2021 to feed their cattle. Trial Tr. 307:1–7.

Trial Excerpts, Appendix Ex. 7. The district court's order of rescission leaves Tuscanos in a far worse position than they were in at the time of contracting because it leaves them saddled with debt they cannot afford to repay without the property. This situation does not comport with the object of rescission to return parties to the status quo and is grossly inequitable. Because the remedy of rescission does not accomplish its object, the only just remedy is to give each party the benefit of the bargain, which the Jury's verdict accomplishes. Jury Verdict, ¶¶ 1, 5, Appendix Ex. 1. Accordingly, the court erred in granting rescission because rescission does not restore the parties to their pre-contract position.

F. The district court erred in granting Helviks breach of contract when Helviks precluded performance of the Agreement.

The facts are that Tuscanos offered to perform pursuant to the Agreement and Helviks refused to accept their offer. Wes went to Helviks' property with a check and offered to pay Helviks. Amended Compl., p. 6 (¶¶ 56–57) [Doc. 37]. Sidney declined payment. *See* Section IV of this brief, *infra*.

Also, Tuscano's attorney at that time, Eric Nord, wrote Helviks' attorney, Barbara Harris, a letter prior to litigation being filed. That letter stated: "Bottom line is that my clients now have the money to move forward with the Agreement. They propose to send two checks immediately..." Appendix Ex. 8. Additionally, Tuscanos, through their attorney, provided Helviks with a promissory note as promised. Helviks again declined payment and the promissory note.

The law is clear in Montana: “One who prevents or makes impossible the performance or happening of a condition precedent upon which his liability by the terms of the contract is made to depend cannot avail himself of its non-performance. In other words, he who prevents a thing from being done shall never be permitted to avail himself of the non-performance which he himself has occasioned.” *Smith v. Gunniss*, 115 Mont. 362, 379, 144 P.2d 186 (1943) (citing 12 Am. Jur., sec. 329, p. 885); *see also Bender v. Rosman*, 2023 MT 140, ¶ 18, 413 Mont. 89, 532 P.3d 855.

The district court, contrary to the evidence presented at trial, found that “[t]he consideration for the Helviks’ sale of their property pursuant to the Agreement has become void, given the lack of payment by the Tuscanos, and testimony by Wesley Tuscano that no payment was intended.” FOFCOL and Judgment, p. 9 (¶ N), Appendix Ex. 3. This finding directly contravenes the undisputed evidence at trial on two counts: First, the only witnesses competent to testify to their intent, Wes and Karen, both testified consistently that they always have, and still do, intend to pay Helviks for their property as set forth in the Agreement. Second, the undisputed evidence from both sides is that Tuscanos attempted to make payments which Helviks have refused to accept.

II. The district court violated Tuscanos’ right to a jury trial by making findings of fact contrary to the Jury’s verdict.

A. The district court erred in negating the Jury’s findings of fact.

The Montana Constitution guarantees that “the right of a trial by jury is secured to all and shall remain inviolate.” Mont. Const. Art. II § 26. The Montana Code further provides that “if a trial is by jury, all questions of fact other than those mentioned in 26–1-201 must be decided by the jury.” Mont. Code Ann.

§ 26–1-202. The mere fact that legal and equitable claims share questions of fact in the same action does not deprive a litigant of the right to a jury trial on legal claims or on facts common to legal and equitable claims. *State v. Chilinski*, 2016 MT 280, ¶ 9, 385 Mont. 249, 383 P.3d 236 (holding that the right to a jury trial “may not be compromised because it is combined with equitable issues in one action”); *Gray v. Billings*, 213 Mont. at 13. The right to a jury trial includes the right to a jury verdict. *Finstad v. W.R. Grace & Co.-Conn.*, 2000 MT 228, ¶¶ 10–14, 301 Mont. 240, 8 P.3d 778. Jury verdicts supported by substantial evidence are conclusive. *Green v. Wolff*, 140 Mont. 413, 417, 372 P.2d 427, 430 (1962).

The Montana Supreme Court has also held that Montana’s right to a jury trial “is the same as that guaranteed by the Seventh Amendment.” *Linder v. Smith*, 193 Mont. 20, 23, 629 P.2d 1187, 1189 (1981) (citing *Consol. Gold & Sapphire Mining Co. v. Struthers* (1910), 41 Mont. 565, 571, 111 P. 152, 155). Indeed, even though

federal Seventh Amendment law does not apply to State jury rights, the Montana Supreme Court has adopted the U.S. Supreme Court's framing of the jury trial right. *Gray*, 213 Mont. at 13.

Given the above, the practice of the federal courts to bind courts sitting in equity to follow jury findings of fact on Seventh Amendment grounds should be highly persuasive to this Court. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 508 (1959) (holding that postponing a jury trial of legal claims pending a bench trial of equitable claims is "impermissible" because injunctive relief should only be granted "after a jury renders its verdict"); *L.A. Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993) (holding that trial courts are required to follow juries' findings of fact, as well as the implications of those findings). "We have noted that district courts must 'exercise the greatest self-restraint in interfering with the constitutionally mandated processes of a jury decision.' *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 13, 336 Mont. 105, 152 P.3d 727." *Jacobsen v. Allstate Ins. Co.*, 2009 MT 248, ¶ 38, 351 Mont. 464, 215 P.3d 649.

Here, the Jury found that Tuscanos had breached the Agreement with Helviks and caused damages of \$150,000. Jury Verdict, Appendix Ex. 1. The Jury further declined to rescind the Agreement, finding that the Agreement was produced by neither undue influence nor fraud. *Id.* In finding breach and awarding damages, the Jury implicitly found that there was no material breach. However, four months after the jury trial, the district court simply overrode the Jury's verdict by declaring that the breach was material and finding that the consideration had become entirely void. FOFCOL and Judgment, pp. 9, 11, Appendix Ex. 3.

The district court's disregard of the Jury's verdict blatantly violates Tuscanos' right to a jury trial, one of the fundamental pillars of a free society. In substituting its own findings of fact for the Jury's regarding the Agreement's validity, the district court violated the Montana Code's requirement that all findings of fact be by jury as well as this Court's holding that the right to a jury trial "may not be compromised" merely because legal and equitable claims are mixed in a single action. *Chilinski*, ¶ 9. In disregarding the verdict and award of damages, the district court further violated the parties' right to a jury verdict. *Finstad*, ¶¶ 10–14.

B. The district court erred in relying on *Renz v. Everett-Martin* to justify its actions.

The district court purportedly relied on *Renz v. Martin*, 2019 MT 251, ¶ 15, 397 Mont. 398, 450 P.3d 892, but completely ignored its most important principle. In *Renz*, this Court held that equitable remedies "[are] not available unless facts and circumstances indicate that the party's legal remedies . . . are inadequate." *Id.* (omission in original) (quoting *Jeppeson v. Dep't of State Lands*, 205 Mont. 282, 287, 667 P.2d 428, 430–31 (1983)). *Renz*, ¶ 17. The language cited here by the District Court applies only when the legal remedy is inadequate, which is not the case here.

In *Renz*, this Court observed that in cases where the right to possess real estate is at issue, a court may use its equitable power to complement legal findings or jury awards. 2019 MT 251, ¶ 15, 397 Mont. 398, 450 P.3d 892. It further observed that "[a] court sitting in equity is empowered to grant all relief necessary to the

entire adjustment of the subject matter of the litigation.” *Id.* (quoting *City of Whitefish v. Troy Town Pump*, 2001 MT 58, ¶ 27, 304 Mont. 346, 21 P.3d 1026). In other words, courts may grant equitable relief when the legal remedy is inadequate to ensure a just outcome. *Renz*, ¶ 17. Indeed, this Court specifies that equitable remedies “[are] not available unless facts and circumstances indicate that the party’s legal remedies . . . are inadequate.” *Id.* (omission in original) (quoting *Jeppeson v. Dep’t of State Lands*, 205 Mont. 282, 287, 667 P.2d 428, 430–31 (1983)).

In *Renz*, a jury found that the defendant was trespassing on the plaintiff’s property, and the district court ordered possession of the property to the plaintiff. *Renz*, ¶¶ 7–8. The defendant then moved the district court to set aside the jury verdict, raising issues that were not raised at trial and claiming that the equitable award of possession was incompatible with the jury’s verdict. *Renz*, ¶¶ 8, 12. After the district court denied her motion, she appealed. *Renz*, ¶¶ 8–9.

This Court began its analysis of whether the district court erred in denying the defendant’s motion by stating the general rule that “a judgment must be based on a verdict or findings of a court.” *Renz*, ¶ 10 (quoting *Nat’l Sur. Corp. v. Kruse*, 121 Mont. 202, 205–206, 192 P.2d 317, 319 (1948)). Since the jury awarded no damages and the defendant’s trespass was continuous, the district court properly granted additional equitable relief because the legal remedy was inadequate to fully relieve the plaintiff. *Renz*, ¶ 16. Ultimately, this Court held that the trial court did not abuse its discretion *because* its “judgment followed and conformed to the jury’s verdict.” *Renz*, ¶ 20.

In the instant case, the district court misapplied *Renz* because the equitable relief it granted after the jury trial was inconsistent on its face with the Jury's verdict. In fact, the district court effectively nullified the Jury's verdict by finding material breach where the Jury did not, and rescinding the Agreement where the Jury awarded damages. *See* Jury Verdict Appendix Ex. 1; *see also* FOFCOL and Judgment, Appendix Ex. 3; Pl. Amended Compl. [Doc. 37]. Unlike in *Renz*, where the trial court's equitable relief complemented the jury's verdict by granting complete relief to the plaintiff, here, the district court replaced the Jury's verdict with its own findings of fact unsupported by the evidence. Accordingly, the district court erred in applying *Renz*, which mandates that judgments conform to jury verdicts, to justify its setting aside a jury verdict.

Renz can also be distinguished from the instant case on procedural grounds. In *Renz*, the Court noted that the defendant's motion to set aside the jury's verdict did not conform to M. R. Civ. P. 59(a)(1) (providing that a "court may, on a motion, grant a new trial on some of the issues" in some cases), but nonetheless proceeded as if it had. Here, Helviks filed no motion at all. In fact, Helviks missed the 28-day window to make such a motion under M. R. Civ. P. 59(b) as well as to make a motion for judgment as a matter of law under M. R. Civ. P. 50(b), both of which would have been proper avenues for Helviks to object to the Jury's verdict if allowed, which they did not do. Instead, the district court summarily granted relief incompatible with the Jury's verdict as if the jury trial had never occurred.

Accordingly, the district court's reliance on *Renz* is in error. The district court's judgment here is incompatible with the Jury's verdict, whereas this Court requires

judgments to “follow[] and conform[] to the jury’s verdict,” allowing equitable remedies that complement jury verdicts only when legal relief is inadequate. *Renz*, ¶¶ 15–16. Also, the defendant in *Renz* at least filed a motion challenging the trial court’s denial of her motion to set aside the jury’s verdict, whereas Helviks filed no such motion, providing no procedural justification for the court to modify the Jury’s verdict or grant a new trial.

III. The Judge’s findings of fact that Tuscanos never intended to, and did not try to, make payments pursuant to the Agreement, directly contradict the evidence at trial.

Helviks’ complaint acknowledges that Wes offered to pay, pursuant to the Agreement. Amended Compl., p. 6 (¶¶ 56–57) [Doc. 37]. At trial, Sidney, and both Wes and Karen testified that Wes had tried to pay, and that Sidney did not accept payment. Appendix Ex. 7. Further, Trial Exhibit D-AA is a letter from Tuscanos’ attorney to Helviks’ attorney offering to pay and provide a promissory note pursuant to the Agreement. Appendix Ex. 8.

Instead of complying with the Jury verdict and finding facts that have no basis whatsoever in the evidence presented at trial, the court found that Tuscanos “never intended to abide by the terms of the Agreement and, in fact, did not abide by the terms of the Agreement.” FOFCOL and Judgment, p. 8 (¶ H), Appendix Ex. 3. The court seems to be confused by Tuscanos’ pretrial legal position that the Agreement

was never finalized; however, the record and trial testimony proves the intentions of the Tuscanos to fulfill their terms of the Agreement, and all parties agreed that Tuscanos tried to pay and Helviks refused payment.

Contrary to Tuscanos argument, the Jury found that the Agreement bound the parties and assessed monetary damages against Tuscanos in the amount of the past-due payments. The verdict did not contain any question as to whether Tuscanos intended to, or had attempted to, make the payments which the Agreement established. The uncontradicted evidence at trial, adduced by both sides, was that Tuscanos recognized their obligation to pay the Helviks per the Agreement, and had attempted to do so, and that Helviks had refused the checks and promissory note Tuscanos had offered.

Even though all three witnesses, Wes, Karen, and Sidney all testified that Wes not only intended to pay Helviks, but that he offered, and Sidney refused payment, and Tuscanos' attorney offered in writing to pay, the Court still determined otherwise. The court entered its own findings of fact and conclusions of law which have no basis in the record.

In its finding no. 12, the court stated that, "Wesley Tuscano testified ... that he did not have any intention of abiding by the provisions of the Agreement." FOFCOL and Judgment, p. 4 (§ 12), Appendix Ex. 3. This finding is directly contrary to Helviks' amended complaint and actual testimony of Wes, Karen, and Sidney.

The court's finding no. 21 states, "[n]o money has been paid by Tuscanos..." and finding no. 22 states, "[n]o Promissory Note was executed by the Tuscanos,"

both of which omit the salient additional facts in the record that Tuscanos tendered both payment and a promissory note, which Sidney refused. *Id.*, p. 6, (¶¶ 21–22). The court’s conclusions of law repeat these unsupported “facts” and parlay them into legal conclusions. *Id.*, p. 8, (¶¶ H, N, & P).

This Court has held that where a trial court makes findings of fact after a bench trial, “[a] district court’s findings are clearly erroneous if substantial credible evidence does not support them, if the trial court has misapprehended the effect of the evidence or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been committed. *Ray v. Nansel*, 2002 MT 191, ¶ 19, 311 Mont. 135, 53 P.3d 870 (citing *Guthrie v. Hardy*, 2001 MT 122, ¶ 24, 305 Mont. 367, 28 P.3d 467).” *Steiger v. Brown*, 2007 MT 29, ¶ 16, 336 Mont. 29, 152 P.3d 705. Notably, *Steiger*, *Guthrie*, and *Ray* were all cases tried without a jury. A fortiori, a court entering its own findings after a jury trial is bound to at least the same standard. Here, the district court’s findings are clearly erroneous on all three grounds: they are not supported by substantial evidence; the court has misapprehended the effect of the evidence; and the record firmly and definitely shows that a mistake has been committed.

IV. The district court erred when it granted Helviks’ motion in limine, excluding evidence of oral negotiations pursuant to the Gift Deed.

The district court based two important rulings granting Helviks’ motions in limine on erroneous interpretation and application of the statute of frauds. The statute of frauds provides that “an estate or interest in real property” may only be

granted “by operation of law or a conveyance or other instrument in writing.” Mont. Code Ann. § 70–20–101. Ordinarily, evidence of an agreement to sell real property “is not admissible without the writing or secondary evidence of the writing’s contents.” Mont. Code Ann. §§ 28–2–903(1)(d)(2). However, when the validity of an agreement is at issue, evidence extrinsic to the writing is permitted. Mont. Code Ann. § 28–2–905. Further, “for the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge is placed in the position of those whose language the judge is to interpret.” Mont. Code Ann. § 1–4–102. “Agreements,” under the law, include deeds, and where the validity of a deed is disputed, extrinsic evidence is appropriate. Mont. Code Ann. § 70–20–202. Parties, therefore, are entitled to present all evidence relevant to their claims.

Here, the district court abused its discretion by granting Helviks’ motion in limine because extrinsic evidence should have been allowed by law and was necessary to defend against Helviks’ fraud and undue influence claims as they related to the Gift Deed. Extrinsic evidence is explicitly allowed by statute when “the validity of the agreement is the fact in dispute,” notwithstanding the general bar on extrinsic evidence imposed by the statute of frauds. Mont. Code Ann. § 28–2–905, § 70–20–202. Here, Helviks claimed that “the Gift Deed . . . was the result of undue influence and/or fraud,” clearly challenging the validity of the Gift Deed. Pl. Amended Compl., p. 7 (¶ 62) [Doc. 37]. Tuscanos alleged facts that went to the validity of the Gift Deed involving unsigned and unwritten negotiations and

agreements. Tuscanos' Amended Answer & Countercl., pp. 2–3 (¶¶ 11–20) [Doc. 43]. Rather than allow the extrinsic evidence to be presented in accordance with Montana law, the district court ordered that “[t]he oral negotiations and agreements between Wes Tuscano and Sidney Helvik are not admissible.” Or. re: Helviks’ Mot. in Limine re: Improper Evid., p. 5, Appendix Ex. 5. Without this evidence, neither the jury nor this Court gets a full view of the reason the transaction morphed from the first version reflected by the Agreement and the second reflected by the Gift Deed.

In granting Helviks’ motion in limine, the court hamstrung Tuscanos’ defense because it wrongly excluded evidence that could have disproven Helviks’ undue influence claim. Further, the court’s order effectively granted summary judgment against Tuscanos’ counterclaim for promissory estoppel/detrimental reliance by barring the only evidence that could have been introduced in support of that claim. As a result, the Gift Deed, which should have been presented to the Jury as the culmination of an oral agreement between the parties, was held to be a product of undue influence and resulted in a \$150,000 damages award against Tuscanos. Jury Verdict, ¶ 6, Appendix Ex. 1. Given that the evidence barred by the court’s order was material to Tuscanos’ defense and counterclaim and could have changed the Jury’s verdict, Tuscanos have suffered substantial injustice as a result of the court’s error. Because the statute of frauds expressly allows evidence extrinsic to an agreement when the agreement’s validity is at issue, the court abused its discretion by disallowing such evidence in violation of Montana law. The court’s decision certainly did not safeguard Tuscanos’ right to a fair trial based on the evidence.

V. The district court erred in granting Helviks' motion in limine precluding any evidence regarding an Adult Protective Services Investigation.

Prior to Helviks suing Tuscanos, Conner had made allegations against Wes for elder abuse and the Adult Protective Services Bureau (APS) and the Montana Department of Public Health and Human Services (DPHHS) issued a report. Or. re: Helviks' Mot. in Limine & Third-Party Def. Mot. in Limine re: Evidence of APS Investigation, p. 2, Appendix Ex. 6. During discovery, Helviks disclosed this report to Tuscanos, and Tuscanos deposed Jody McCampbell, the APS employee who did the report. *Id.*

The court wrongly ruled that Tuscanos could not utilize this evidence at trial because it was not relevant. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.*, M.R.E 401. Helviks alleged that the property transfer was the result of undue influence. This Court defined undue influence:

The influence exerted must be such as to destroy the free agency of the influenced person with the will of another substituted. This influence must be exerted to procure the result desired by the influencing party. The amount of influence is determined by taking into consideration the mental and physical health of the party being influenced and correlating them with acts of influence which were exerted.

Est. of Heintz v. Vestal, 185 Mont. 233, 237, 605 P.2d 606, 608 (1980). The statute for undue influence and the factors developed by this Court also focus on the

person's weakness of mind and inability to withstand influence. Mont. Code Ann. § 28–2-407; *Pense v. Lindsey*, 2003 MT 182, ¶ 15, 316 Mont. 429, 433, 73 P.3d 168, 171.

Tuscanos argued:

The investigation done in the report was conducted by Jody McCampbell who has been an employee with Adult Protective Services for over nine years. McCampbell Depo: 6:12–25; 7:1–12... Ms. McCampbell testified that during her interview with Sidney, she did not have concerns with Sidney's capacity to sign contracts. Jody McCampbell Depo 13:4–10. Moreover, given that she could not determine Sidney's mental state at the time he signed the Gift Deed on June 24, 2020, her investigation was inconclusive, meaning she did not have enough evidence by the preponderance of the evidence that any financial exploitation occurred during this transaction. Jody McCampbell Depo 23:16–25, 24:1–3; 46:9–12. In addition, the report indicates, and Ms. McCampbell testified, that the risk assessment of abuse by Tuscanos went down after Ms. McCampbell completed her investigation. Jody McCampbell Depo 31:6–25; 32:1–15.

Tuscanos' Resp. to Helviks' Mot. in Limine, p. 10 [Doc. 186].

Further, Tuscanos argued the contents of the report and the information surrounding the report, including McCampbell's testimony, were relevant in that it tends to show that it is more probable than not that Sidney has/had capacity to enter into contracts and that no undue influence occurred. *Id.* Also, Ms. McCampbell testified she had concerns about Conner increasing her position in Sidney's Will while she was serving as his advisor. *Id.* Tuscanos argued they should be able to provide all evidence and rebuttal evidence that Sidney was

capable of entering into contracts in the spring and summer of 2020 and that Sidney signed the Gift Deed transferring the property under his free will. *Id.*, pp. 10–11.

Instead of ensuring a fair trial for all parties, *including* the Tuscanos, the court abused its discretion when it granted Helviks’ and Conner’s motion in limine keeping the APS report and witness from the Jury. This evidence was relevant to Helviks’ claims of undue influence as well as to Tuscanos’ claims against Conner. The judge abused her discretion in excluding it. This is an incorrect conclusion of law.

VI. The district court erred in granting Third-Party Defendant Jacqueline Conner’s motion for summary judgment on counts 1 and 2 on Tuscanos’ Third-Party complaint for tortious interference with contract and abuse of process.

The district court found that there was no evidence of any contract between Tuscanos and Helviks, and thus that there was not a viable claim of tortious interference with contract by Tuscanos against Conner. Decision & Or. re: Third-Party Def. Mot. for Summary Judgment, p. 16, Appendix Ex. 4. However, Helviks themselves alleged and at trial the jury found that the parties were bound by the Agreement. The district court, even though wrongly, also made post-trial findings and conclusions that the Tuscanos materially breached the Agreement, justifying its rescission. FOFCOL and Judgment, p. 9 (¶¶ M-, O), Appendix Ex. 3. This is the

same Agreement with which Conner tortiously interfered and that was the basis for Tuscanos' summary judgment. The district court erred as a matter of law in granting summary judgment.

VII. The Jury instructions were erroneous in that they did not adequately instruct the Jury on the law of undue influence.

In this case, the special verdict form asked the Jury to decide whether either the Agreement (Question 2) or the Gift Deed (Question 6) were “the result of undue influence.” However, the jury instructions contained no instruction as to the elements of undue influence, even though the Montana Civil Pattern Jury Instruction 2d 13.09 directly addresses this definition. The court’s failure to instruct the jury on this central issue, including instruction on which party had the burden of proof on each element of undue influence, is reversible error.

This Court is clear that it is the district court that is ultimately responsible for ensuring that the instructions fully and fairly instruct the jury on the applicable law.

[T]he district court has an overriding duty to ensure the jury is properly instructed, even in cases where failure to properly instruct the jury is arguably the fault of the parties themselves. See [*Billings Leasing Co. v. Payne*, 176 Mont. 217, 225, 577 P.2d 386 (1977)] (“It is inescapable duty of the trial judge to instruct the jurors, fully and correctly, on the applicable law of the case, and to guide, and assist them toward an intelligent understanding of the legal and factual issues involved in their search for truth. The court must instruct the jury properly on the controlling issues in the case”)

Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, ¶ 42, 357 Mont. 293, 306-07, 239 P.3d 904, 914.

[J]ury instructions must fully and fairly instruct the jury on the law applicable to the case. ... *Peterson*, ¶ 22. When considering the jury instructions given by the district court, we review them in their entirety, in connection with the evidence introduced at trial, to determine if the instructions fully and fairly instruct the jury on the law applicable to the case.

Camen v. Glacier Eye Clinic, P.C., 2023 MT 174, ¶ 16, 413 Mont. 277, 285, 539 P.3d 1062, 1067.

When the trial court's instructions do not meet this standard, the remedy is to reverse and remand for a new trial. "If Camen was prejudiced by the District Court's failure to properly instruct the jury under the law and facts of the case, the proper remedy is to reverse the jury's verdict and remand for a new trial. *Peterson*, ¶ 43; *Camen*, ¶ 22. Here, the jury instructions did not provide the Jury with any guidance as to the legal elements of Helviks' claims of undue influence, and the verdict form did not contain specific questions as to those elements. The Jury was instead left to its own devices to reach the ultimate legal conclusion as to whether there was undue influence and found that there was as to the Gift Deed but not as to the Agreement. Their overall decision that the parties were bound by the Agreement and that Tuscanos' arrears could be remedied by a lump sum payment of damages indicates only that they did not actually believe Tuscanos should get the property as a "gift," which is exactly what Tuscanos testified to as well.

Because the Jury did not have the proper guidance as to what constituted undue influence as to either document, this case should be remanded and retried on this issue.

CONCLUSION

Based on the district court's errors of law, Tuscanos ask this Court:

1. To find, as a matter of law and fact, that the district's court material breach of the Agreement was in error.
2. To find, as a matter of law, that the district court's post-trial ruling to rescind the Agreement was an error.
3. To find, as a matter of law, that the district court's post-trial ruling violated Tuscanos' constitutional rights to a jury trial.
4. To find that the court erred in finding facts post-trial that the Jury did not find and that contradicted evidence provided at trial proving that Tuscanos' intended to, and in fact did try to pay Helviks, and Helviks refused payment.
5. To find, as a matter of law, that the court erred in granting the motion in limine to exclude evidence of an oral contract and the negotiations between Wes and Sidney.
6. To find, as a matter of law, that the court erred in granting the motion in limine to exclude evidence related to APS's investigations of Wes for elder abuse.
7. To find, as a matter of law, that the court erred in granting Conner's motion for summary judgment because the Jury found there was an Agreement, and so did the court.
8. To find, as a matter of law, that the Jury's determination that the Gift Deed was acquired by undue influence is erroneous.
9. To reverse the district court's:
 - a. Finding of material breach.

- b. Finding for judicial rescission.
- c. Vacating of the Jury's verdict.

If this Court finds that the district court erred in its finding of material breach, rescission of the Agreement, vacating the Jury verdict, and issuing its FOF/COL, Tuscanos ask the Court to remand the case with the instructions to enforce the Jury verdict and enter final judgment according to that verdict. If the Court does not so find, then Tuscanos ask for a remand and retrial so that Tuscanos can provide all the necessary evidence with correct jury instructions and argue all issues to the Jury.

Lund Law PLLC

Respectfully submitted,

Dated: March 17, 2025

By: /s/ Hertha Lund

*Attorney for Defendants, Counter-
Plaintiffs, and Appellants*

Wesley and Karen Tuscano &
*Third-Party Plaintiffs and
Appellants*

Wesley and Karen Tuscano

Certificate of Compliance

I certify that the Appellants' Opening Brief filed in this case:

1. Is prepared in Times New Roman, a proportionally spaced typeface of 14 points.
2. Is double-space.
3. Contains **9,588** words as calculated by TypeLaw.com, excluding table of contents, table of citations, certificate of service, certificate of compliance, and appendix.

Lund Law PLLC

Dated: March 17, 2025

By: /s/ Hertha Lund

Certificate of Service

I, Hertha Louise Lund, hereby certify that I have served true and accurate copies of the foregoing Appellants' Opening Brief to the following on
03/17/2025

Michael Francis McGuinness (Attorney)
2817 2nd Avenue North Suite 300
Billings MT 59101
Representing: Jacqueline Conner
Service Method: eService

Justin Oliveira (Attorney)
2817 2nd Ave. N, Ste. 300
Billings MT 59101
Representing: Jacqueline Conner
Service Method: eService

Barbara C. Harris (Attorney)
P. O. Box 743
Helena MT 59624
Representing: Julian Helvik, Sidney Helvik
Service Method: eService

Dated: March 17, 2025

Lund Law PLLC
By: /s/ Gayle Schmidt

CERTIFICATE OF SERVICE

I, Hertha Louise Lund, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-18-2025:

Michael Francis McGuinness (Attorney)
2817 2nd Avenue North Suite 300
Billings MT 59101
Representing: Jacqueline Conner
Service Method: eService

Justin Oliveira (Attorney)
2817 2nd Ave. N, Ste. 300
Billings MT 59101
Representing: Jacqueline Conner
Service Method: eService

Barbara C. Harris (Attorney)
P.O. Box 743
Helena MT 59624
Representing: Julian Helvik, Sidney Helvik
Service Method: eService

Peter B. Taylor (Attorney)
662 S. Ferguson Ave, Unit 2
Bozeman MT 59718
Representing: Karen Tuscano, Wesley Tuscano
Service Method: eService

Electronically signed by Gayle Schmidt on behalf of Hertha Louise Lund
Dated: 03-18-2025