

Judgment Page 1 of 8
 Gary Christensen Washington County Recorder
 02/09/2024 02:43:23 PM Fee \$40.00 By FABIAN &
 CLENDENIN, P.C. DBA FABIAN VANCOTT

The Order of the Court is stated below:

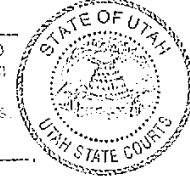
Dated: January 31, 2024
 04:49:04 PM

/s/ KEITH C BARNES
 District Court Judge



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STATE OF UTAH
 COUNTY OF Washington
 I hereby certify that the document to
 which this certificate is attached is a
 full, true and correct copy of the
 original filed in the Utah State Courts.
 WITNESS my hand and seal
 this 9th day of Feb
 20 24
 DISTRICT COURT



CLERK

Attorneys for Edward Dean Ekstrom and
 M'Lisa J. Ekstrom

IN THE FIFTH JUDICIAL DISTRICT COURT
 IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

EDWARD DEAN EKSTROM, <p style="text-align: center;">Plaintiffs</p> v. CARSON COLE PAYNE, <p style="text-align: center;">Defendants</p>	<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDERS, AND JUDGMENT GRANTING EDWARD AND M'LISA EKSTROM'S MOTION FOR PARTIAL SUMMARY JUDGMENT</p> <p style="text-align: right;">Case No. 210500431</p> <p style="text-align: right;">Judge: Keith C. Barnes</p>
CARSON COLE PAYNE, <p style="text-align: center;">Counterclaimant,</p> v. EDWARD DEAN EKSTROM and M'LISA J. EKSTROM, <p style="text-align: center;">Counterclaim Defendants.</p>	
CARSON COLE PAYNE, v. M'LISA J. EKSTROM.	

This matter came before the Court on oral argument on December 19, 2023, on Plaintiff Edward Ekstrom's ("**Edward**") and Third-Party Defendant M'Lisa Ekstrom's ("**M'Lisa**") (collectively "**Ekstrom Parties**") Motion for Partial Summary Judgment ("**Motion**") seeking summary judgment on Edward's first and third claims for relief and all of Defendant/Counterclaimant/Third-Party Plaintiff Carson Payne's ("**Payne**") Counterclaims and Third-Party Claims. The Ekstrom Parties were represented by Jeffrey C. Bramble of the law firm Fabian VanCott and Payne was represented by James L. Spendlove of the law firm Gurr Brande & Spendlove, PLLC. The Court, having considered the pleadings on file, the parties' briefing on the Motion, as well as oral argument of the Parties, and all other matters the Court deemed relevant hereby **GRANTS** the Motion for the reasons provided below.

PROCEDURAL BACKGROUND

1. Edward filed his Complaint on May 28, 2021. Doc. No. 1.
2. Edward, pursuant to stipulation, filed his Amended Complaint on October 17, 2022. Doc. No. 39. In the Amended Complaint, Edward asserted the following claims:
 - a. Rescission of the Debt Settlement Agreement;
 - b. In the alternative to rescission, damages for breach of the Debt Settlement Agreement;
 - c. Quiet Title to the subject property located in St. George, Utah;
 - d. Defamation and False Light;
 - e. Civil Extortion;
 - f. Conversion; and
 - g. Intrusion upon Seclusion.

Id.

3. In response to the Amended Complaint, Payne filed counterclaims against Edward and third-party claims against M'Lisa. *See Answer to Amended Complaint and Counterclaim, Doc. No. 45.* The counterclaims and third-party claims include the following:

- a. Fraud in the Inducement related to the Debt Settlement Agreement;
- b. Breach of Debt Settlement Agreement, breach of \$10,000 promissory note, and breach of oral loan agreement;
- c. Breach of the Implied Covenant of Good Faith and Fair Dealing; and
- d. Quiet Title to the subject property located in St. George, Utah.

Id.

4. The Ekstrom Parties filed their Motion on August 21, 2023. Doc. No. 83. The Ekstrom Parties sought summary judgment on Edward's claim for rescission (first claim) and quiet title (third claim) and all of Payne's counterclaims and third-party claims. *Id.*

5. Payne filed his Memorandum in Opposition to the Motion ("**Opposition**") on September 19, 2023. Doc. No. 86.

6. The Ekstrom Parties filed their Reply Memorandum in Support of Motion for Partial Summary Judgment on October 6, 2023. Doc. No. 88.

FACTUAL SUMMARY

The Court concludes that there are no material facts in genuine dispute with respect to the Motion. The undisputed material facts relevant to the Motion are as follows:

The Debt Settlement Agreement

1. The Parties entered the Debt Settlement Agreement on March 31, 2021.
2. Pursuant to the Debt Settlement Agreement, the Parties agreed, in pertinent part, as follows:
 - a. The debt due is equal to \$266,789.32 (the "**Debt Amount**");

- b. Edward to quit claim the property located at 1106 W. Bloomington Drive, St. George, Utah (the "Property") to secure payment of the Debt Amount;
- c. Payne would not take any action on the Property for sixty days, or until May 31, 2021;
- d. In the event the debt amount of \$266,789.32 is not paid by May 31, 2021, Payne "may refinance or sell the Property at fair market value" and any amount received from the refinance or sale of the Property above the debt amount of \$266,789.32 would be paid to Edward;
- e. The Debt Settlement Agreement and quit claim deed would be confidential; and
- f. The Parties shall not at any time engage in any form of conduct, or make any statements or representations, whether in writing or orally, that disparage or otherwise impair the reputation, goodwill or commercial interests of the other Party, members of their family or any business interests owned by each Party.

3. The non-disparagement provision and sixty days to pay the Debt Amount were material terms that Edward ensured were contained in the Debt Settlement Agreement.

4. The Debt Settlement Agreement was executed by Edward and Payne on March 31, 2021.

Payne's Breach of the Settlement Agreement

5. Within hours of executing the Debt Settlement Agreement, Payne sent disparaging text messages to several people, including Edward's friends, family, and business associates. The text messages included insults, name calling, profanity, and settlement details.

6. The text messages include the following:

- a. On March 31, 2021, at 5:53 p.m. MST, Payne authored and sent a text message to Edward, Missy, and Edward's children and friends stating:

". . . [Edward] was using me in a scheme; he is a lying artist and lying to everyone. My dad, my mom, my siblings, everyone has been lied to by [Edward]. I believe what I am trying to do is make sure you're all made whole outside [Edward's] lies. . . . For the record, I have [Edward]

recorded by his voice, which I also captured geolocation and address of him feeling *sic* terrible things about me. He was trying to cover himself the entire time. . . . The St. George house has already put in my name. . . .”

- b. On March 31, 2021, at 6:49 p.m. MST, Payne authored and sent a text message to Patty Varney stating: “Patty . . . Ed f[***]ed me and lied to me. . . . He is a con artist and took all of us! . . . He fucked you, Patty; he fucked me too. . . .”; and
- c. On March 31, 2021, at 7:08 p.m. MST, Payne authored and sent a text message to Dustin and Crystal Pebbles stating: “Hey Dust, hi Crys! Copied herein is Ed and his wife, Missy. . . . I’ll give you the quick and skinny guys Ed stole from you. I knew about it. . . .”

7. Payne admitted that he authored and sent the text messages.

8. Payne’s action of sending the text messages was a material breach of the Debt Settlement Agreement that goes to the heart of the contract and deprives Edward of the entire benefit of the agreement.

9. Payne was the first party to breach the Debt Settlement Agreement.

CONCLUSIONS OF LAW

10. “What constitutes so serious a breach as to justify rescission is not easily reduced to precise statement.” *Cross v. Olsen*, 2013 UT App 135, ¶ 27, 303 P.3d 1030 (citation and internal quotation marks omitted). Utah courts have stated that a breach is material “not [when it] goes to the heart of the *provision* breached, but [when] it goes to the heart of the *contract* itself.” *Id.* (citation and internal quotation marks omitted) (emphasis added). *Id.*

11. To assist in determining whether a breach is material, courts examine the following factors:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will

be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Id.

12. Payne's breach of the Debt Settlement Agreement goes to the heart of the contract based on the *Cross* factors and is a material breach.

13. The record shows that nearly the entire benefit that Edward was bargaining for was the cessation of verbal and written hostilities from Payne.

14. The non-disparagement is an express condition of the Debt Settlement Agreement and the record shows that Edward ensured it was included in the agreement.

15. Pursuant to Utah's first breach rule, "a party first guilty of a substantial or material breach of contract cannot complain if the other party thereafter refuses to perform." *Backbone Worldwide Inc. v. LifeVantage Corporation*, 2019 UT App 80, ¶ 25, 443 P.3d 780. "The first breaching party can neither insist on performance by the other party nor maintain an action against the other party for a subsequent failure to perform." *Id.*

16. Based upon the first breach rule, Payne cannot maintain claims for breach of contract or breach of good faith and fair dealing.

17. Additionally, Payne's claim of fraudulent inducement does not meet the raised standard of pleading a fraud claim and it is speculative without adequate basis and evidence.

ORDER AND JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of law, the Court hereby
ORDERS, ADJUDGES, AND DECREES as follows:

Entered by the Court as indicated by the Court's seal at the top of the first page.

APPROVED AS TO FORM:

DATED this 30th day of January, 2024.

/s/ James L. Spendlove
Signed electronically by Jeffrey C. Bramble
with permission of James L. Spendlove
GURR BRANDE & SPENDLOVE, PLLC
Attorney for Carson Payne