

STATE OF MICHIGAN

COURT OF APPEALS

ENMANCO CORPORATION,

Plaintiff-Appellee,

v

R.C. ASSOCIATES, INC., f/k/a R.C.
ENGINEERING & ENVIRONMENTAL, INC.,

Defendant-Appellant.

UNPUBLISHED

April 25, 2000

No. 209029

Saginaw Circuit Court

LC No. 97-019537 CK

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

MEMORANDUM.

Defendant appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of plaintiff. We affirm.

The parties entered into a subcontract under which plaintiff was to perform services in connection with the removal of an underground storage tank. Defendant prepared an unsigned subcontract agreement, and forwarded it to plaintiff. Plaintiff made a modification to a portion of the agreement regarding subcontractor's compensation, signed the agreement, and returned it to defendant. Defendant then signed the revised agreement.

Defendant was unable to obtain payment for the removal of the tank, and plaintiff brought this action to recover for its work, under the revised portion of the subcontract agreement. Under the original subcontract offer, defendant was not required to pay plaintiff until it received payment from the owner.

A valid contract requires mutual assent on all essential terms. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Before a contract can be completed, there must be an offer and an acceptance. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). Acceptance must be unambiguous and in strict conformance with the offer. *Id.*

Here, plaintiff did not accept defendant's offer; rather, it extended a counteroffer by modifying a term in the proposed contract. The modification was clearly set forth in the document returned to defendant. By signing the modified agreement, defendant accepted the counteroffer. When plaintiff moved for summary disposition under MCR 2.116(C)(10), defendant failed to set forth specific facts showing that there is a genuine issue for trial. The trial court properly granted summary disposition to plaintiff. MCR 2.116(G)(4). *Allen v Comprehensive Health Services*, 222 Mich App 426, 434; 564 NW2d 914 (1997).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey