

TULSA, INC.

v.

JT'S MARKET, INC., et al.

Argued December 5, 2019  
Decided December 12, 2019

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

#### MEMORANDUM OF DECISION

Tulsa, Inc., appeals from a summary judgment entered by the Superior Court (Aroostook County, *Stokes, J.*) in favor of JT's Market, Inc., and John Thyng, on a two-count complaint for breach of contract and guaranty concerning the sale of fuel.

The parties stipulated to judgment in favor of Tulsa and against JT's Market, Inc., on Count I of the complaint, which alleged breach of contract. Tulsa contends that the court erred in concluding that the subsequent summary judgment order as to Count II of the complaint disposed of all of Tulsa's remaining claims against either JT's Market, Inc., or Thyng. We review challenges to a trial court's later construction of its own judgment de novo. *Hughes v. Morin*, 2000 ME 135, ¶ 10, 755 A.2d 513.

Contrary to Tulsa's contentions, the court did not err in determining as a matter of law that the stipulated judgment fully disposed of Tulsa's claims under Count I of its complaint. The record contains no evidence to suggest that either the parties or the court ever believed Count I to contemplate an

individual breach of contract claim against John Thyng. Further, Tulsa failed to preserve the issue by raising it for the first time on appeal. Alexander, *Maine Appellate Practice*, §402(a) at 310 (5th ed. 2018); see *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 18, 771 A.2d 1040; see also *Morey v. Stratton*, 2000 ME 147, ¶¶ 8-9, 756 A.2d 496.

The entry is:

Judgment affirmed.

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William J. Smith, Esq. (orally), Smith Law Office, LLC, Van Buren, for appellant Tulsa, Inc.

Luke M. Rossignol, Esq. (orally), Bemis & Rossignol, LLC, Presque Isle, for appellee JT's Market, Inc., and John Thyng

Aroostook County Superior Court docket number CV-2018-31  
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