

BRUCE HEWISON

v.

PROGRESSIVE CASUALTY INSURANCE COMPANY et al.

Submitted on Briefs November 25, 2003
Decided December 5, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, CALKINS, and
LEVY, JJ.

MEMORANDUM OF DECISION

Progressive Casualty Insurance Company appeals from a summary judgment entered in the Superior Court (Androscoggin County, *Delahanty, J.*) on Bruce Hewison's breach of contract complaint. Contrary to Progressive's contentions, there was no genuine issue of material fact relating to mutual assent, *see Pepperell Trust Co. v. Mountain Heir Fin. Corp.*, 1998 ME 46, ¶¶ 7, 11, 708 A.2d 651, 654-55; Progressive failed to prove the existence of a genuine issue of material fact relating to its affirmative defenses of mutual mistake, estoppel, and unclean hands, *see Bay View Bank, N.A. v. Highland Golf Mortgagees Realty Trust*, 2002 ME 178, ¶ 11, 814 A.2d 449, 452; and the Superior Court acted within the bounds of its

discretion when it ordered Progressive to produce the documents necessary to facilitate the settlement agreement, *see Withee v. Garnett*, 1998 ME 30, ¶ 4, 705 A.2d 1119, 1120.¹

The entry is:

Judgment affirmed.

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¹ Although the Superior Court granted Hewison's motion for summary judgment prior to Progressive's response deadline, its action did not affect Progressive's substantial rights or the outcome of the case because the court had before it, and considered, Progressive's responsive statement of facts. *See In re Scott S.*, 2001 ME 114, ¶ 25, 775 A.2d 1144, 1152.