

STATE OF MICHIGAN
COURT OF APPEALS

ROUGE STEEL COMPANY,

UNPUBLISHED
February 17, 1998

Plaintiff-Appellant,

v

No. 192219
Wayne Circuit Court
LC No. 94-421249-NI

ACUTUS INDUSTRIES, INC.,

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) in this action for indemnification. We affirm.

Defendant is in the business of servicing industrial equipment. Plaintiff contacted defendant concerning two damaged slag pots. Defendant tendered a quote for the repair of the equipment, and at the request of plaintiff, one of defendant's employees picked up the equipment from plaintiff's premises. In the process of doing so, defendant's employee was injured. Afterwards, plaintiff sent two requests for quotations to defendant. Defendant sent a letter that contained the final price for the repair work, and plaintiff issued a purchase order. The purchase order and the requests for quotations included indemnification provisions allegedly applicable to the action brought by the injured employee. The employee sued plaintiff. Plaintiff settled the lawsuit and filed this action seeking indemnification.

Plaintiff contends that a genuine issue of material fact exists regarding whether the indemnification language was part of the contract with defendant. We agree with the trial court that the governing contractual language was set forth in defendant's quote of March 3, 1993, and that the indemnification language relied on by plaintiff never became part of the contract.

Defendant's quote was an offer that was not subject to modification absent the written approval of defendant. An objective test is used to determine whether a party assented to a contract. We

* Circuit judge, sitting on the Court of Appeals by assignment.

evaluate “how a reasonable person in the position of the promisee would have interpreted the promisor’s statements or conduct.” *Rood v General Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993). In this case, plaintiff attached defendant’s quote to a purchase notification form, issued a request for shipper form that referred to defendant’s agreement to pick up the slag pot, and allowed defendant to pick up the slag pot to begin the repair work. A reasonable person in the position of defendant would have interpreted these actions as an acceptance of the terms proposed in defendant’s quote. Therefore, the trial court properly found that there was no genuine issue of material fact as to the existence of a contract, the terms of which were contained in defendant’s quote. Because this quote did not include a provision for indemnification of plaintiff in the event of an injury to one of defendant’s employees, there was no genuine issue of fact regarding plaintiff’s express contractual indemnification claim.

Affirmed.

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros