



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

OCTOBER TERM, 2026

Joshua Merson and Victoria Taravella v.	}	APPEALED FROM:
The Lemelson Group, LLC*	}	
	}	Superior Court, Lamoille Unit, Civil Division
	}	CASE NO. 25-CV-04332
		Trial Judge: Benjamin Battles

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a summary-judgment decision in plaintiffs' favor in this contract dispute. We affirm.

Plaintiffs sued defendant in October 2025, seeking the return of a property-rental deposit. Defendant filed counterclaims. The parties filed cross-motions for summary judgment, and the court granted summary judgment to plaintiffs.

The court cited the following undisputed facts. Defendant owns the real property at issue; Emmanuel Lemelson is defendant's manager. Plaintiffs sought to rent defendant's property in connection with a September 2025 wedding. On February 5, 2025, Lemelson emailed a proposed contract to plaintiffs' wedding planner entitled "Vacation Rental Contract." The contract included a provision that, in the event of a cancellation within 365 days or less of check-in, "[r]enters will forfeit the total rental." There was no evidence that plaintiffs ever signed this contract.

On February 15, 2025, Lemelson emailed plaintiffs and their wedding planner another contract also entitled "Vacation Rental Contract." This contract stated that plaintiffs would "forfeit the total rental" only in the event of cancellation within ninety days or less of check-in and, in the event of a cancellation prior to this period, plaintiffs would receive a refund of the amounts paid less certain fees. The parties exchanged several redlined drafts of the second contract. On February 19, Lemelson sent plaintiffs and their wedding planner an email entitled "finalized contract," and attached a PDF version of the contract. The contract included the ninety-day cancellation provision and also specified that the contract could be modified only by a writing signed by the parties in interest.

On February 24, 2025, plaintiffs replied to Lemelson’s “finalized contract” email, stating: “Please see attached signature pages for the finalized contract,” and they included signed copies of the signature pages for the contract that Lemelson sent to plaintiffs on February 19. Plaintiffs thereafter paid defendant a deposit of \$53,584.35. Lemelson sent plaintiffs an email the next day confirming receipt and expressing excitement about hosting the wedding.

In April 2025, plaintiffs emailed Lemelson that their plans had changed and they would no longer be renting defendant’s property. Plaintiffs requested a refund under the ninety-day cancellation clause. Lemelson responded by email, attaching the unsigned February 5 contract, and asserting that plaintiffs were not entitled to a refund due to the 365-day cancellation clause in that contract. Lemelson suggested that plaintiffs instead reschedule the rental. The parties discussed moving the wedding to July 2025. Plaintiffs’ wedding planner informed Lemelson that plaintiffs agreed to move forward with the July event and asked Lemelson to “prepare an adjusted timeline on the contract and send [it] to us.” On April 26, the wedding planner told Lemelson that “it’s important we discuss finalizing the contract for [plaintiffs’] venue,” following which the planner and Lemelson discussed the possibility that plaintiffs might add an additional day to the rental. After some additional back-and-forth, Lemelson sent a revised contract addendum by email on April 28, which included additional charges and additional contract terms. Plaintiffs responded several days later with a detailed series of proposed revisions. This included the addition of a signature line for Lemelson, which plaintiffs considered necessary to modify the terms of the original contract.

On May 6, the wedding planner summarized a discussion she had with Lemelson wherein he proposed adding additional conditions and charges in response to inquiries from plaintiffs. On May 13, plaintiffs informed Lemelson that they decided not to have their wedding on defendant’s property and that they would not be pursuing a contract for an earlier rental date. Plaintiffs asked defendant to refund their deposit, less processing fees, under the ninety-day cancellation clause in the parties’ February 19, 2025 agreement. Defendant refused to do so.

Based on these undisputed facts, the court concluded as a matter of law that defendant breached the parties’ agreement by refusing to return plaintiffs’ deposit. The court rejected defendant’s arguments that the original contract was governed by a 365-day cancellation clause, or that the parties’ email exchanges in the spring of 2025 established a new contract pursuant to which plaintiffs agreed to rent the property for a July wedding. As the court explained, the summary-judgment record established that the parties entered into a single contract—the “finalized contract” that Lemelson sent to plaintiffs on February 19, which one plaintiff signed on February 24. This contract contained a ninety-day cancellation clause and prohibited modification of the agreement except in a writing signed by all parties. Defendant put forward no evidence that created a disputed material fact on this point. There was no evidence to support defendant’s assertion that when plaintiffs responded on February 24 to defendant’s February 19 “finalized contract” email and attached signature pages, plaintiffs were somehow agreeing to defendant’s proposed February 5 draft, a draft that did not include any of plaintiffs’ subsequent revisions and which included a 365-cancellation clause.

The court further found it undisputed that the parties never modified the February 2025 contract. The court recognized, as a general matter, that “parties can modify contractual agreements with one another through the course of performance or dealings.” Est. of Kuhling v. Glaze, 2018 VT 75, ¶ 38, 208 Vt. 273, overruled in part on other grounds by Jackson v. Jackson as Tr. for William Jackson Tr. of 1939, 2025 VT 29, ¶ 23, 221 Vt. 115. The parties here, however, executed a contract that expressly prohibited such modifications unless made “in

writing” and “signed by the parties in interest at the time of the modification.” This contract language was clear, unambiguous, and controlling. The parties’ agreement also contained language that unambiguously made ineffective any prior agreements and any subsequent agreements not reflected in a writing signed by all parties. The parties never signed a revised contract or addendum, either in ink or using their electronic signatures, and there was no basis to conclude that the parties’ exchange of emails between April 8 and May 13 satisfied the requirements for a contract modification under the terms of the February 19 contract.

The court thus concluded that defendant breached the parties’ contract by refusing to honor plaintiffs’ April 8 cancellation and refund request based on a 365-day cancellation period to which the parties never agreed. Notwithstanding this breach, the parties then spent several weeks attempting to plan a July wedding at the property. Plaintiffs and their wedding planner repeatedly reminded defendant of the need to execute a signed contract modification to confirm the revised schedule and any additional costs. When the parties could not agree on the terms of a modification, plaintiffs reaffirmed their cancellation of the contract 123 days in advance of the contracted-for date of September 13, 2025. Defendant then breached the contract again by refusing to refund plaintiffs’ deposit. The court concluded that plaintiffs were entitled to summary judgment on their breach-of-contract claim and entered judgment in their favor for the requested amount. The court rejected defendant’s counterclaims as a matter of law. This appeal followed.

We review a grant of summary judgment de novo, applying the same standard as the trial court. The moving party must show that “there is no genuine issue as to any material fact, and that [they are] entitled to judgment as a matter of law.” Gordon v. Bd. of Civ. Auth. for Morristown, 2006 VT 94, ¶ 4, 180 Vt. 299.

Defendant first contends that “[t]he parties, through accord and satisfaction, reached a new agreement to continue the contract relieving [d]efendant from any alleged duty to return the deposit.” Defendant fails to show that it raised this argument below and we therefore do not address it. V.R.A.P. 28(a)(4) (providing that appellant must explain what issues are, how they were preserved, and what appellant’s contentions are on appeal, with citations to authorities, statutes, and parts of record relied upon); see Lane v. Town of Grafton, 166 Vt. 148, 153 (1997) (“Failure to raise a reason why summary judgment should not be granted at the trial level precludes raising it on appeal.”); In re S.B.L., 150 Vt. 294, 297 (1988) (recognizing that appellant must show how trial court erred warranting reversal, and this Court will not comb record searching for error).

Defendant next argues that there are “two distinct contracts” here and a question of fact exists as to “which document reflects the actual meeting of the minds.” Defendant asserts that because the invoice pursuant to which plaintiffs made their deposit payment used the word “wedding,” this means they “affirmed their assent to the original wedding contract terms.” Defendant does not provide any citation to the record as to this invoice.

As set forth above, the summary judgment record does not support defendant’s assertion that two contracts existed. There was only one executed contract and it contained a ninety-day cancellation clause. Putting aside defendant’s failure to cite to the record, the use of the word “wedding” on an invoice in no way creates a dispute of fact as to whether plaintiffs somehow agreed to the terms of a contract that they did not sign.

Defendant’s assertion about a “modified contract” is equally unpersuasive. Defendant maintains that the parties, through their conduct, waived the requirement that all modifications

be in writing and signed by the parties. Defendant appears to suggest that it entered into a new contract with plaintiffs for a July rental. Defendant also argues that the doctrine of equitable estoppel should apply to prevent plaintiffs from “disavowing the modification or claiming a breach.” Defendant cites the Vermont Uniform Electronic Transactions Act, 9 V.S.A. § 276, and suggests that there is an “electronic record” of a modified contract that was electronically signed.

The undisputed facts do not support these assertions. As set forth above, the record plainly shows that the parties discussed moving the reservation to a new date, but they never finalized any such agreement or signed any written modification to the existing contract. Defendant offers no persuasive argument to the contrary. The undisputed facts establish that defendant breached its contract with plaintiffs and plaintiffs were entitled to summary judgment in their favor.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Michael P. Drescher, Associate Justice