

**SUPREME JUDICIAL LAW COURT
SITTING AS THE LAW COURT**

YORK, SS

STATE OF MAINE

Law Docket No. Yor-25-269

CONSTANCE L. BEANE,

Appellant,

V.

VILLAGE ON GREAT BROOK, LLC et al.,

Appellee.

On Appeal from the York County Superior Court
York County

THE REPLY BRIEF OF APPELLANT, CONSTANCE L. BEANE

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STATUTES, CASES, AND AUTHORITIES

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THE CASES CITED BY VGB DO NOT STAND FOR THE PROPOSITION
THAT THE TIME FOR PERFORMING A CONDITION PRECEDENT IS THE
SAME AS PERFORMING THE CONDITION PRECEDENT ITSELF

Village on Great Brook, LLC (hereafter VGB) makes the argument in its Brief, citing a number of Maine cases, that the failure to satisfy a condition precedent within a certain period of time means that the condition precedent (which was met just not within the time required) was not met. This is not the law in Maine nor is it likely the law elsewhere.

Many of the cases cited by VGB do not answer the question faced by the Law Court in this case-Does the failure to obtain Eliot Planning Board approval by the date set in the Agreement, even though Planning Board approval was granted within 27 days of the date such approval was contractually required, void the contract as a matter of law? In Raisin Memorial Trust v. Casey, 945 A.2d 1211, 1216 (Me. 2007) this Court looked at whether there was substantial performance of by the obligor of the terms of a Note (payment was made close to the date required, but not made exactly when required.) This Court held that whether “time of the essence in a contract is a matter of fact, and cannot be determined simply by the presence or absence of these magic words in the contract. In the past, we have looked to the nature, circumstances, and purpose of the contract to determine whether time is of the essence.” Id. (emphasis added) The Law Court in other cases has also held that whether time is of the essence in a contract is a factual

question, not a legal one. See also Colbath v. H.B. Stebbins Lumber Co., 127 Me. 406, 144 A. 1, 11 (1929) (“We think, therefore, that the jury should have been instructed that, as a matter of law, the mutual promises to pay were conditioned upon a condition precedent, upon it being proved by December 31, 1921, whether the number of feet of logs in the lake on May 14 exceeded or fell short of the stated number, and the jury should not have been instructed that time was not, as a matter of law, of the essence and that whether the parties intended it to be of the essence was a question of fact for them to determine.” (emphasis added)); Frost v. Barrett, 246 A.2d 198 (Me. 1968) (Upholding the trial Court’s reading of a purchase and sale agreement finding that time is of the essence in this purchase and sale agreement for real estate, and since the Seller could not give marketable title within 60 days the Buyers properly rescinded the contract, and therefore the Buyers were not liable to pay the Seller rent while they occupied the property.)

VGB cites the Frost case for other language that if a party agrees to a date to perform part of the contract then the Court is not free to disregard this. However, in determining substantial performance of a contract, and analyzing the meaning of a condition precedent in a contract which requires performance by a date certain, the Court should look at a contract to determine whether the date required for an act to be done was a material part of the condition precedent given the “nature, circumstances, and purpose of the contract.”

The Agreement between Beane and VGB does not indicate time is of the essence, and for the reasons set forth by Beane in her Brief the timing of the Eliot Planning Board approval was not material to this contract. In other words, the Eliot Planning Board approval was not subject to “time is of the essence” in the same way other performance in a contract might be. VGB’s own attorney suggested in a letter that the Eliot Planning Board approval not being on time was not important going forward. VGB ignores the part of the Casey decision indicating that whether time is of the essence is a question of fact. This is Beane’s argument in this appeal—the Eliot Planning Board approval was granted within twenty-seven days of the date that was required by the Agreement, and on a Rule 12(b)(6) Motion the Court cannot, as a matter of law, say this provision requiring Planning Board approval (which was not within Beane or any other Unit owner’s control to meet) became a material breach of the contract when it was met, just not in the time required. Casey indicates this is a factual determination and requires an examination of the entire contract.

Many other cases do not support VGB’s argument. See Loyal Erectors, Inc. v. Hamilton & Son, Inc., 312 A.2d 748 (Me. 1973). (This case involved a question of whether a contingent sum due could be subject to trustee process, and the Law Court held that the architect’s certificate of approval (a condition precedent) was necessary before payment was required to be made to a contractor so that such

payment would be subject to trustee process.); Bucksport & B. R. Co. v. Brewer, 67 Me. 295 (1877) (It was a condition precedent in the contract between the Town of Brewer and the railroad requiring the Town to purchase railroad stock only if the railroad was located in a place “satisfactory to the selectmen in the town.”); Irving v. Town of Clinton, 1998 ME 112, 711 A.2d 141 (Snow removal contract had a condition precedent requiring approval of the amount of money needed to enter into the snow removal contract by the voters at a Town meeting.); Fisher v. Merchants' Ins. Co., 95 Me. 486, 50 A. 282 (1901) (A pre-uniform arbitration act decision that an arbitration requirement in an insurance policy was a condition precedent to the insured maintaining a lawsuit under the insurance policy.) None of these cases support VGB’s argument in this case because none of them deal with a situation where a condition precedent is met, just not in the time set forth in the contract.

For timing VGB appears to rely upon Medomak Canning Co. v. York, 143 Me. 190, 57 A.2d 745 (1948). In this case the Law Court held that the requirement in a lease that an option to renew the lease for five more years must be made within 30 days of the expiration of the lease was a condition precedent that “in the absence of special circumstances warranting a court of equity in granting relief, the right to renewal is lost if the notice is not given in accordance with the provisions of the lease.” Id. at 747-748. There was no notice ever given of the renewal of the lease.

Id. at 746. In this case the tenant first argued the landlord/owner waived this notice of renewal provision but was unsuccessful. The Law Court reversed the lower court ruling that the lease had been renewed anyway and held that the renewal within 30 days was a condition precedent that was not waived. Trying to analogize the failure to renew a lease within the time required to do so with the date when VGB received Eliot Planning Board approval misses the mark completely. They are not concepts related in any way.

Ignoring for the moment the argument that VGB had within its control Eliot Planning Board approval and not Beane, and ignoring the fact that VGB's counsel waived strict compliance with the time deadline, renewing a lease in a timely manner represents a much different situation than this case. With a lease renewal the landlord should be timely informed whether the tenant is going to continue as a tenant for the next five years. This is something the landlord can rely upon and determine whether he or she needs to re-rent the property, occupy it, or maybe sell it. Being left without a timely renewal means the landlord moves forward with his or her plans for the property WITHOUT a tenant having a five year lease. The reliance in such a timely "lease renewal" is huge and cannot be overlooked. On the other hand, what is the reliance for VGB regarding the timing of the Eliot Planning Board approval? Did it do anything different once Eliot Planning Board approval was not granted on the date required, but within 27 days thereafter? The

harm to the landlord in being kept in the dark about a whether the tenant will renew a lease is easy to see, but there is no harm that VGB can point to that it suffered by receiving Eliot Planning Board approval within 27 days of the date required. This is the falsity of this analogy-one situation involves, as a matter of law and contract, reliance on the failure to meet a condition precedent within a timely manner, and the other situation, this one, as a matter of law and contract, presents no reliance argument on the failure to meet the condition precedent on the date required by the contract. Again, if this case is reinstated VGB can make any factual argument about reliance or harm to it that it wishes to make at trial. However, as a matter of law this case is not analogous to the failure to renew a lease in a timely manner.

CONCLUSION

This Court should reverse the decision of the York County Superior Court dismissing the Plaintiff's Complaint and order that the Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted should be denied.

RESPECTFULLY SUBMITTED
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Date: 11/06/2025

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CERTIFICATE OF SERVICE

I, Patrick S. Bedard, Esq., hereby certify that a true copy of the foregoing, on this date, has been forwarded via electronic mail to: Benjamin E. Ford, Esq. and Erica Johanson, Esq.

Date: 11/06/2025

/s/ Patrick S. Bedard
Patrick S. Bedard, Esq.