STATE OF MICHIGAN

COURT OF APPEALS

VERNA BEARD,

Plaintiff,

v

LUTHERAN FRATERNITIES OF AMERICA, SOCIETY #57,

Defendant/Cross-Plaintiff-Appellant,

and

CITY OF EASTPOINTE,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
February 25, 2000

No. 209012
Macomb Circuit Court
LC No. 96-002345-NO

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant and cross-plaintiff Lutheran Fraternities of America, Society # 57 (hereafter "Lutheran Fraternities") appeals as of right from an order granting defendant City of Eastpointe's motion for summary disposition of Lutheran Fraternities cross-complaint under MCR 2.116(C)(10). We affirm.

Plaintiff Verna Beard sued Lutheran Fraternities and the City of Eastpointe (hereafter the "City") for injuries she sustained in a slip and fall at the entrance of a hall owned by Lutheran Fraternities while attending a Christmas dance sponsored by the City's Department of Parks and Recreation. Lutheran Fraternities filed a cross-complaint against the City for contractual indemnification pursuant to a rental agreement signed by Mary Hovanec, the Senior Citizens Program supervisor, allegedly on behalf of the City. The City moved for summary disposition of Lutheran Fraternities' cross-complaint, alleging that Hovanec had no authority to bind the City to the written rental agreement, and further, that the alleged rental agreement did not obligate the City to indemnify Lutheran Fraternities in any event.

On appeal, this Court reviews de novo a trial court's decision regarding a summary disposition motion. *Roberson v Occupational Health Centers of America, Inc*, 220 Mich App 322, 324; 559 NW2d 86 (1996). A motion pursuant to MCR 2.116(C)(10) tests the factual basis of a claim. In reviewing such a motion, the test is set forth in *Quinto v Cross & Peters Co,* 451 Mich 358, 362; 547 NW2d 314 (1996):

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

See also *Madden v Rozwood,* 461 Mich 109, 119-121; 597 NW2d 817 (1999).

We conclude that the trial court did not err in granting the City's motion for summary disposition on the basis that Hovanec did not have the authority to bind the City to a rental agreement with Lutheran Fraternities.

In *Johnson v Menominee,* 173 Mich App 690, 693-694; 434 NW2d 211 (1988), this Court observed:

> It is fundamental that those dealing with public officials must take notice of the powers of the officials. *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655, 660; 173 NW2d 236 (1969). Persons dealing with a municipal corporation through one of its officers must at their peril take notice of the authority of the particular officer to bind the corporation. *Id*. If the officer's act is beyond the limits of his or her authority, the municipality is not bound. *Id.*, p. 661. . . .
>
> Generally, no officer or board, other than the common council, has power to bind the municipal corporation by contract. 10 McQuillin, Municipal Corporations (3d ed, 1981 Rev), § 29.15, p 255.

In *Johnson*, this Court ruled that the plaintiff failed to show a binding employment contract because the city's Personnel and Labor Committee and individual council members had no authority, under the city charter, to reappoint the plaintiff as the city engineer. Similarly, in *Superior Ambulance Service*, *supra*, this Court determined that the plaintiff failed to show that the Chief of Police for the City of Lincoln Park had the authority to bind the city to contracts for the provision of ambulance service in the city.

Here, the trial court correctly ruled that Hovanec lacked the authority to bind the City to a rental agreement with Lutheran Fraternities. Section 22 of the City Charter pertaining to contracts provides, in

pertinent part, that "[a]ll contracts entered into by the City shall be signed by the Manager or such other officer, or officers, of the City as the Council may by ordinance provide." The evidence indicates that Hovanec signed the rental agreement in her own name, designating herself as the "patron," without providing any job title or otherwise indicating that she was acting on behalf of the City. Further, there is no evidence that the City authorized Hovanec to sign the written rental agreement on its behalf. Furthermore, while Carl Gerds, Lutheran Fraternities' business manager, testified that it was a customary practice for Lutheran Fraternities to have a written rental agreement before renting the hall, their evidence indicated that Hovanec had never signed a written rental agreement on the eight or nine prior occasions when she rented the hall for the Christmas dance. Rather, when she arranged to book the hall for the City, she would call Gerds by telephone and confirm the arrangements by a letter, enclosing a check to cover the rental fee, without ever signing a written rental agreement. Accordingly, we conclude that the trial court properly determined that there was no genuine issue of material fact that Hovanec did not have the authority to bind the City to a written rental agreement with Lutheran Fraternities. *Johnson*, *supra*.

Having concluded that Hovanec was not authorized to bind the City to the written rental agreement, it is unnecessary to address the remaining issues on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens