MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. Yor-25-269

CONSTANCE L. BEANE,

Plaintiff/Appellant

v.

VILLAGE ON GREAT BROOK, LLC et al.,

Defendant/Appellee

On appeal from the York County Superior Court

BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

INTRODUCTION

Appellant, Constance L. Beane, is suing Appellee, the Village on Great Brook, LLC, for breaching a contract that never existed. As plead in the Complaint, the parties intended to enter into an agreement that would become binding on the Village on Great Brook upon the issuance of building permits by the Town of Eliot. Pursuant to the plain words of the agreement, that issuance had to occur by March 1, 2023 for the contract to become binding. March 1 came and went with no building permits. The Superior Court (York County, *Martemucci, J.*) correctly found that the condition precedent was unambiguous and had not been satisfied. The Court appropriately dismissed the Complaint for failure to state a claim upon which relief could be granted.

Appellant tried to fix the deficient complaint by introducing a document she claims could be interpreted as a waiver of the condition precedent. The Superior Court exercised its discretion and dismissed the Appellant's motions after the Court correctly found that no reasonable interpretation of the document could support Appellant's claim.

The language in the purported agreement and in the additional document are as plain as the words on this paper. The Superior Court found that language

unambiguous and correctly dismissed this case. Accordingly, the Court's decisions should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Village on Great Brook developed a multi-unit condominium in Eliot, Maine. Appellant is a unit owner in the Village on Great Brook condominium. (A. 26-27.) A dispute between the Village on Great Brook and the unit owners, including the Appellant, arose over the continued construction of infrastructure within the condominium. During the dispute, the Village on Great Brook submitted building permits to the Town of Eliot Planning Board. Following negotiations led by Roger A. Clement, who represented the Village on Great Brook, and Peter Doyle, who represented the unit owners (including the Appellant), the parties signed a settlement agreement on February 13, 2023. (A. 36-39.) Section 12 of the settlement agreement stated in pertinent part:

> The obligations of the parties hereunder are contingent upon the occurrence of the items described in subparagraphs (a)-(d) below.
>
> > Planning Board approval **no later than March 1, 2023** of the Application as filed by VGB with no conditions imposed by the town other than such conditions as may be approved in writing by VGB and the expiration of all applicable appeal periods without an appeal having been filed;

(A. 38 (emphasis added).)

The Town of Eliot Planning Board approved the Village on Great Brook's application on March 28, 2023. (A. 55-64.)

Appellant noticed stakes in the ground in an adjacent lot that she claims the Village on Great Brook was supposed to convey to the Condominium Association as part of the settlement agreement, and, fearing that a new unit would be developed on that parcel, brought suit against the Village on Great Brook. (A. 26-30.) Appellant's complaint alleged that Village on Great Brook had breached the February 13, 2023 agreement and sought specific performance, a declaratory judgment, damages, costs, and attorney fees. (A. 26-30.) Appellant attached the entire settlement agreement as Exhibit B to the Complaint. (A. 36-38.)

The Village on Great Brook filed a Motion to Dismiss under Rule 12(b)(6) for failing to state a claim upon which relief could be granted. (A. 67-74.) Specifically, the motion stated that a condition precedent, contained in Section 12(a) of the agreement, was never met, and therefore, the Village on Great Brook had been discharged of any obligations under the Agreement. (A. 67-68, 69-70.)

On March 10, 2023, the Superior Court issued an order dismissing the Complaint in full without leave to amend. (A. 7-17, 24.) The Court concluded that Appellant had failed to state a claim for relief because a condition precedent contained in the agreement had not been met. (A. 12-13, 17.) Contrary to Appellant's arguments, the Court found that the specific date

contained within the condition precedent was a material component of the agreement and provided evidence that the parties had intended strict performance of the terms of the agreement. (A. 12-13.)

Following the Court's order granting Village on Great Brook's motion to dismiss, Appellant filed a motion to reconsider and to alter and amend the judgment dismissing the Complaint pursuant to M.R. Civ. P. 59(e) (A. 77-86) and a motion to amend the Complaint pursuant to M.R. Civ. P. 15(a) (A. 88-89). Both motions were based on a letter dated April 18, 2023, between Village on Great Brook's former attorney and an attorney for the unit owners, which included Appellant. (A. 85-86.) In those motions, Appellant contended that the letter provided evidence that time was not a material component of the condition precedent. (A. 77-83.) The Court denied the motion to reconsider and to alter or amend the judgment because the letter did not constitute "new material that could not previously have been presented" and the letter did not constitute a waiver of the time component of the condition precedent. (A. 21-23.) Appellant appealed. (A. 6.)

STATEMENT OF ISSUES

I. In deciding that the Complaint failed to state a claim, the Superior Court properly referenced the agreement that was attached to the Complaint.

II. The Superior Court correctly found, as a matter of law, that Appellant's failure to meet the date specified in the condition precedent constituted a failure of the condition precedent.

III. The Superior Court properly denied Appellant's motion to amend when she did not sufficiently explain her failure to include the document and the document itself would not change the outcome.

ARGUMENT

I. In deciding that the Complaint failed to state a claim, the Superior Court properly referenced the agreement that was attached to the Complaint.

Appellant correctly states the first part of the legal standard for a court to dismiss a complaint under the rules. But while the Court must take the facts alleged in the Complaint as true, the Court has the ability to expand the inquiry to any documents referred to in the Complaint where the authenticity of such documents is not in dispute. *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 10, 843 A.2d 43. The purpose of this rule is to prevent a plaintiff with a legally deficient claim from surviving a motion to dismiss simply by failing to attach a dispositive document on which it relied. *Id.* (quoting *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

Applying this rule, the Superior Court correctly examined the words in the Complaint and the words in the agreement. There is no dispute as to the authenticity of the document because it was attached to the Complaint.

II. The Superior Court correctly determined, as a matter of law, that Appellant's failure to meet the date specified in the condition precedent constituted a failure of the condition precedent.

This Court must first consider whether the language in the contract is ambiguous, which it reviews de novo. *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003

ME 6, ¶ 11, 814 A.2d 989. A provision is ambiguous if it is "reasonably possible to give that provision at least two different meanings." *Reliance Nat'l Indem. v. Knowles Indus. Servs., Corp.*, 2005 ME 29, ¶ 24, 868 A.2d 220; *Halco v. Davey*, 2007 ME 48, ¶ 9, 919 A.2d 626; *Keegan v. Est. of Bradbury*, 2025 ME 13, ¶ 7, 331 A.3d 394. "Whenever a paper can be understood from its own words, its interpretation . . . the promise it makes, the duty or obligation it imposes, is a question of law for the court." *State v. Patterson*, 68 Me. 473, 474 (1878); *Hoyt v. Tapley*, 121 Me. 239, 243, 116 A. 559, 560 (1922). If the provision is unambiguous, the court gives the provision its plain, ordinary, and generally accepted meaning, without resorting to extrinsic evidence. *Reliance Nat'l Indem.*, 2005 ME 29, ¶ 24, 868 A.2d 220. The interpretation is based on the language within the "four corners" of the document. *Am. Prot. Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989.

"Unless it has been excused, the non-occurrence of a condition discharges the duty when the condition can no longer occur." Restatement (Second) of Contracts § 225 (Am. L. Inst. (1981)); *see Fisher v. Merchants' Ins. Co.*, 95 Me. 486, 490, 50 A. 282, 284 (1901) ("[W]hen the contract provides that no action upon it shall be maintained until after such an award, then the award is a condition precedent to the right of action."); *Irving v. Town of Clinton*, 1998 ME 112, ¶ 4, 711 A.2d 141. In determining whether a condition precedent exists,

courts seek to determine the intent of the parties by considering "the words of the particular clause, . . . the language of the whole contract as well as the nature of the act required, and the subject matter to which it relates." *Bucksport & B.R. Co. v. Brewer*, 67 Me. 295, 299 (1877).

Maine Courts have been prolific in defining the material nature of a condition precedent and have consistently refused to ignore language defining such conditions. *See, e.g., Irving*, 1998 ME 112, ¶¶ 2, 4, 711 A.2d 141 (determining that the language "[t]his contract is contingent upon voter approval," created a material condition precedent, and discharging the parties' duties under the contract because the precondition did not occur); *Loyal Erectors, Inc. v. Hamilton & Sons, Inc.*, 312 A.2d 748, 753, 757 (Me. 1973) (interpreting a contract to conclude that a builder's failure to obtain an architect's certificate of approval constituted a failure to meet a condition precedent); *Fisher*, 95 Me. at 490, 50 A. at 284 (holding that a contract, which required that no action under the contract could occur until the amount of loss had been first determined, created a condition precedent).

It is well established in Maine case law that when an agreement includes an express condition to be performed within a specified time, a court cannot interpret that time as immaterial. *Colbath v. H. B. Stebbins Lumber Co.*, 127 Me. 406, 412, 144 A. 1, 4 (1929). In *Colbath*, the parties agreed to an increase in the

price of lumber if an excess of available logs could be proved by the sawmill by a specific date. *Id.* at 409, 144 A. at 3. The sawmill claimed the excess of logs but could not prove the excess until after the date specified in the agreement. *Id.* at 410, 144 A. at 3. When asked to ignore the timing provision, this Court responded: "In an action at law, when a promise is expressly conditioned upon an agreed condition to be performed **within an expressed time**, this Court cannot say that it is immaterial which the parties have made by their contract material." *Id.* at 412, 144 A. at 4 (emphasis added). Similarly, in *Medomak Canning Co. v. York*, a lease to pick blueberries gave the lessee the option to extend the lease for five years if the lessee gave the lessor "written notice in not less than thirty days prior to the end of the then existing term of renewal. . . ." 143 Me. 190, 192, 57 A.2d 745, 746 (1948). This Court held that "[s]ince thirty days' written notice was a condition precedent to effect an extension of the lease, and was never given as provided for, the right to an extension of the lease was lost," affirming the principle that when a condition precedent requires performance within a specified time, a court cannot disregard the time-related language as immaterial. *Id.*, at 194-95, 57 A.2d at 747-48.

This Court has also refused to require "magic words" such as "time is of the essence" in order to find the timing of a condition material to the agreement. *See Raisin Mem'l Tr. V. Casey*, 2008 ME 63, ¶ 21, 945 A.2d 1211; *Frost v. Barrett*,

246 A.2d 198, 201 (Me. 1968). In *Frost*, this Court affirmed a trial court's determination that a plaintiff's failure to convey good and marketable title within sixty days from the date of contract allowed the defendants to treat the contract as broken even though the sixty-day period did not explicitly provide that "time is of the essence." 246 A.2d at 201. This Court reasoned that a provision allowing the purchaser the option return their down payment if the seller is unable to give good and marketable title at the expiration of sixty days provided persuasive evidence that the parties intended strict performance of the contract, which is "equivalent to a recitation that time is of the essence." *Id.* Similarly, in *Raisin Mem'l Tr.*, 2008 ME 63, ¶ 22, 945 A.2d 1211, this Court determined that contract provisions allowing a mortgagee to demand immediate late fees, accelerate the entire principal upon any delay, and increasing the rate of the note upon default constituted persuasive evidence that the parties intended for time to be a material component in the contract.

Here, when the agreement stated that "[t]he obligations of the parties hereunder are contingent upon the occurrence of . . . Planning Board approval no later than March 1, 2023" (A. 38), it created a condition precedent for which the time was an explicit and material component. Like the language in the agreement in *Irving*, 1998 ME 112, ¶¶ 2, 4, 711 A.2d 141, this agreement has the language, "contingent upon," which this Court has recognized

unambiguously creates a condition precedent. Furthermore, the explicit temporal deadline—"no later than March 1, 2023"—unambiguously indicates that the parties intended to make time a material part of this condition precedent. *Colbath*, 127 Me. at 412, 144 A. at 4; *Medomak Canning Co.*, 143 Me. at 195-96, 57 A.2d at 747-48. The clearly expressed deadline, like the sixty-day period to convey good and marketable title in *Frost*, 246 A.2d at 201, indicates that the parties intended strict performance of the contract, which is "equivalent to a recitation that time is of the essence."

Nonetheless, Appellant provides a tour of case law from other jurisdictions in an attempt to undermine a principle long settled in Maine. (*See* Blue Br. 15-17.) Appellant cites *Chirichella v. Erwin*, 270 Md. 178, 182 (Md. 1973), for the proposition that a failure to satisfy a condition precedent does not include a "mere lapse of time." However, in *Chirichella*, the pertinent provision read, "Coincide with settlement of New Home in Kettering Approx. Oct. '71." *Id.* at 181-82. The Maryland Court of Appeals determined that this was not language strong enough to create a condition precedent but rather clarified that an event should take place during the month of October 1971 or within a reasonable time after that date. *Id.* at 182. By contrast, the temporal language at issue here is far more specific by stating the precise date by which Planning Board approval was required and avoiding language like

"approximately." (A. 38.) Appellant also cites a case from the Eastern District of Pennsylvania, *Burger King Corp. v. Family Dining, Inc.*, 426 F. Supp. 485, 493-94 (E.D. Pa. 1977), to support its position that a lapse in time is not a material component of a conditional clause in a contract. However, in that case, Burger King had not demanded exact compliance with a multi-year development schedule, and thus, it could not claim that the defendant had failed to perform when it had not exactly complied with the development schedule. *Id.*

The Town of Eliot Planning Board approved the Village on Great Brook's application on March 28, 2023 (A. 55-64), four weeks after the agreement's stated deadline of March 1, 2023. The agreement's specific and precise language manifests a clear intent of the parties for the conditions and timing to be strictly performed. Even if some lapse in time might be excusable, the lapse of nearly an entire month is unreasonable, distinguishing this case from illustration three in the Restatement (Second) of Contracts § 229 (Am. L. Inst. (1981)), which suggests that a party's performance might be excused for a lapse of one day if time is not of the essence. (Blue Br. 16); *c.f. Chirichella*, 270 Md. at 183 (holding that although time was not of the essence in the contract at issue, the lapse of time was unreasonably long). Accordingly, because the condition precedent requiring Planning Board approval no later than March 1, 2023, was

not met, Village on Great Brook was discharged of its duty to perform under the agreement.

Because the Village on Great Brook was discharged of its duties under the agreement, Appellant's complaint based on several contract-related claims failed to allege facts that would entitle her to relief pursuant to some legal theory. *See Moody,* 2004 ME 20, ¶ 7, 843 A.2d 43. Therefore, the Superior Court did not err when it granted the Village on Great Brook's motion to dismiss the Complaint in full without leave to amend.[1]

III. The Superior Court properly denied Appellant's motion to amend when she did not explain the failure to include the document and when the document itself would not change the outcome.

Appellant brought a Rule 15 motion to amend the Complaint together with a Rule 59(e) motion to reconsider and to alter and amend the judgment of dismissal. (A. 77-84, 88-89.) The Superior Court appropriately exercised its discretion in denying Appellant's motions. (A. 18-25.) Appellant's motion failed because (1) the "new evidence" did not meet the standard required for a

[1] The effect of Superior Court's judgment of dismissal without leave to amend the Complaint is that a future claim would be barred the principles of res judicata. *See Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 1998 ME 70, ¶ 9, 708 A.2d 283 ("A Rule 12(b)(6) dismissal is technically an adjudication on the merits and is without prejudice." (citing 1 Field, McKusick & Wroth, Maine Civil Practice § 12.11, at 119 (2d ed. Supp. 1981))); *see also Dutil v. Burns*, 1997 ME 1, ¶ 5, 687 A.2d 639 ("An order of dismissal for failure to state a claim is technically an adjudication on the merits unless, as is usually the case, leave is granted to amend the complaint.").

motion for reconsideration and (2) the purported evidence did not serve to cure her deficient complaint.

"In reviewing the denial of a motion to amend pleadings, [this Court] determine[s] whether the party has demonstrated (1) that the court clearly and manifestly abused its discretion and (2) that the amendment was necessary to prevent injustice." *Montgomery v. Eaton Peabody, LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106 (alterations and quotation marks omitted). "A motion to amend may be denied based on one or more of the following grounds: undue delay, bad faith, undue prejudice, or futility of amendment." *Id.* (citing *Bangor Motor Co. v. Chapman*, 452 A.2d 389, 392 (Me. 1982)).

Maine Rule of Civil Procedure 59(e) provides that "[a] motion for reconsideration of the judgment shall be treated as a motion to alter or amend the judgment." A trial court's denial of a motion for reconsideration is reviewed for an abuse of discretion. *See Roalsvik v. Comack*, 2019 ME 71, ¶ 3, 208 A.3d 367.

A. Appellant failed to show that her motion for reconsideration was necessary in order to bring new material that could not previously been presented to the Court's attention.

The standard for motions for reconsideration is found in M.R. Civ. P. 7(b)(5), which provides that a motion to reconsider should not be brought

"unless required to bring to the court's attention an error, omission or new material that could not previously have been presented." *See Murphy v. Corizon*, No. 1:12-cv-00101-JAW, 2012 U.S. Dist. LEXIS 152731, *7 (D. Me. Oct. 24, 2012) ("[T]he standard for newly discovered evidence is that the evidence be not only new to the litigant but not previously available." (citing *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006))).

Here, Appellant presents a letter between an attorney for the Village on Great Brook and an attorney for the unit owners (which included the Appellant) who negotiated the agreement as new evidence that Village on Great Brook waived the timing component of the condition precedent related to Planning Board approval. (Blue Br. 23.) However, Appellant provides no explanation as to how the letter constitutes "new material that could not previously have been presented." Rather, the letter dated April 18, 2023, was not "new" when Appellant filed her complaint in November 2024 or when the Court filed its order on March 10, 2025. Nor was the letter not previously available. Instead, the letter was sent to Appellant's own counsel and was easily discoverable by the Appellant prior to filing the lawsuit or during the litigation of the Motion to Dismiss.

Because the Appellant's motion for reconsideration failed to bring to the Court's attention evidence that could not have been previously presented, the

Court did not err or abuse its discretion when it denied Appellant's motion for reconsideration and to alter or amend the judgment. Because the Court appropriately denied Appellant's motion and thus the case has been dismissed, the Court did not clearly and manifestly abuse its discretion in denying Appellant's motion to amend the Complaint. *See Paul v. Town of Liberty*, 2016 ME 173, ¶ 6 151 A.3d 924 ("[A] full and final dismissal of all counts of a complaint arguably leaves nothing remaining to amend.").

B. Appellant failed to show how her proposed amendment to the pleadings would cure her complaint.

"When a proposed amended complaint would be subject to a motion to dismiss, the court is well within its discretion in denying leave to amend." *Montgomery*, 2016 ME 44, ¶ 13, 135 A.3d 106 (quoting *Glynn v. City of S. Portland*, 640 A.2d 1065, 1067 (Me. 1994)) (quotation marks omitted). Said differently, "a court does not abuse its discretion when it denies a motion for leave to amend when the moving party fails to show how it could cure the complaint." *Sherbert v. Remmel*, 2006 ME 116, ¶ 8, 908 A.2d 622 (alteration, quotation marks, and ellipses omitted).

The first paragraph of the April 18, 2023 letter at issue states: "As we have discussed, events have somewhat overtaken this Agreement in that some of the conditions described in paragraph 12 have already been satisfied. For

example, planning board approval has been granted (and VGB is willing to waive the March 1 deadline). We now need to focus on the conditions described in paragraph 12(d). This letter is an attempt to satisfy that condition." Appellant contends that this language constitutes clear evidence that Village on Great Brook considered the section 12(a) condition precedent to the agreement to be satisfied and that it had waived the March 1, 2023 deadline. (Blue Br. 23.)

Waiver of a condition precedent or a term in a contract "may be established by express waiver, or by actions clearly inconsistent with an intent to retain the contractual protection." *Williams v. Ubaldo*, 670 A.2d 913, 916 (Me. 1996); *Medomak Canning Co.*, 143 Me. at 196-97, 57 A.2d at 748 (holding that for a waiver of a condition precedent in a contract or of a legal right "there must be a clear, unequivocal and decisive act of the party showing such a purpose, or acts amounting to an estoppel on his part" (quotation marks omitted)).

The letter is not an express waiver nor "a clear, unequivocal and decisive act" sufficient to indicate the parties intended to waive the timing component of the condition precedent. The Superior Court correctly surmised that the letter constituted an offer to negotiate a settlement, rather than a waiver. (A. 22.) Moreover, there was no suggestion that Village on Great Brook intended to waive this provision before the event occured, as the letter was

communicated on April 18, 2023, more than a month and a half after the deadline expired.

Amending the Complaint to include this letter would not cure the Appellant's complaint. It does not clearly show the existence of a waiver of the time component, and thus, does not indicate that the Village on Great Brook had any obligations under the agreement that might allow the Appellant to bring a breach of contract claim. Accordingly, the Superior Court did not abuse its discretion in denying Appellant's motion to amend the complaint.

CONCLUSION

For all the foregoing reasons, the Village on Great Brook requests that the Court deny this appeal and uphold the Superior Court's decision. The Superior Court did not err in granting the Village on Great Brook's motion to dismiss nor did it abuse its discretion in denying Appellant's motions for reconsideration and motion to amend the pleadings.

Dated in Portland, Maine this 22nd day of October 2025.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Benjamin E. Ford, Esq., hereby certify that I have this day caused a copy of the foregoing Brief of Appellees to be mailed by U.S. Mail, first-class, postage prepaid and to counsel of record as follows:

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Dated in Portland, Maine this 22nd day of October 2025.

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