STATE OF MICHIGAN

COURT OF APPEALS

RELIANCE INSURANCE COMPANY, Subrogee of CLOVERDALE EQUIPMENT COMPANY, Plaintiff-Appellant,	UNPUBLISHED December 26, 2000
v	No. 218507 Livingston Circuit Court
INGERSOLL-RAND and KELSEY HAYES DIVISION, Defendants-Appellees.	LC No. 98-016397-CK

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

PER CURIAM.

Plaintiff Reliance Insurance Company appeals as of right from the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10)[1] in favor of defendants Ingersoll-Rand and Kelsey Hayes Division.[2] We affirm.

This case arises out of an agreement between defendant Ingersoll-Rand and Cloverdale Equipment Company. Pursuant to an oral agreement, Cloverdale leased to Ingersoll-Rand an Ingersoll-Rand manufactured air compressor, which Ingersoll-Rand in turn loaned to its customer, Kelsey Hayes Division. As requested by Ingersoll-Rand, Cloverdale delivered the air compressor directly to the Kelsey Hayes facility in Howell, Michigan. At the time of delivery, the maintenance supervisor at the Kelsey Hayes facility signed a document that he believed merely acknowledged receipt of the air compressor and that it was in working condition, but which plaintiff maintains is a written lease agreement. Months after the delivery of the air compressor to the Kelsey Hayes facility, a fire destroyed the air compressor. Thereafter, plaintiff paid its subrogor, Cloverdale, for the damage to the air compressor that the fire caused, approximately $65,000, then sued defendants to recover that amount pursuant to the purported

[1] Although the trial court remained silent as to the subsection under which it granted summary disposition, it is apparent from the record that the determination came under MCR 2.116(C)(10).

[2] The record is unclear as to the proper name of defendant Kelsey Hayes Division. Apparently, this defendant is also known as Kelsey Hayes - Western Wheel Division or as Hayes Lemmerz. For purposes of ease and consistency, we refer to this defendant as Kelsey Hayes throughout this opinion.

written lease agreement. That agreement contained indemnity and risk of loss clauses deeming the customer, i.e., Ingersoll-Rand, responsible for any damage to the air compressor.

In addition to claiming breach of contract, plaintiff pursued recovery under the theories of bailment and breach of warranties. However, at oral argument plaintiff conceded that the limitations period had expired for the breach of warranties claim. After oral argument, the trial court concluded that the maintenance supervisor at Kelsey Hayes, who had signed the purported lease agreement, was not an agent of Ingersoll-Rand. Thus, the trial court ruled that there was no written lease agreement and, absent a written lease agreement, there was no indemnity agreement because it flowed from the purported lease agreement. With regard to the bailment claim, the trial court found that there was no showing of negligence by the bailee to give rise to a bailment claim. For these reasons, the trial court granted summary disposition in favor of defendants.

We review a trial court's decision to grant or deny summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When reviewing a motion for summary disposition, a court "considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id.* at 119-120. Summary disposition is appropriate where the proffered evidence fails to establish a genuine issue of material fact. *Id*. at 120.

On appeal, plaintiff first argues that the trial court erred in granting summary disposition in favor of defendants regarding the breach of a written lease agreement claim because numerous questions of fact existed. Specifically, plaintiff contends that the trial court erred in determining that the maintenance supervisor at the Kelsey Hayes facility was not acting as an agent on behalf of Ingersoll-Rand when he signed the purported lease agreement between Ingersoll-Rand and Cloverdale, and thus in concluding that no written lease agreement existed. Plaintiff argues that Cloverdale reasonably believed that the maintenance supervisor had the apparent authority to sign the lease agreement on behalf of Ingersoll-Rand because Cloverdale had entered into this type of lease agreement with Ingersoll-Rand several times in the past, establishing a pattern and practice or course of dealing. Plaintiff concludes that because a written lease agreement that required indemnification existed between Ingersoll-Rand and Cloverdale, Ingersoll-Rand was required to pay for the damage to the air compressor caused by the fire.

After reviewing the record, we conclude that the trial court did not err in granting summary disposition in favor of defendants. In order for an enforceable written lease agreement to exist, plaintiff must show that the maintenance supervisor at Kelsey Hayes was an agent for Ingersoll-Rand and possessed the authority to enter into a contract that added a significant term to the oral agreement between Ingersoll-Rand and Cloverdale. Plaintiff's agency claim is unsupported by any of the commonly known theories of agency. For plaintiff to prevail here, it is necessary to show that an employee of Kelsey Hayes, a company that is merely a customer of Ingersoll-Rand, could accept delivery of a leased item and in doing so bind Ingersoll-Rand to a lease agreement with a significant indemnity term over and above the terms orally agreed on by the contracting parties. We reject the notion that under these circumstances the person accepting delivery can act as an agent for purposes of setting, changing or adding to the terms of a lease

agreement between two other parties. Although plaintiff asserted that a course of dealing between Ingersoll-Rand and Cloverdale supported its theory that Ingersoll-Rand was bound by the actions of a third-party company's maintenance supervisor who testified that he merely signed to acknowledge receipt of the air compressor and to indicate that it was received in working condition, plaintiff failed to provide support for this bald assertion. Cloverdale admitted that "business was spotty" and produced no documents demonstrating a previous course of business. The non-moving party must set forth specific facts showing a genuine issue for trial—a mere possibility that the claim might be supported by evidence produced at trial is insufficient under our court rules. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999); *Maiden, supra* at 120-121. Considering the substantively admissible evidence, we conclude that the trial court correctly granted summary disposition in favor of defendants regarding the breach of a written lease agreement claim.

Plaintiff next argues that that even if the maintenance supervisor did not have the authority to sign the lease agreement on behalf of Ingersoll-Rand, Ingersoll-Rand was estopped from denying the existence of the written lease agreement under a ratification or estoppel theory. Plaintiff claims that Ingersoll-Rand ratified the written lease agreement by making lease payments to Cloverdale and collecting lease payments from Kelsey Hayes, and is thus estopped from denying the existence of the lease. We disagree.

If an agent does not have authority to bind the principal, the third party may still bind the principal under a ratification or estoppel theory. *Henritzy v General Electric Co*, 182 Mich App 1, 8; 451 NW2d 558 (1990); *City National Bank of Detroit v Westland Towers Apartments*, 152 Mich App 136, 142-143; 393 NW2d 554 (1986); *Cudahy Bros Co v West Michigan Dock & Market Corp*, 285 Mich 18, 24-27; 280 NW 93 (1938). This Court has defined ratification as "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." *City National Bank of Detroit, supra*, quoting Restatement of Agency, 2d, § 82. Affirmance is either

> (a) a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or
>
> (b) conduct by him justifiable only if there were such an election. [*Id.*, quoting *David v Serges*, 373 Mich 442, 443-444; 129 NW2d 882 (1964).]

A third party may also bind the principal under an estoppel theory if the third party is "misled to its prejudice and acts are done in reliance upon conduct calculated to mislead." *Cinderella Theatre Co, Inc, v United Detroit Theatres Corp*, 367 Mich 424, 444; 116 NW2d 825 (1962); *Cudahy Bros Co, supra* at 26-27.

Nothing in Ingersoll-Rand's actions indicated anything other than that which was agreed upon in the oral agreement. Here, the evidence indicated that Ingersoll-Rand merely performed its part of the oral agreement with Cloverdale to lease the air compressor. Other than acting in a manner consistent with the oral lease agreement, Ingersoll-Rand made no manifestation of

treating the indemnification agreement as authorized nor conducted itself in a manner justifiable only if it had made such an election. There was no evidence that Ingersoll-Rand or Kelsey Hayes misled Cloverdale to its prejudice into believing that the maintenance supervisor, or anyone else at the Kelsey Hayes facility, had the authority to sign on behalf of Ingersoll-Rand a lease agreement with an additional term materially altering the agreement. Thus, plaintiff's argument is without merit.

Finally, plaintiff argues that the trial court erred in granting summary disposition in favor of defendants with regard to the bailment claim. Plaintiff claims that a bailment existed in this case, that plaintiff was entitled to a presumption of negligence on behalf of Ingersoll, and that Ingersoll-Rand failed to produce evidence to rebut that presumption.

A bailment exists when a bailor delivers personal property to a bailee "in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished." *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 479-480; 413 NW2d 433 (1987). To establish a prima facie case of negligence on behalf of the bailee, the bailor must establish the existence of a bailment and that the property is returned in a damaged condition, thus creating a presumption of negligence. *Columbus Jack Corp v Swedish Crucible Steel Corp*, 393 Mich 478, 483-484; 227 NW2d 506 (1975). The bailee may rebut that presumption by proving that the bailee exercised due care under the circumstances. *Id.* at 486.

In the present case, the trial court granted summary disposition in favor of defendants regarding the bailment claim, concluding that there was no evidence of negligence on behalf of Ingersoll-Rand. We affirm the trial court's ruling, but for a different reason. See *Hall v McRea Corp*, 238 Mich App 361, 369; 605 NW2d 354 (1999) (This Court may affirm where the trial court reached the right result, albeit for the wrong reason.). Even assuming a bailment existed here, defendant was entitled to summary disposition because the record reveals that any presumption of negligence was rebutted. Plaintiff's complaint acknowledges that fire destroyed the air compressor. Plaintiff made no allegation that the fire occurred from negligence; rather, plaintiff alleged that the sole cause of the fire was Ingersoll-Rand's poor design and construction of the air compressor. Plaintiff does not allege that the damage to the air compressor resulted from defendants' operation, use or handling of the air compressor. Plaintiff failed to come forward with additional evidence to establish that a genuine issue of material fact remained, and thus summary disposition was appropriate. *Maiden, supra*.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey