

STATE OF MICHIGAN  
COURT OF APPEALS

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DOWNRIVER MAINTENANCE  
CORPORATION,

Plaintiff-Appellant,

v

MICHAEL L. DECKER and DEFINED  
EMPLOYEE MANAGEMENT,

Defendants-Appellees.

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UNPUBLISHED  
August 30, 2002

No. 232875  
Oakland Circuit Court  
LC No. 00-022654-CZ

Before: White, P.J., and Hoekstra and O'Connell, JJ.

WHITE, P.J. (*dissenting*).

Plaintiff presented sufficient evidence to avoid summary disposition. The Yates affidavit stated that defendant represented that plaintiff would be charged actual costs plus administrative fees. Krautner-Simmons testified that Meverock indicated that because defendant would not be paying certain things, it would not be charging plaintiff for them, and that defendant "would be charging us what was - what they were incurring and that they would be charging us fees on top of that for their processing." The MESC form provided by Decker purported to set forth a rate that was in accord with what defendant was charging plaintiff, but was not in accord with what defendant was paying in plaintiff's behalf. The contract clearly and unambiguously speaks in terms of "reimbursement" of all costs incurred by defendant in connection with the required taxes and insurance, and specifically mentions, in connection with reimbursement, charges for unemployment taxes and workers compensation coverage. I do not regard the rate sheet proposals as fatal to plaintiff's claim, since the rate sheet is silent regarding whether it represents the rates actually paid by defendant. Further, there was sufficient evidence of reliance. Krautner-Simmons testified that she never attempted to negotiate the rates because she did not realize they were negotiable. Plaintiff did, indeed, compare defendant's rates with the rates of another company prior to learning that defendant was charging rates above the actual rates, but in 1999 plaintiff secured lower rates from a different company. The fact that one company's rates were higher than defendant's does not establish that plaintiff did not rely on defendant's alleged misrepresentations.

I would reverse and remand for further proceedings.

/s/ Helene N. White