

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1133**

David Schindele,
Appellant,

vs.

Build 218 LLC, et al.,
Respondents.

**Filed March 10, 2025
Affirmed in part, reversed in part, and remanded
Ede, Judge**

Beltrami County District Court
File No. 04-CV-23-2170

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Considered and decided by Ede, Presiding Judge; Harris, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal arising from a dispute over two home-improvement contracts, appellant homeowner challenges the district court's order granting summary judgment and dismissing his complaint against respondents, a limited liability company (LLC) contractor and its individual members. We conclude that appellant has forfeited any appellate argument to reverse summary judgment on a theory of personal liability as to his claims

against respondent individuals. And we conclude that the district court did not err in granting summary judgment for respondents on appellant's claims for breach of warranty, negligent misrepresentation, and conversion/theft because appellant failed to present evidence sufficient to create genuine issues of material fact as to those counts. But we also conclude that, because there are genuine issues of material fact about appellant's claims against respondent LLC for breach of contract, fraudulent misrepresentation, fraudulent inducement to contract, and deceit, the district court erred by granting summary judgment for respondent LLC on those counts. We therefore affirm in part, reverse in part, and remand for further proceedings not inconsistent with this opinion.

FACTS

Appellant David Schindele sued respondent Build 218 LLC and its individual members, respondents Shaun Williams and Nichole Williams, based on a disagreement about two home-improvement contracts.¹ Schindele's complaint asserts the following claims: (count one) breach of contract by Build 218; (count two) breach of contract by Shaun; (count three) breach of statutory warranties by Build 218 and Shaun; (count four) fraudulent misrepresentation by Build 218 and Shaun; (count five) negligent misrepresentation by Build 218 and Shaun; (count six) fraudulent inducement to contract by Build 218 and Shaun; (count seven) conversion/theft by all respondents; and (count eight) deceit by Build 218 and Shaun.

¹ Because Shaun Williams and Nichole Williams share the same surname, we refer to each of them by their first names in the interest of clarity.

The facts below stem from the summary-judgment record before the district court and are presented in the light most favorable to Schindele.²

The Rental Property

In March 2022, Schindele hired Build 218 to “construct various improvements” and to “perform residential remodeling” at a house that Schindele owned in Bemidji (the rental property). The scope of work was identified in an unsigned estimate³ provided by Build 218, which included: painting all rooms in the house; hauling personal property; installing laminate flooring and carpet; installing doors and trim; installing a kitchen sink as well as kitchen cabinetry, countertops, and appliances; installing a tub and vanity; removing and installing new siding; installing drywall; installing windows; and performing plumbing and electrical work. The total estimated cost of that work was \$130,915. The parties orally agreed that Build 218 would complete the work at the rental property by June 2022 “so [that] the rental property could be placed on the market [for sale] to take advantage of favorable market conditions.”

From March to June 2022, Schindele issued four payments to Build 218 totaling \$110,000. In July 2022, Shaun informed Schindele that the work at the rental property was complete and requested final payment. Before he inspected the rental property, Schindele

² See *Com. Bank v. W. Bend Mut. Ins.*, 870 N.W.2d 770, 773 (Minn. 2015) (indicating that, on appeal from summary judgment, an appellate court “view[s] the evidence in the light most favorable to the party against whom summary judgment was granted”).

³ The estimate was attached as an exhibit to Schindele’s complaint. At the bottom of the third page of the estimate, there are blank spaces next to the printed words, “Accepted By” and “Accepted Date.”

made a final payment of \$41,665 to Build 218. Upon inspecting the rental property, Schindele “discovered that the scope of work was not completed” and that work Shaun had “represented was complete[] was not performed in a workmanlike manner and in accordance with applicable building[] codes and standards.”

Schindele notified respondents “of the deficiencies regarding workmanship and building standards at the rental property and offered them an opportunity to cure said work.” In August 2022, Shaun and Nichole conducted a walk-through of the rental property. During that inspection, Shaun and Nichole “acknowledged the incomplete and deficient work.” But despite Schindele’s repeated demands, respondents made no repairs, performed no corrective work, and arranged no inspections of the rental property.

The Lake Cabin

In May 2022, Schindele and Shaun discussed renovating a separate property, Schindele’s lake cabin, which was located in Laporte. Schindele and Shaun orally agreed that the renovation would include: all new siding and windows; a new addition for a bathroom; reframing a three-season room; and electrical work. Shaun agreed to complete the renovation by July 4, 2022. Although “[t]he parties agreed that [Schindele] would pay ‘no more than \$30,000’ for the scope of work” at the lake cabin, they never memorialized the contract in writing. Schindele paid \$20,000 to Build 218 to start renovating the lake cabin, and Build 218 began the work in June 2022.

But Build 218 neither completed the renovation of the lake cabin by July 4 nor “completed the verbal scope of work.” Instead, Build 218 stopped working on the lake cabin in November 2022. Schindele alleged that Build 218’s work was “faulty and not in

accordance with building standards and/or was incomplete.” He notified Build 218 “of the deficiencies in their workmanship and building standards.” Respondents, however, “failed to inspect their incomplete work, [to] offer any repair, [to] perform any corrective work, or [to] arrange for inspections to be performed.”

The Lawsuit and Summary Judgment

Schindele filed this lawsuit in August 2023. Among other things, Schindele asserts that Build 218 and Shaun fraudulently induced him to contract by making several misrepresentations, which included the completion dates for the improvements to both properties and the agreed-upon scopes of work. Along with other relief requested in the complaint, Schindele seeks an award of “damages in an amount to be proven at trial, together with interest at the lawful rate.” Respondents answered Schindele’s complaint, denying most of the allegations and claiming that Build 218 completed the work at the rental property and that, “at all material times,” Shaun and Nichole acted “only in their capacity as representatives of Build 218.”

After the close of discovery, respondents moved for summary judgment, arguing that Schindele had failed to present sufficient evidence to support the causes of action set forth in the complaint. Respondents also contended that Schindele had “not proffered any evidence to justify” piercing the corporate veil to pursue his claims against Shaun and Nichole in their individual capacities. In support of their summary-judgment motion, respondents attached exhibits, including a transcript of Schindele’s deposition testimony. Below, we discuss relevant portions of that testimony throughout the analysis.

In his memorandum in opposition to respondents' motion for summary judgment, Schindele reiterated the facts alleged in the complaint, maintaining that his testimony supports the alleged facts and establishes that genuine issues of material fact exist. In that testimony, Schindele claimed that respondents told him that he could sell the rental property for \$350,000 after Build 218's improvements were complete. Schindele also argued that the district court did not need to pierce the corporate veil for Shaun and Nichole to be held personally liable because "[i]t is the universal rule that an officer of a corporation who takes part in the commission of a tort by the corporation is personally liable thereof." *Ellingson v. World Amusement Serv. Ass'n*, 222 N.W. 335, 339 (Minn. 1928). And in support of his position that genuine factual disputes preclude summary judgment, Schindele submitted photographs of the rental property and the lake cabin, copies of text messages that Schindele and Shaun had exchanged, and an August 2023 estimate by a different contractor.

Following a December 2023 motion hearing, the district court granted respondents' summary-judgment motion and dismissed the complaint with prejudice.⁴ The district court did not file an accompanying memorandum with its order. This appeal follows.

⁴ No transcript of the December 2023 hearing appears in the appellate record. We note that, "[o]n appeal, the duty to provide a transcript is on the party seeking review of the rulings being challenged." *In re Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003) (declining to dismiss an appeal "[b]ecause we can review aspects of the issues raised by appellant even without a transcript").

DECISION

Schindele challenges the summary-judgment dismissal of his complaint, contending that there are genuine issues of material fact as to each of his claims. Respondents counter that the district court did not err in granting summary judgment in their favor on each cause of action because there are no genuine issues of material fact and because Schindele has forfeited any appellate argument for reversal on a theory of personal liability as to Shaun and Nichole.

“The [district] court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. The party claiming that there is no genuine issue as to any material fact must: (1) support that assertion by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials”; or (2) show “that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.” Minn. R. Civ. P. 56.03(a).

“On appeal from summary judgment, [appellate courts] determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *Village Lofts at St. Anthony Falls Ass’n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020) (quotations omitted). Appellate courts review the grant of summary judgment de novo and in the light most favorable to the nonmoving party. *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021). “[A]ll doubts and

factual inferences” are resolved against the moving party. *Id.* Appellate courts “need not adopt the reasoning of the district court” and “may affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

We first address respondents’ contention that Schindele has forfeited any appellate argument to reverse summary judgment on a theory of personal liability as to Shaun and Nichole. Then, we turn to each of Schindele’s challenges to the district court’s summary-judgment order.

I. Schindele has forfeited any appellate argument to reverse summary judgment on a theory of personal liability as to his claims against Shaun and Nichole (counts two through eight).

In their summary-judgment motion, respondents argued that Schindele had “not proffered any evidence to justify” piercing the corporate veil to support his claims against Shaun and Nichole in their individual capacities—i.e., breach-of-contract by Shaun (count two), breach of statutory warranties by Shaun (count three), fraudulent misrepresentation by Shaun (count four), negligent misrepresentation by Shaun (count five), fraudulent inducement to contract by Shaun (count six), conversion/theft by Shaun and Nichole (count seven), and deceit by Shaun (count eight). And on appeal, respondents argue that Schindele has forfeited these claims. This argument has merit.

Build 218’s organization as an LLC generally shields its members—Shaun and Nichole—from liability. More specifically, the Minnesota Revised Uniform Limited Liability Company Act provides as follows:

The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member, manager, or governor solely by reason of the member acting as a member, manager acting as a manager, or governor acting as a governor.

Minn. Stat. § 322C.0304, subd. 1 (2024). Even “[t]he failure of a limited liability company to observe formalities relating exclusively to the management of its internal affairs is not a ground for imposing liability on the members, managers, or governors for the debts, obligations, or other liabilities of the company.” *Id.*, subd. 2 (2024). But “[a] court may pierce the corporate veil to hold a party liable for the acts of a corporate entity if the entity is used for a fraudulent purpose or the party is the alter ego of the entity.” *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009); *see also Victoria Elevator Co. of Minneapolis v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979). Aside from occasions in which “the failure of a limited liability company to observe any formalities relat[es] exclusively to the management of its internal affairs, the case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.” Minn. Stat. § 322C.0304, subd. 3 (2024).

In his memorandum in opposition to respondents’ motion for summary judgment, Schindele quoted *Ellingson* and argued it was unnecessary for the district court to pierce the corporate veil because “[i]t is the universal rule that an officer of a corporation who takes part in the commission of a tort by the corporation is personally liable thereof.” 222

N.W. at 339. But despite respondents’ continuous assertion of the issue before the district court and on appeal, Schindele does not make any appellate argument on whether his claims against Shaun and Nichole rely on a piercing-the-corporate-veil theory or are otherwise viable per *Ellingson*. And “[a] party’s failure to brief and argue an issue on appeal results in forfeiture of that issue.” *Jundt v. Jundt*, 12 N.W.3d 201, 204 (Minn. App. 2024), *rev. denied* (Minn. Dec. 31, 2024). Thus, we consider forfeited any appellate argument by Schindele to reverse summary judgment on a piercing-the-corporate-veil or other theory of liability as to all of Schindele’s claims against Shaun and Nichole in counts two through eight.

II. The district court erred by granting summary judgment for Build 218 on Schindele’s breach-of-contract claim (count one).

Schindele argues that he is entitled to a trial on the merits of his breach-of-contract claim against Build 218 (count one). He maintains that there are factual disputes “related to substantial performance and whether . . . Build 218 materially breached the [rental-property and lake-cabin] contract[s]” by failing to complete the scope of work for each by the agreed-upon completion dates. Respondents contend that Schindele cannot prove that the work on the rental property was not completed in a timely manner because the estimate did not include a completion date and because Schindele has not provided sufficient evidence “that any alleged defects or incomplete work exists.” In addition, respondents assert that Schindele “has provided no evidence to support his contentions that Build 218 agreed to complete the work [on the lake cabin] by July 2022.” And even if Schindele had shown a lack of substantial performance as to either or both properties, respondents

maintain that Schindele has not sufficiently proven damages. We conclude that the district court erred by granting summary judgment for Build 218 on Schindele's breach-of-contract claim (count one).

"In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). "A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014).

"A contract is formed when two or more parties exchange bargained-for promises, manifest mutual assent to the exchange, and support their promises with consideration." *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 628 (Minn. 2022) (quotation omitted). "Minnesota follows the objective theory of contract formation, under which the parties' outward manifestations are determinative, rather than either party's subjective intent." *Riley Bros. Constr., Inc. v. Shuck*, 704 N.W.2d 197, 202 (Minn. App. 2005). "The existence and terms of a contract are questions for the factfinder." *Vermillion*, 969 N.W.2d at 628. "But if taking the record as a whole, a rational trier of fact could not find for the nonmoving party, summary judgment is appropriate." *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 232 (Minn. App. 2006).

We next review whether there is a genuine issue of material fact as to (A) the completion dates of the contracts, (B) substantial performance by Build 218, and (C) damages.

A. Completion Dates

In their interrogatory responses, respondents claim that Schindele had “acknowledged that Build 218 . . . could not guarantee a completion date for either project.” Viewing the evidence in the light most favorable to Schindele, however, we conclude that there is a genuine issue of material fact about the terms of the contracts, specifically as to completion dates.

Schindele testified that Shaun “verbally” agreed to complete the improvements to the rental property by June 2022 and that the rental property would be “on the market in June.” As expanded on below, respondents maintain that they completed the scope of work for the rental-property contract in July 2022. They further argue that the estimate—which was unsigned—was “the contract controlling the work performed on the rental property” and “did not contain a completion date.” From this premise, respondents contend that Schindele’s testimony “regarding alleged oral communications with Build 218—in which the parties discussed that the work on the rental property would be completed by June 2022—would not be admissible at trial because the parol evidence [rule] bars such statements.”

“The parol evidence rule ‘prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated

writing.”” *Maday v. Grathwohl*, 805 N.W.2d 285, 287 (Minn. App. 2011) (quoting *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003)). Respondents assert that any oral statements they may have made about a completion date for the work at the rental property would be inadmissible at trial because no such date was included in the written estimate. Quoting the Minnesota Supreme Court’s decision in *Liljengren Furniture & Lumber Co. v. Mead*, respondents instead claim that “the time of performance for Build 218’s work on the Rental Property was a ‘reasonable time.’” 44 N.W. 306, 308 (1890) (holding that, “[w]here a contract is silent as to the time of performance, the law implies that it was to be performed within a reasonable time” and that, “if the contract be in writing, parol evidence of an antecedent or contemporaneous oral agreement is inadmissible to vary the construction to be thus legally implied from the writing itself”). And respondents argue that “a four-month time frame to complete such work [between March and July 2022] was [a] ‘reasonable time.’”

““When parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement. But parol evidence is admissible when the written agreement is incomplete or ambiguous to explain the meaning of its terms.”” *Maday*, 805 N.W.2d at 287 (quoting *Flynn v. Sawyer*, 272 N.W.2d 904, 907–08 (Minn. 1978)). “Whether an agreement is completely integrated and therefore not subject to variance by parol evidence is an issue of law.” *Id.* (quotation omitted). “If it appears from the circumstances surrounding the case that the parties did not intend the agreement to be a complete integration, then parol evidence can be used to prove the existence of a separate consistent oral agreement.” *Alpha Real Est. Co.*, 664 N.W.2d at

312. Although the Minnesota Supreme Court has explained that “[a] determination of whether [a] written document is a complete and accurate integration of the terms of [a] contract is not made solely by an inspection of the writing itself” because “the writing must be read in light of the situation of the parties, the subject matter and purposes of the transaction, and like attendant circumstances[,]” the supreme court has also held that an examination of the written terms is “important” and has concluded that, in some cases, appellate courts “need not look beyond the writing . . . itself to determine whether it is a complete integration.” *Id.* at 312–13 (quotation omitted). Considering the record in the light most favorable to Schindele, we conclude from the circumstances surrounding this case—including the rental-property estimate itself, which is both unsigned and lacks a completion date—that the parties did not intend the estimate to be a complete integration. *See id.* As a result, the parol evidence rule does not bar Schindele’s testimony about the parties’ agreement for renovations to be finished by June 2022. *See Maday*, 805 N.W.2d at 287. A genuine issue of material fact therefore precludes summary judgment for Build 218 on this issue. *See Vermillion*, 969 N.W.2d at 628.⁵

Schindele also testified that the parties agreed that the improvements to the lake cabin would be finished by July 2022. Respondents contend that Schindele “has provided no evidence to support his contentions that Build 218 agreed to complete the work by July

⁵ Even if Schindele’s testimony about the completion date for work on the rental property were inadmissible parol evidence, we would still conclude that there is a genuine issue of material fact about the terms of that contract. This is because, “[a]s a general rule, what constitutes a reasonable time for the performance of contract obligations is a question of fact or mixed law and fact for determination by a jury.” *Bly v. Bublit*, 464 N.W.2d 531, 535 (Minn. App. 1990).

2022.” The record defeats this contention. While no writing contains any term in that contract—including an agreed-upon completion date—Schindele opposed respondents’ summary-judgment motion by, among other things, submitting as an exhibit text messages that he had exchanged with Shaun. In a text message that he sent to Shaun on August 25, 2022, Schindele stated:

At the cabin see you accomplished a lot this week!!!!!! We will be at the lake cabin for labor day weekend and I want a finished bathroom to use and I want to start doing the things I need to do. What 4th of July did you mean???

Together with the aforementioned testimony, this exhibit, viewed in the light most favorable to Schindele, supports Schindele’s claim that the parties had contracted for work at the lake cabin to be completed by July 4, 2022.

Thus, we conclude that genuine issues of material fact exist as to the completion dates for the rental-property and lake-cabin contracts.

B. Substantial Performance by Build 218

We also conclude that there are genuine issues of material fact related to substantial performance of the contracts.

In this context,

[s]ubstantial performance means performance of all the essentials necessary to the full accomplishment of the purposes for which the thing contracted for has been constructed, except for some slight and unintentional defects which can be readily remedied or for which an allowance covering the cost of remedying the same can be made from the contract price.

Voight v. Jones, 404 N.W.2d 830, 834 (Minn. App. 1987) (quoting *Ylijarvi v. Brockphaler*, 7 N.W.2d 314, 318 (Minn. 1942)). But “[d]eviations or lack of performance, which are

either intentional or so material that the owner does not get substantially that for which he bargained, are not permissible.” *Id.*

Schindele maintains that Build 218 failed to substantially perform both the rental-property and lake-cabin contracts.

According to the estimate for work on the rental property, the scope of the improvements included: painting all rooms in the house; hauling personal property; installing laminate flooring and carpet; installing doors and trim; installing a kitchen sink as well as kitchen cabinetry, countertops, and appliances; installing a tub and vanity; removing and installing new siding; installing drywall; installing windows; and performing plumbing and electrical work. In their interrogatory responses, respondents asserted that Schindele “admitted satisfaction” with the work completed at the rental property. But Schindele testified that he was dissatisfied with respondent’s “poor paint jobs” and that he believed “all [Shaun] did was prime it.” And Schindele stated that there were “cracks in the walls” and “unfinished closets.”

As for the lake cabin, Schindele alleges in the complaint that he and Shaun orally agreed that the improvements would include all new siding and windows, a new addition for a bathroom, reframing a three-season room, and electrical work. Schindele testified that “the scope of work to be completed at the lake cabin” was based on “all verbal discussion.” And, in opposing summary judgment, Schindele submitted as an exhibit an August 2023 estimate by a separate contractor who made improvements to the lake cabin after respondents stopped working on the property. Schindele testified that the separate contractor provided him with the estimate after “looking at everything that was incomplete

and not finished” by Build 218. Respondents contend that they performed work at the lake cabin from June 2022 through November 2022 and that “Build 218 did not finish its work at the lake cabin because [Schindele] did not allow Build 218 to complete any further work.” *See Zobel & Dahl Constr. v. Crotty*, 356 N.W.2d 42, 45 (Minn. 1984) (“Generally, contract performance is excused when it is hindered or rendered impossible by the other party.”).

Based on the above, we conclude that genuine issues of material fact exist as to whether Build 218 substantially performed under both contracts or whether Build 218 was excused from doing so.

C. Damages

Lastly as to count one, we conclude that there are genuine issues of material fact about whether Schindele was damaged by Build 218’s alleged breach of contract.

“Under a general allegation of damages resulting from a breach of contract, a plaintiff may recover those damages that naturally and necessarily result from the alleged breach.” *Logan v. Norwest Bank Minn., N.A.*, 603 N.W.2d 659, 663 (Minn. App. 1999). “In contract, the damage award should place the plaintiff[] where they would have been if the contract were performed.” *Johnson v. Garages, Etc., Inc.*, 367 N.W.2d 85, 86 (Minn. App. 1985). “Whether a contractor has substantially performed and the amount of damages occasioned by omissions and defects are fact questions.” *Knutson v. Lasher*, 18 N.W.2d 688, 694 (Minn. 1945).

“[R]eliance damages or expectation damages are alternatives available to a party alleging breach of contract.” *Logan*, 603 N.W.2d at 663 (explaining that “[r]eliance

damages reimburse losses arising from a party's change in its position in reliance on a contract"). "The owner of real property is competent to testify concerning the value it would have had if constructed according to the contract and its value as actually constructed." *LaValle v. Aqualand Pool Co.*, 257 N.W.2d 324, 328 (Minn. 1977). But the owner's opinion about the value of his property "is of little probative value" where "[n]o foundation [is] laid to show that [the owner is] familiar with the market value of real estate" of a particular kind. *H.P. Droher & Sons v. Toushin*, 85 N.W.2d 273, 281 (Minn. 1957); *see also Johnson*, 367 N.W.2d at 87 (stating that "the lack of foundation . . . goes to the weight of the testimony").

Respondents maintain that, even if Schindele could "establish defects relative to the scope of work performed" at the rental property and the lake cabin, or that the work was not completed in a timely manner, Schindele's breach-of-contract claim would still fail because there is no evidence of his purported damages. We disagree.

Schindele testified that Build 218's breach of the rental-property contract damaged him because he would have made more money by selling the rental property as-is before Build 218 performed any work. Schindele explained that he hired Build 218 after filing "an insurance claim based on . . . property damage caused by prior tenants." His insurance company paid him \$60,000 for that claim. According to Schindele, he received an offer of \$140,000 for the rental property before contracting with Build 218, but he declined that offer. Schindele stated that, if he had "taken the insurance money" rather than hiring Build 218, he "would have come out with roughly . . . \$200,000." Moreover, Schindele said that he believed the market value of the rental property was depressed "due to Shaun's

shady work.” And Schindele testified that he had expected to sell the rental property for \$350,000, but because Build 218 failed to make the agreed-upon improvements by June 2022, he had to list the property at a lower price. Schindele eventually sold the rental property for \$225,000 in February 2023, with “no inspections, no nothing, just as is.”

As to the lake cabin, Schindele testified that, after “looking at everything that was incomplete and not finished” by respondents, a separate contractor gave him an estimate of \$42,663 to address the issues that the separate contractor identified. In opposing respondents’ motion for summary judgment, Schindele submitted that estimate as an exhibit. And in his response to respondents’ interrogatories, Schindele stated that, based on respondents’ failure to complete the agreed-upon scope of work at the lake cabin, he “has been unable to, among other things, enjoy use” of the cabin.

Taking the record as a whole, we conclude that a rational trier of fact could find for Schindele because there are genuine issues of material fact about the completion terms of the contracts, substantial performance by Build 218, and damages. We therefore conclude that the district court erred in granting summary judgment for Build 218 on Schindele’s breach-of-contract claim (count one). *See Cargill Inc.*, 719 N.W.2d at 232.

III. The district court did not err by granting summary judgment for Build 218 and Shaun on Schindele’s breach-of-warranty claim (count three).

Schindele contends that he “is entitled to a trial on the merits to determine whether Build 218 breached any statutory warranties” related to the work it performed at the lake

cabin.⁶ Respondents counter that, as a matter of law, Schindele cannot prevail on his breach-of-warranty claim against Build 218 and Shaun (count three) because he has identified no specific violation of building standards. Respondents' argument is persuasive.

Minnesota Statutes section 327A.02, subdivision 3(a)(1) (2024) requires that, "in a contract for the sale of home improvement work involving major structural changes or additions to a residential building," the contractor must warrant to the owner that "during the one-year period from and after the warranty date the home improvement shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards." "Building standards" are defined as "the materials and installation standards of the State Building Code, adopted by the commissioner of labor and industry pursuant to sections 326B.101 to 326B.194, in effect at the time of the construction or remodeling." Minn. Stat. § 327A.01, subd. 2 (2024).

We conclude that the district court did not err by granting summary judgment for respondents because Schindele has not produced admissible evidence supporting his breach-of-warranty claim against Build 218 and Shaun (count three). Schindele has not identified the applicable building standards for which he alleges noncompliance. Nor has Schindele produced evidence of the specific manner in which respondents have breached such building standards. Schindele did disclose several photos of the alleged defects in discovery. The photos, however, contain no annotations that address the above deficiencies

⁶ Although the complaint alleges a breach-of-warranty claim against respondents based on the improvements Build 218 made to the rental property, Schindele "is no longer pursuing a breach of warranty claim related to rental property following the transfer of his home ownership interest."

in Schindele’s case. And Schindele provided only the following response to questioning at his deposition about whether he “had any specific information about what building standards [he thought] . . . Build 218 did not comply with”: “No, other than what the pictures show.”

Viewing the evidence in the light most favorable to Schindele, we conclude that Schindele has not produced competent evidence that the work completed at the lake cabin was noncompliant with building standards. Because Build 218 and Shaun are “entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of [Schindele’s] claim,” the district court did not err in granting summary judgment for respondents on Schindele’s breach-of-warranty claim (count three).⁷ *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

IV. The district court erred by granting summary judgment for Build 218 on Schindele’s claims for fraudulent misrepresentation (count four), fraudulent inducement to contract (count six), and deceit (count eight).

Schindele argues that the district court erred in granting summary judgment for Build 218 on his claims for fraudulent misrepresentation (count four), fraudulent inducement to contract (count six), and deceit (count eight). In particular, Schindele asserts that there are genuine issues of material fact about whether respondents fraudulently induced and deceived him into contracting with Build 218 by (1) misrepresenting the completion dates for the work to be performed at both the rental property and the lake cabin

⁷ On top of the forfeiture analysis set forth in section I, our substantive conclusion that the district court did not err by granting summary judgment for Shaun on Schindele’s breach-of-warranty claim (count three) is an additional basis for affirmance of the district court’s summary-judgment order as to that claim against Shaun.

and (2) overstating the expected post-construction value of the rental property. Respondents dispute these contentions, maintaining that Schindele “cannot prove an essential element of any of the claims—that a misrepresentation was actually made.” We agree with Schindele.

“In Minnesota, an actionable misrepresentation requires proof either that the misrepresenter acted dishonestly or in bad faith, i.e. with fraudulent intent, or, alternatively, that the misrepresenter was negligent.” *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986). And under Minnesota law, Schindele’s claims for fraudulent misrepresentation, fraudulent inducement to contract, and deceit, all require that he prove: (1) that “there was a false representation by a party of a past or existing material fact susceptible of knowledge”; (2) that the false representation was “made with knowledge of the falsity of the representation or [was] made as of the party’s own knowledge without knowing whether it was true or false”; (3) that the representing party made the false representation “with the intention to induce another to act in reliance thereon”; (4) “that the representation caused the other party to act in reliance thereon”; and (5) “that the [other] party suffered pecuniary damage as a result of the reliance.” *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted); *see also Anderson v. G. Heileman Brewing Co.*, 116 N.W. 655, 655 (Minn. 1908) (describing the elements required for a plaintiff to maintain an action “for fraud and deceit”).

Viewing the evidence in the light most favorable to Schindele, we conclude that there are genuine issues of material fact about whether Build 218 made the alleged false representations about the completion dates for the two projects. In their discovery

responses, respondents claimed that Shaun, “in his capacity as a representative of Build 218,” told Schindele “that Build 218 . . . could not and would not guarantee any completion date” for the work at the rental property and the lake cabin. But Schindele’s testimony contradicts these assertions. And, as stated previously, the August 25, 2022 text message that Schindele sent to Shaun supports Schindele’s claim that Build 218 had represented to him that work at the lake cabin would be complete by July 4, 2022.

“A party need not show substantial evidence to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006). Because Schindele has presented sufficient evidence to permit a reasonable person to draw different conclusions about the completion dates for the two contracts, the district court erred in granting summary judgment on his claims against Build 218 for fraudulent misrepresentation (count four), fraudulent inducement to contract (count six), and deceit (count eight). *See id.*

V. The district court did not err by granting summary judgment for Build 218 and Shaun on Schindele’s negligent-misrepresentation claim (count five).

Schindele maintains that the district court erred by granting summary judgment for Build 218 and Shaun on his negligent-misrepresentation claim (count five) because genuine issues of material fact exist. This argument is unavailing.

A negligent-misrepresentation claim requires that a plaintiff show: (1) that the defendant owed a duty of care to the plaintiff; (2) that the defendant gave the plaintiff false

information; (3) that the plaintiff justifiably relied on the false information; and (4) that the defendant failed “to exercise reasonable care in communicating the [false] information.” *Williams v. Smith*, 820 N.W.2d 807, 815 (Minn. 2012). Minnesota courts “recognize[] and preserve[] the distinction between tort actions and contract actions.” *Lyon Fin. Servs., Inc.*, 848 N.W.2d at 544. “[A] party is not responsible for damages in tort if the duty breached was merely imposed by contract and not imposed by law.” *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 584 (Minn. 2012) (quotations omitted). “Tort actions and contract actions protect different interests.” *80 S. Eighth St. Ltd. P’ship v. Carey-Canada, Inc.*, 486 N.W.2d 393, 395 (Minn. 1992). “Because of the differences between tort and contract actions, when a contract provides the only source of duties between the parties, Minnesota law does not permit the breach of those duties to support a cause of action in negligence.” *Glorvigen*, 816 N.W.2d at 584 (quotation omitted).

We conclude that, viewing the evidence in the light most favorable to Schindele, there are no genuine issues of material fact about whether the two contracts provide the only source of duties between the parties—the undisputed evidence before the district court at summary judgment reflects as much. In such a case as this, Minnesota law does not permit an alleged breach of contractual duties to support a cause of action for negligent misrepresentation. *See id.* Thus, the district court did not err in granting summary judgment for Build 218 and Shaun on Schindele’s negligent-misrepresentation claim (count five).

To the extent that Schindele asserts that his negligent-misrepresentation claim is sufficiently supported by his testimony that respondents told him he could sell the rental property for \$350,000 after Build 218 completed the agreed-upon improvements, we are

unconvinced. “If the record reflects a complete failure of proof on [an] issue, [the moving party] is entitled to summary judgment as a matter of law because that failure renders all other facts immaterial.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (quotation omitted). Viewing the evidence before us in the light most favorable to Schindele, we conclude that the record reveals his complete failure of proof on whether the alleged misrepresentation of the rental property’s expected post-construction value was false information on which Schindele justifiably relied. *See Williams*, 820 N.W.2d at 815. And the record is likewise silent on whether Build 218 and Shaun failed to exercise reasonable care in communicating the purportedly false information to Schindele. *See id.* These failures of proof on at least three of the four elements of negligent misrepresentation “render[] all other facts immaterial” and further compel our conclusion that the district court did not err in determining that Build 218 and Shaun are entitled to summary judgment on count five.⁸ *See Nicollet Restoration*, 533 N.W.2d at 848 (“Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial.”).

VI. The district court did not err by granting summary judgment for respondents on Schindele’s conversion/theft claim (count seven).

Schindele argues that genuine issues of material fact exist as to whether respondents converted materials that he prepaid to be installed in the lake cabin. Respondents contend that Schindele cannot establish a *prima facie* cause of action for conversion/theft because

⁸ Again, this conclusion is another basis for affirmance of the district court’s summary-judgment order as to Schindele’s negligent-misrepresentation claim against Shaun (count five), in addition to our forfeiture analysis in section I.

he cannot detail what materials, if any, were taken from the lake cabin and because Schindele cannot prove that respondents deprived him of any property interest. On this issue, respondents have the better argument.

“Conversion is the wrongful exercise of dominion or control over the property of another.” *Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. App. 2000) (citations omitted), *rev. denied* (Minn. Mar. 14, 2000). “The elements of common law conversion are: (1) plaintiff holds a property interest; and (2) defendant deprives plaintiff of that interest.” *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 125 (Minn. App. 2017) (quotation omitted), *aff’d*, 913 N.W.2d 687 (Minn. 2018).

Viewing the evidence in the light most favorable to Schindele, there are no genuine issues of material fact—Schindele offered only speculation that respondents converted prepaid materials, without producing any concrete evidence. Indeed, Schindele merely testified that he *believed* that respondents converted certain prepaid materials. But “[m]ere speculation, without some concrete evidence, is not enough to avoid summary judgment. Sometimes, of course, this evidence will be supplied by deposition testimony. But it must have some foundation other than mere conjecture.” *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993). And during his deposition, Schindele could not identify what materials were taken from the lake cabin:

COUNSEL FOR RESPONDENTS: So specifically I want to know about the materials you’re claiming you paid for that were taken from the job site?

SCHINDELE: I don’t have a list of them, ma’am. I seen it there and [Shaun] told me it was there, and that’s all I have to go by.

COUNSEL FOR RESPONDENTS: But you don't know what specific materials it is or was?
SCHINDELE: Correct.

There is no other evidence in the record supporting Schindele's claims that respondents deprived him of an interest in property. Based on the record before us, we conclude that the district court's summary-judgment dismissal of Schindele's conversion/theft claim against respondents (count seven) was not erroneous.⁹

In sum, we affirm the district court's summary-judgment dismissal of the following claims: (count two) breach of contract by Shaun; (count three) breach of statutory warranties by Build 218 and Shaun; (count four) fraudulent misrepresentation by Shaun; (count five) negligent misrepresentation by Build 218 and Shaun; (count six) fraudulent inducement to contract by Shaun; (count seven) conversion/theft by all respondents; and (count eight) deceit by Shaun. But we reverse the district court's grant of summary judgment on: (count one) breach of contract by Build 218; (count four) fraudulent misrepresentation by Build 218; (count six) fraudulent inducement to contract by Build 218; and (count eight) deceit by Build 218. And we remand for further proceedings not inconsistent with this opinion on those remaining claims against Build 218.

Affirmed in part, reversed in part, and remanded.

⁹ As with counts three and five, our substantive conclusion that the district court did not err in granting summary judgment for Shaun and Nichole on Schindele's conversion claim (count seven) provides an alternative ground, other than forfeiture, for affirming the district court's summary-judgment dismissal of that count.