IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-25-0272

BRUCE DOERING, an individual and KIM DOERING, an individual,

Defendants/Appellants,

v.

SPENCER MELBY, an individual and COLETTE MELBY, an individual,

Plaintiffs/Appellees,

and

DAWN MADDUX, an individual, WESTERN FRONTIER, LLC d/b/a ENGEL & VÖLKERS WESTERN FRONTIER, a Montana Limited Liability Company;

Co-Defendants/Appellees

APPELLANTS' REPLY BRIEF

On appeal from the Montana Fourth Judicial District Court, Missoula County
Cause No. DV-21-671; Honorable Judge Jason Marks

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INTRODUCTION AND SUMMARY

In their Answer Brief ("Answer"), Plaintiffs Spencer and Colette ("Melbys") attempt to ignore and minimize the controlling language in the Buy-Sell Amendment ("Amendment"): "Final contract for deed to be mutually agreed upon by both parties." That phrase is material and adds legal effect. It is the parties' express recognition that the transaction—once converted from conventional financing to seller financing—required a separately negotiated, mutually accepted contract-for-deed to define the parties' rights and obligations which would exist for years after closing. The Amendment imposed an express condition precedent to seller financing: a final contract-for-deed mutually agreed by both parties. That condition never occurred and under Montana law, therefore the Amendment is unenforceable.

Melbys' Answer does not address the district court's core legal error: the parties' Amendment expressly required mutual agreement on the final contract-for-deed terms. The parties—and their counsel—understood that a final contract-for-deed was required. Drafts were exchanged, material revisions were proposed, and negotiations ended without agreement. Montana law does not enforce an "agreement to agree" on essential terms in the future, and the record confirms there was no meeting of the minds on the seller-financing instrument that would govern the parties' post-closing relationship. When that condition failed, the Buy-Sell Amendment failed with it.

This appeal presents a narrow, dispositive legal question: whether the district court erred in granting summary judgment on Melbys' breach-of-contract claim where the parties' Amendment expressly required that the "final contract for deed be mutually agreed upon," and no such agreement was ever reached.

First, this Court should clarify the scope of review. The only ruling certified under M.R.C.P. Rule 54(b) is the district court's determination that a valid contract existed and that Doerings breached that contract by failing to close. The district court expressly denied summary judgment on implied covenant and "bad faith" theories because those claims turned on disputed facts, and it did not certify them for appeal. Melbys' extensive reliance on implied-covenant rhetoric does not address the certified issue.

Second, the plain language of the Amendment controls. By converting the transaction from conventional financing to seller financing at Melbys' request, the parties expressly required that the "final contract for deed be mutually agreed upon by both parties." Clearly the Amendment conditioned enforceability on future mutual assent to essential terms, thus the Buy-Sell Amendment is unenforceable until that occurs.

Third, the district court erred by treating the contract-for-deed as a non-material "performance detail." A contract-for-deed is the operative and controlling instrument that allocates the parties' rights and obligations for the entire installment

period (collectively, the "Additional Contract Terms")—including payment structure, possession and access, environmental responsibilities, security, default, post-closing obligations, remedies, real estate taxes, insurance, escrow, and how and when the ultimate transfer of title would occur. Montana precedent makes clear that terms "central to the very performance of the contract" are material, and again, where those terms are left for future agreement, no enforceable contract exists. *Patton v. Madison County*, 265 Mont. 362, 367–68, 877 P.2d 993, 996 (1994).

Fourth, Melbys' reliance on cases enforcing agreements that contemplated later nonmaterial documentation is misplaced. This case falls on the opposite side of that line because the Amendment expressly conditioned enforceability on mutual agreement to the final material and central performance contract-for-deed instrument.

For these reasons, the summary judgment certified to this Court should be reversed and judgment entered in favor of Doerings on the breach-of-contract claim.[1]

ARGUMENT

I. This Appeal Concerns Only Whether an Enforceable Contract Existed and Was Breached by Failing to Close.

Melbys misstate the scope of this Rule 54(b) appeal. Melbys frame the appeal as presenting two issues—(1) whether Melbys were entitled to summary judgment

[1] Doering filed a Motion for Summary Judgment on January 17, 2024 (Dkts.134 and 135). That Motion was denied in the Order certified to this Court.

and (2) whether Doerings were entitled to summary judgment. (Answer at 1). That framing obscures the real—and only—issue properly before this Court.

The certification of Doerings' appeal presents a single, dispositive legal question: whether summary judgment was proper where the Amendment expressly required a "[f]inal contract for deed to be mutually agreed upon by both parties" and the parties never reached such agreement. If no enforceable seller-financed contract existed, the Amendment is terminated and there could be no breach for failure to close. Melbys' focus on an implied-covenant argument. This is not the narrow appellate issue presented to the Court.

Throughout Melbys' Answer, they suggest that Doerings had reasons not to agree to a contract-for-deed. For example, Melbys assert that the parties disagreed as to the scope of an easement to protect the public's right to use the property. Secondly, Melbys assert that Doerings subsequently sold the property for "more" money.[2] With respect to these positions, again, they are misplaced. The reasons why the parties cannot reach the terms of the agreement are not relevant. The sole issue is—did the parties reach an agreement as to the terms of a contract-for-deed, thereby fulfilling the conditions set forth in the Amendment. Why there was a disagreement

[2] Melbys fail to state the subsequent purchaser paid $10,000 more than Melbys agreed purchase prices of $2,150,000. This is less than one percent, specifically .4651 percent.

and why a contract was not reached is not a consideration when the requirement is simply that a contract be formed.

By raising an implied-covenant theory Melbys improperly reframed this appeal to discuss disputed factual allegations sensationalizing their narrative rather than focusing on the legal issue on appeal. Melbys cannot rely on an implied-covenant or "bad faith" theory to defend the district court's ruling. The only question before this Court is whether the district court erred in entering summary judgment on the premise that an enforceable Amendment existed despite the absence of mutual assent to a final contract-for-deed which the Amendment expressly required.

II. The Amendment Expressly Required Mutual Agreement on the Final Contract for Deed, Thus No Enforceable Buy-Sell Existed.

The dispositive error in the District Court's ruling—and in Melbys' Answer—is the treatment of the Amendment's express requirement that the "final contract for deed be mutually agreed upon by both parties" as not material. It is material.

By amending the Buy-Sell to replace conventional financing with seller financing, the parties fundamentally altered the structure of the transaction. The Amendment did not merely adjust payment terms; it substituted an installment sale in which Doerings would retain legal title after closing and the parties' post-closing rights and significant obligations would be governed by a contract-for-deed. Recognizing that reality, the parties properly included this condition into the Amendment. By providing that the "final contract for deed [was] to be mutually

agreed upon by both parties," the Amendment expressly conditioned the transaction on later mutual assent to a contract-for-deed, which is a complex agreement governing the Additional Contract Terms.

Instead of addressing the Amendment's text, Melbys reframe the mutual agreement requirement as a question of motive and bad faith. That shift avoids the Amendment's plain language and rests entirely on disputed facts. Instead, the Amendment imposed an objective condition: a "final contract for deed to be mutually agreed upon."

Under Montana law, the language of the Amendment is controlling. An agreement that requires the parties to agree in the future on essential terms is not enforceable. *GRB Farm v. Christman Ranch, Inc.*, 2005 MT 59, ¶ 11, 326 Mont. 236, 108 P.3d 507. Mutual consent must exist as to all essential terms, and "[c]onsent must be mutual, and the parties must agree upon the same thing, in the same sense." *AAA Constr. of Missoula, LLC v. Choice Land Corp., 2011 MT 262, ¶ 18, (citations omitted).*

Here, the Amendment did not simply contemplate memorializing an already-complete agreement. It expressly required that the operative financing instrument—the contract-for-deed—be mutually agreed upon. That language reflects the parties' shared understanding that seller financing from Doerings could not proceed unless

and until they reached agreement on all Additional Contract Terms. The Additional Contract Terms were not collateral details; they were central to the transaction itself.

Nor can the district court's conclusion be reconciled with the objective record. Neither Doerings' nor Melbys' attorney took the position that no contract-for-deed was required. Where material terms are left for future negotiation, there is no meeting of the minds and a lack of consent, therefore there is no enforceable contract. *Keesun Partners v. Ferdig Oil Co.*, 249 Mont. 331, 337, 816 P.2d 417, 421 (1991). The parties exchanged competing drafts of the contract-for-deed containing substantive revisions; negotiations ended without agreement; and no final contract-for-deed was executed. That undisputed history confirms lack of consent to the very instrument the Amendment required as a condition of the seller-financed transaction.

The district court erred in holding that the Buy-Sell Amendment was enforceable that a mutually agreed final contract-for-deed was not required. The district court effectively unilaterally removed that requirement from the Amendment. Because the parties never reached mutual agreement on the final contract-for-deed required by the Amendment, no enforceable Buy-Sell agreement existed as a matter of law, and summary judgment for a breach of contract by Doerings could not properly be entered.

III. The District Court Erred by Treating the Contract for Deed as a Non-Material "Performance Detail."

The district court's conclusion that the contract-for-deed was not material because it did not fit within the limited list of "material terms" identified in *Olsen v. Johnston,* 2013 MT 25, ¶ 20, 368 Mont. 247, 301 P.3d 791 is error. That reasoning misapplies *Olsen*, inappropriately dismisses the holding in *Steen v. Rustad,* 132 Mont. 96, 106, 313 P.2d 1014, 1020 (1957), and ignores Montana precedent recognizing that materiality depends on the nature of the transaction.

Similarly, Melbys' Answer attempts to salvage the summary judgment ruling by minimizing the legal significance of the contract-for-deed. That effort fails under Montana law.

A. The Buy-Sell Amendment did not contain all essential terms.

Melbys contend that the Amendment already "featured all terms essential to formation" and that the Amendment merely altered the method of payment. Answer, 19. Under this theory, they argue the contract-for-deed was unnecessary to contract formation and concerned only how the parties would perform an already complete agreement.

That characterization is incorrect. The Amendment did not merely adjust payment timing; it replaced a cash-at-closing sale with seller-financing through an installment transaction. Under the original Buy-Sell agreement, third-party

financing would fund a closing at which title transferred immediately, ending the parties' contractual relationship.

The Amendment fundamentally altered that structure. By converting the transaction to a contract-for-deed, the Doerings would retain legal title for years, Melbys would take possession without ownership, and the parties' rights and obligations would continue well beyond closing. In that arrangement, the contract-for-deed is not incidental—it is the operative instrument containing post-closing Additional Contract Terms.

Montana law has long recognized that "[l]ittle might be needed in a simple pay-and-take agreement; and much in a more involved transaction and agreement." *Dineen v. Sullivan*, 123 Mont. 195, 198, 213 P.2d 241, 242 (1949). Once the parties abandoned a cash transaction and substituted seller-financing structure, the Additional Contract Terms became essential to contract formation. The Amendment itself lacked essential terms for a contract-for-deed transaction, thus the required contract-for-deed not being agreed to made the Amendment unenforceable.

The requirement of an escrow agent alone illustrates the fundamental difference between a standard cash transaction and seller-financing through a contract-for-deed. Escrow is essential in this type of transaction. From the buyer's perspective, escrow ensures that full performance will result in delivery of a deed; from the seller's perspective, escrow ensures a defined remedy upon default,

including access to a quitclaim deed. Without escrow, the buyer risks paying in full without assurance of title, and the seller risks default without an effective remedy short of litigation.

Additionally, the recording of a Notice of Purchaser's Interest ("NPI") further underscores the distinction. An NPI is the buyer's only protection against subsequent conveyance to third parties, placing the world on notice of the buyer's equitable interest and precluding any good-faith purchaser for value.

Simply stated, without agreement on the Additional Contract Terms—including escrow and NPI—the transaction allocates unacceptable risk to both parties and cannot proceed. No reasonable buyer would make installment payments without escrow protection or an NPI, and no reasonable seller would finance a sale without defined default remedies.

These realities confirm that the contract-for-deed was not optional or incidental. It was required to protect both Melbys and Doerings, as their attorneys recognized in attempting to negotiate mutually acceptable terms. The district court's conclusion—and Melbys' assertion—that these terms were not material has no basis in law or in the practical realities of a seller-financed transaction.

B. The Amendment's limited financing terms do not render the Contract for Deed non-material.

Melbys again invoke *Hurly v. Lake Cabin Dev., LLC,* 364 Mont. 425, 276 P.3d 854 (2012) to argue that because the Amendment specified certain financing

terms, the remaining contract-for-deed provisions must have been non-material. (Answer, 18–19). As explained in Doerings' Opening Brief ("Opening"), *Hurly* does not apply here.[3]

Hurly addressed whether an already-written agreement contained sufficient terms to ascertain performance. *Hurly* does not involve seller financing, retained title, escrow, or an express requirement that a future material instrument be mutually agreed upon. Here, by contrast, the parties expressly conditioned seller financing on execution of a final, mutually agreed contract-for-deed—an instrument that would supersede prior agreements and govern the parties' rights for years after closing. *Hurly* thus provides no basis to ignore that condition.

Nor does *Olsen* support Melbys' argument and district court's ruling that the Amendment contained "all material terms." Answer, 20. *Olsen* did not purport to establish a fixed or exhaustive list of material terms applicable to every real-estate transaction. Nothing in *Olsen* authorizes a court to disregard additional terms that become essential when the parties restructure the transaction itself. Indeed, *Olsen* does not purport to override *Dineen*'s instruction that what constitutes an "essential" term depends on the nature of the agreement—namely, that a simple transaction may require few material terms, while a more complex agreement requires many.

[3] Opening 20-21.

The Amendment's omission of the Additional Contract Terms does not demonstrate immateriality; to the contrary, it underscores the materiality of the contract-for-deed, as explained in the Opening.[4] It demonstrates precisely why the Amendment required a final contract-for-deed to be mutually agreed upon before the seller-financed transaction could proceed.

C. *Steen* Does Not Create a Categorical Rule That Performance-Related Terms Are Non-Essential.

Melbys further argue—repeating the district court's legal error—that because a contract-for-deed relates to "performance," it cannot be essential under *Steen*. *Answer*, 18. That contention misreads *Steen* and this error is addressed at length in the Opening.[5]

Steen holds that matters which *merely* relate to performance—subsidiary or collateral details that presuppose agreement on all essential terms—are not material. It does not establish a categorical rule that any term touching performance is non-essential. 132 Mont. 96, 106, 313 P.2d 1014, 1020. To the contrary, Montana law recognizes that terms "central to the very performance of the contract" are essential and must be agreed upon. *Patton,* 367–68, 877 P.2d 993, 996.

As discussed in the Opening, the cases *Steen* relied upon illustrate that distinction. They involved details that could be supplied by statute or that did not

[4] Opening, 17-23.
[5] Opening, 26-31.

materially affect the parties' rights. By contrast, the Additional Contract Terms go far beyond "mere" performance details.

As *Dineen* illustrates, where a writing omits terms necessary to protect a party's stake during an installment sale, no enforceable contract exists. 123 Mont. 195, 199–05, 213 P.2d 241, 244–46 (1949). The sheer number of additional terms to be decided, the effect and materiality of those terms, the undisputed negotiation record with drafts exchanged by counsel, confirms that neither party viewed the contract-for-deed provisions as incidental.

Steen itself cautions that such cases "rest upon their own peculiar facts and circumstances" and must be evaluated in light of the entire body of Montana contract law. 132 Mont. at 106–07, 313 P.2d at 1020. The district court's categorical rule—that any term relating to performance is non-essential—cannot be reconciled with *Steen*, *Patton*, *Dineen*, or most importantly, couldn't be reconciled with the peculiar facts and circumstances of this case and therefore the ruling is made in error.

D. The Amendment could not be enforced without a final, mutually agreed Contract for Deed.

a. Non-Settlement Related Cases

Melbys rely on *Hanson v. Town of Fort Peck*, 2023 MT 208, ¶ 27, to argue that the Buy-Sell Agreement, as amended, remained enforceable even though the contract-for-deed was never finalized.

Hanson holds that an agreement contemplating later documentation is enforceable only if it (1) independently contains all essential terms and (2) does not clearly and unambiguously require execution of a material superseding agreement as a condition precedent to being bound. *Id.*

This case fails both prongs. First, as discussed above, the Amendment did not independently contain all the material terms. Secondly, the Amendment required mutual agreement on the contract-for-deed. It is undisputed the parties did not assent to all the material Additional Contract Terms. Where enforceability is expressly conditioned on future mutual assent to a material instrument, no contract exists unless that condition is satisfied.

In *Olsen,* a case relied upon by Melbys, the Court stated:

> The material terms of a contract for the sale of real property will include the parties, the subject matter, a reasonably certain description of the property affected, the purchase price or the criteria for determining the purchase price, *and some indication of mutual assent.*

Olsen, ¶ 21 (emphasis added). The phrase "will include" confirms that the Court's list is illustrative and dependent on circumstances. In this case, the terms of a mutually agreed upon contract-for-deed were essential to the enforceability of the agreement. Here, where there was no agreement as to the material terms, there is no mutual assent.

Melbys further assert the Amendment's language does not state a clear and unambiguous condition precedent to contract formation. Answer, 29. Melbys' are

mistaken. The parties' intent that they must mutually agree to the terms of a contract-for-deed could not be more clear or unambiguous. The words of a contract are to be understood in their ordinary and popular sense. M.C.A. § 28-3-501. Whether an ambiguity exists in a contract is a matter of law. *Perf. Mach. Co., Inc. v. Yellowstone Mt. Club*, 2007 Mt 250, ¶ 39, 339 Mont. 259, 169 P.3d 394. An ambiguity exists where the language of the contract, as a whole, could reasonably be subject to two different meanings. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 94. Mere disagreement as to the interpretation of a written instrument does not automatically create ambiguity. *Creveling v. Ingold*, 2006 MT 57, ¶ 8, 331 Mont. 322, 132 P.3d 531.

The plain meaning of "to be mutually agreed upon by both parties" indicates intent of a future agreement. If the parties believed that the contract-for-deed would be a standard form, they would have either attached a form contract-for-deed or simply stated "the parties will execute a *standard* contract for deed." The parties intentionally phrased the Amendment in the manner they did because it was understood that the terms would have "to be mutually agreed upon by both parties." The provision cannot reasonably be interpreted differently. As previously noted, the attorneys for Doerings and Melbys recognize that a contract-for-deed must be agreed upon, neither contended otherwise. In fact, Melbys' attorney acknowledged the necessity of a contract-for-deed when he stated as follows:

> Please see the attached draft CFD with my proposed edits. I tried to be as surgical as I could with my suggested edits and I hope that is evident. I also hope it is evident that my client will agree to the vast majority of your client's additions even though many of the additions are not what I could consider typical or customary for a contract for deed. Nevertheless, my client is trying to do everything he can to make this transaction work and so like I said he will agree to most of the additions. Please review and give me a call to discuss when you have a moment. . . I look forward to speaking with you further to keep this transaction moving in the right direction.
>
> Appendix F, 1.

The condition precedent to contract formation is clear and unambiguous. Because that condition precedent was never satisfied, no enforceable agreement arose.

Melbys' attempt to distinguish *Patton* ignores the Amendment's text and the nature of the transaction the parties created. The Amendment conditions assent on terms central to the very performance of the transaction. Melbys assert that the contract-for-deed "was not the essence of the agreement but merely a vehicle to carry out the essence." Answer, 28. That characterization misconstrues the nature of the transaction the parties created. Once the deal shifted from a cash closing to seller financing, the contract-for-deed became the operative instrument governing the parties' rights and obligations for years after closing. The Additional Contract Terms are material to the seller-financed structure, as explained at length in the Opening.[6]

[6] Opening, 17-23.

In *Patton*, this Court refused to enforce an agreement where the parties had not yet agreed on terms "central to the very performance of the contract," holding that no binding agreement existed absent that assent. 265 Mont. at 368, 877 P.2d at 996. The same is true here: the contract-for-deed terms were central to performance, expressly reserved for future agreement, never finalized, leaving no enforceable seller-financed transaction.

b. Settlement Related Cases

As a preliminary matter, each of the cases Melbys rely upon to argue there was no condition upon the execution of the contract-for-deed arises in the limited context of settlement. This case does not. This is significant because the public policy of the state of Montana is to encourage settlement and avoid unnecessary litigation. *Kruzich v. Old Republic Ins. Co.*, 2008 MT 205, ¶ 47, 344 Mont. 126, 188 P.3d 983. Thus, in advancing this public policy, Montana courts are encouraged to enforce settlement agreements. Cases involving settlement agreement have no application to this case. Even if they did, each of the cases relied upon by Melbys is distinguishable on other grounds.

In *Kluver v. PPL Montana, LLC*, 2012 MT 321, ¶¶ 4, 38, the Court enforced an informal MOU because it already contained all substantive settlement terms and rendered the parties' obligations "clearly ascertainable." The contemplated release, deed, lease, and right of first refusal were merely implementing documents whose

material terms were already fixed in the MOU. Melbys misread *Kluver* to suggest that future documents are categorically immaterial. *Kluver* holds only that later documents are immaterial when the underlying agreement contains all essential terms and reflects unconditional assent. *Id.* ¶ 31. That is not the case here. The Amendment did not include all essential terms and the Amendment expressly conditioned seller financing on a "final contract for deed to be mutually agreed upon," leaving numerous material terms unresolved.

Hetherington v. Ford Motor Co. and *Perl v. Grant* likewise do not support Melbys' position. In both cases, the parties unconditionally assented to all essential terms, and the contemplated future documents merely formalized an already binding agreement. In *Hetherington*, counsel unequivocally accepted the settlement offer and requested preparation of standard releases, and the Court emphasized the absence of any conditional intent to delay enforceability. 257 Mont. at 397-401, 849 P.2d 1039, 1041-1043. In *Perl*, the parties' text messages identified the parties, property, and price and manifested unmistakable assent, with no indication that enforceability depended on later agreement, only that the lawyers were going to draft up the formal agreement. 2024 MT 13, ¶¶ 20–25, 415 Mont. 61, 542 P.3d 396.

Those are not this case. Here, there was no unconditional acceptance and no completed agreement on all essential terms. The Amendment expressly requires material Additional Contract Terms. Unlike *Hetherington* and *Perl*, the parties in this

case did not agree to proceed subject only to administrative documentation. The parties instead conditioned enforceability on future mutual agreement to the very instrument that would define the material Additional Contract Terms. Answer, 14, 19. Post's final contract-for-deed offer exchanged between the parties consisted of twenty-three (23) pages, twenty-nine (29) provisions, and eighty-seven (87) distinct revisions to the proposed contract-for-deed, including Melbys' additions of the word "material(ly)" eight (8) times. Twenty-four (24) of these provisions were new, not contemplated in the Buy-Sell. The contract-for-deed was not subsidiary or collateral.

Melbys' assertion that Doerings had no right to "demand additional terms" in the contract-for-deed is illogical. Doerings did not seek to reopen settled Buy-Sell terms. They negotiated only what the Amendment itself required: the mutually agreed terms of the contract-for-deed. When no mutual agreement was reached, the express condition precedent failed.

This case therefore aligns with decisions refusing enforcement where disagreement remained on matters "central to the very performance of the contract." *Patton*, 265 Mont. at 367–68, 877 P.2d at 996. Because the Amendment conditioned seller financing on execution of a final, mutually agreed contract-for-deed—and no such agreement occurred—the district court erred as a matter of law in concluding that an enforceable Buy-Sell existed. Who was to pay post-closing real estate taxes and property insurance? Could Buyer contaminate the property with hazardous

waste? Where were the deeds to be held? These are a few of many unanswered questions if there is no contract-for-deed.

The undisputed negotiation record confirms the absence of mutual assent: the parties exchanged competing drafts addressing essential Additional Contract Terms, and negotiations ended without agreement, thus the condition precedent fails and no enforceable contract arises under Montana law.

IV. Melbys Cannot Compel Closing Under the Terms They Sought to Replace.

Melbys argue that even if the Amendment failed, the original Buy-Sell Agreement independently compelled closing. Answer, 39-40. That misstates the effect of a contract modification. The Amendment replaced financing terms and made seller financing mandatory; there was no contractual right to switch back to a cash closing unilaterally if the contract-for-deed was not mutually agreed to.

As courts recognize, "[a] modification of a contract is a change in one or more respects which introduces new elements into the details of the contract and cancels others but leaves the general purpose and effect undisturbed." *International Bus. Lists v. AT&T*, 147 F.3d 636, 641 (7th Cir. 1998). The Amendment replaced the conventional financing terms. Melbys are precluded from insisting that Doerings had to close under the very terms that they sought to amend.

Melbys' reliance on *Heckman* is misplaced. *Heckman v. Shell & Wilson, 158 Mont. 47, 58–59, 487 P.2d 1141, 1147 (1971) Heckman* is inapposite; it involved a

failed modification where the original contract remained fully performable. Here, the parties executed an Amendment that eliminated conventional financing and imposed an express condition precedent that never occurred.

More importantly, despite the argument Melbys made no effort to appear at closing. Melbys filed their lawsuit on May 26, 2021, requesting the remedy of specific performance. However, they later abandoned their specific performance theory prior to the June 4, 2021 closing date in the Amendment. Melbys did not tender the purchase price, or even the downpayment to a Title company to memorialize their willingness to perform. Simply stated, to accept Melbys' position would still require them to appear at closing and perform. Melbys had no enforceable right to compel closing under either theory.

V. Where No Enforceable Contract Exists on Undisputed Facts, the Doerings Are Entitled to Judgment as a Matter of Law

It is true that reversal of a grant of summary judgment does not automatically require entry of judgment for the opposing party. Rather, an appellate court must determine whether the record contains all facts necessary to resolve the legal issue and whether, on those undisputed facts, the opposing party is entitled to judgment as a matter of law. Where genuine issues of material fact remain, remand is appropriate; where they do not, the Court may direct entry of judgment. *Ash Grove Cement Co. v. Jefferson County*, 283 Mont. 486, 500, 942 P.2d 1229 (1997); *Grassy Mountain Ranch Owners' Ass'n v. Gagnon*, 2004 MT 245, ¶ 7, 323 Mont. 19, 98 P.3d 307.

That standard is met here.

Whether an enforceable contract exists is a question of law when the material facts are undisputed. *Patton*, 367–68, 877 P.2d 993, 996; *Keesun,* 337, 816 P.2d 417, 421. Where an agreement expressly conditions enforceability on future mutual assent to essential terms—and the record conclusively shows that such assent was never reached—no enforceable contract exists as a matter of law. *GRB Farm,* ¶ 11.

Here, the relevant facts are undisputed. The Amendment required that the "final contract for deed be mutually agreed upon by both parties." The parties exchanged drafts addressing substantive Additional Contract Terms. Melbys' attorney acknowledged that agreeing to the terms of a Contract were necessary to move the transaction forward. The transaction ended without agreement. As such, no final contract-for-deed existed to be executed. Melbys do not identify any genuine factual dispute as to this legal issue.

This conclusion does not rest on disputed issues of motive, credibility, or alleged "bad faith," all which are greatly disputed by Doerings. Because the Amendment never ripened into an enforceable contract-for-deed, there was no contractual benefit from which an implied covenant of good faith and fair dealing could arise, thus these disputed issues do not apply as a breach of contract. *Weldon v. Montana Bank*, 268 Mont. 88, 94-95, 885 P.2d 511 (1994).

Because the express condition precedent failed, Melbys cannot establish the threshold element of their breach-of-contract claim—the existence of an enforceable Buy-Sell agreement. Where that is established as a matter of law on undisputed facts, summary judgment for Melbys was in error, and judgment must be entered for Doerings.

Dated this 7th day of January 2026.

/s/ Taylor N. Eisenzimer
David B. Cotner
Kyle C. Ryan
Taylor N. Eisenzimer

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that Appellants' Reply Brief is printed with a proportionately spaced Times new Roman text typeface of 14 point; is double-spaced; and the word count calculated by Microsoft Office Word, is not more than 5,000 words, excluding the Certificate of Compliance.

Dated this 7th day of January 2026.

/s/ Taylor N. Eisenzimer
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CERTIFICATE OF SERVICE

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