

STATE OF MICHIGAN
COURT OF APPEALS

STEELCASE FINANCIAL SERVICES, INC.

Plaintiff-Appellee,

v

L. J. ORMSBEE MOTORS, INC.,

Defendant-Appellant.

UNPUBLISHED

January 14, 2000

No. 216555

Otsego Circuit Court

LC No. 98-007765 CK

Before: Talbot, P.J., Gribbs and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's \$64,137.15 judgment in favor of plaintiff following its grant of summary disposition to plaintiff pursuant to MCR 2.116(C)(10). We affirm.

This action arises out of a lease of office furniture manufactured by Steelcase, Inc. and financed by plaintiff, Steelcase Financial Services, Inc. Plaintiff alleged that it entered into a lease agreement with defendant, L. J. Ormsbee Motors, Inc., a corporation operating an auto dealership in Cheboygan. The lease agreement and related documents list the lessee as "L. J. Ormsbee Motors, Inc.", which is defendant's official corporate name. The same documents are signed by John Lee Ormsbee, who is an officer of another dealership with the official corporate name "L. J. Ormsbee Motors of Gaylord, Inc." (Ormsbee-Gaylord). After eleven monthly installments, payments ceased and plaintiff accelerated payment pursuant to the default provisions of the lease.

Plaintiff sought to collect the amounts due on the lease from defendant, but defendant denied any obligation under the lease, claiming that Ormsbee-Gaylord was the lessee. Plaintiff subsequently filed a complaint, alleging that defendant breached its obligations under the lease and sought to recover the amount owed under the default provisions plus costs and expenses. In response to interrogatories, defendant denied that it had entered into a lease with plaintiff, stating that John Ormsbee was not authorized to sign the lease on defendant's behalf because he was neither an officer nor a director of

defendant. Defendant further maintained that the furniture was delivered to Ormsbee-Gaylord and that it was not a subsidiary or otherwise affiliated with it.

Plaintiff filed a motion for summary disposition, arguing that either John Ormsbee or Ormsbee-Gaylord was an agent of defendant with apparent authority to enter into the lease, and alternatively, that defendant ratified the agreement. The trial court granted plaintiff's motion, ruling that the existence of defendant's name on the lease, related documents, and checks led plaintiff to believe that defendant was the lessee, and regardless whether the persons signing the checks had authority to do so, defendant "apparently stood behind them for a period and let it happen." The trial court entered a final judgment in the amount of \$64,137.15, consisting of \$47,046.84 for the present value of future payments as alleged in the complaint plus \$17,090.31 representing plaintiff's costs and expenses.

On appeal, defendant argues that summary disposition was improper because genuine issues of material fact exist regarding whether John Ormsbee or Ormsbee-Gaylord had apparent authority to enter into a lease on defendant's behalf. This Court reviews a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), citing *Quinto v Cross and Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). In reviewing a motion brought pursuant to MCR 2.116(C)(10), the trial court must consider the documentary evidence in the light most favorable to the nonmoving party. *Id.* Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 454-455.

Even assuming defendant cannot be held liable under an apparent authority theory, we conclude that summary disposition was proper under plaintiff's alternative theory of ratification. Ratification "is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *David v Serges*, 373 Mich 442, 444; 129 NW2d 882 (1964). A corporation can ratify and become bound by the unauthorized acts or contracts of its directors, officers, or agents which are within the scope of its corporate powers. See *Carnahan v M. J. & B. M. Buck Co*, 250 Mich 198, 201-202; 229 NW 513 (1930). Unauthorized acts are ratified by the corporation if it has received and accepted the benefits of the unauthorized acts with knowledge of the material facts connected with the transaction. *Cudahy Bros Co v West Michigan Dock & Market Corp*, 285 Mich 18, 25; 280 NW 93 (1938). *Hutton v Roberts*, 182 Mich App, 153, 162; 451 NW2d 536 (1989); see also *Old Motgage & Finance Co v Pasadena Land Co*, 241 Mich 426, 436; 216 NW 922 (1928) (in order to bind the corporation, ratification by the officer, board, or agent must be made with full knowledge of the material facts connected with the transaction).

In support of its motion for summary disposition, plaintiff submitted documentary evidence that the lease payments were made on checks bearing defendant's corporate name and that five of the checks were signed by defendant's treasurer, Jetre Ormsbee, as its "authorized representative." An officer who has authority to execute a contract on behalf of the corporation has authority to ratify its execution by parties who have no such authority, *American Employers' Ins Co v H.G. Christman & Bros Co*, 284 Mich 36, 43; 278 NW 750 (1938). In the absence of any provision to the contrary in a corporation's charter, it is presumed that a corporate treasurer has the authority to make all necessary contracts in transacting the ordinary business of a corporation. *Stone-Ordean-Wells Co v New*

England Pie Co, 201 Mich 407, 415; 167 NW 943 (1918). While plaintiff submitted evidence that defendant ratified the lease through Jetre Ormsbee, defendant did not offer sufficient evidence to rebut plaintiff's showing. MCR 2.116(G)(4); *Quinto, supra* at 371. Indeed, defendant submitted no evidence contesting Jetre Ormsbee's authority to execute contracts on behalf of defendant and, in fact, withdrew his affidavit from the court's consideration.¹ Nor did defendant present evidence to rebut the claim that Jetre Ormsbee, by making payments on behalf of "L.J. Ormsbee Motors, Inc.", had knowledge of the material facts connected with the lease. Further, while it was undisputed that the furniture that was the subject of the lease was delivered to Ormsbee-Gaylord, plaintiff produced no documentary evidence showing that defendant did not use the subject furniture or otherwise benefit from the lease. Because defendant failed to satisfy his burden of opposing plaintiff's motion with evidence sufficient to establish a genuine issue of material fact, we conclude that the trial court properly granted summary disposition in plaintiff's favor.

Affirmed.

/s/ Michael J. Talbot

/s/ Roman S. Gibbs

/s/ Patrick M. Meter

¹ Accordingly, defendant's submission of Jetre Ormsbee's affidavit in support of his argument on appeal constitutes an impermissible expansion of the record and has not been considered in deciding the merits of this appeal. MCR 7.210(A); *Reeves v Kmart Corp*, 229 Mich App 466, 480 n 7; 582 NW2d 841 (1998).