STATE OF MICHIGAN

COURT OF APPEALS

DOWNRIVER MAINTENANCE CORPORATION,

Plaintiff-Appellant,

v

MICHAEL L. DECKER and DEFINED EMPLOYEE MANAGEMENT,

Defendant-Appellee.

UNPUBLISHED
August 30, 2002

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

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

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) in this action involving issues of both fraud and breach of contract. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1996, plaintiff Downriver Maintenance Corporation entered a leased employee management arrangement with defendant Defined Employee Management (DEM) that enabled plaintiff to obtain better workers' compensation insurance premiums and unemployment tax (MESC) rates for its employees. Originally, the agreement was based on an oral understanding between plaintiff's owner, Gretchen Krautner-Simmons, and defendant's president at that time. Although their discussion did not include specifics, at a different time DEM's president told plaintiff's staff that plaintiff would be responsible for paying, in addition to an administrative fee, actual costs for workers' compensation insurance and MESC rates.

Later that year, DEM elected defendant Michael L. Decker as its president. From that time until the relationship was terminated in 1999, the companies operated according to yearly proposals that set forth the charged rates. According to Simmons, Decker never discussed the insurance or unemployment rates with her before 1999. At one point, defendant had faxed an unsolicited MESC form to plaintiff, which plaintiff now asserts was faxed to demonstrate that the rates charged were the actual costs incurred. During the course of the relationship, plaintiff occasionally comparison-shopped DEM's rates with those of competitors.

In 1999, the parties executed a more comprehensive written agreement that detailed the parties' obligations and also referenced a separate document setting forth various rates and fees

to be charged. Within the year, plaintiff replaced DEM with another company. In April 2000, plaintiff filed a five-count complaint asserting that DEM's "marked up" charges for workers' compensation insurance and unemployment tax rates constituted both fraud and breach of contract. Defendants moved for summary disposition on all counts, and the trial court granted the motion in its entirety.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition on its claims of fraud and breach of contract because plaintiff provided evidence raising genuine issues of material fact. We review de novo the trial court's grant of summary disposition. *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd,* 466 Mich 11, 15; 643 NW2d 212 (2002). In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), "a trial 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" to determine whether a genuine issue regarding any material fact exists. *Maiden v Rozwood,* 461 Mich 109, 120; 597 NW2d 817 (1999). If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is properly granted. *Smith v Globe Life Ins Co,* 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999).

We begin by addressing plaintiff's claims of fraud. Plaintiff first argues that the trial court erred in finding that defendants never represented they would charge only actual costs. Plaintiff introduces three specific occasions during which the alleged representations were made, including the conversations with DEM's former president and Decker as well as the faxed MESC form.

In order to establish a cause of action for fraud, a plaintiff must prove that (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, he or she knew that it was false or made it recklessly without any knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon the representation; and (6) due to his or her reliance on the representation, the plaintiff suffered injury. *Hord v Environmental Research Institute of Michigan (After Remand),* 463 Mich 399, 404; 617 NW2d 543 (2000); *M&D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998).

According to plaintiff, the former president of DEM made representations that plaintiff would be paying only actual costs. In support of this assertion, plaintiff relies on the affidavit of a bookkeeper. The bookkeeper's affidavit reveals that her understanding was that plaintiff would pay actual costs in addition to the administrative fee, but that any "marked up" costs were never discussed. Even assuming that the former president of DEM made such a representation and it was false, plaintiff has not established that it relied on the representation to its detriment. Plaintiff's owner admitted that she did not get the specifics on the charges during her discussion with DEM's former president and could not recall discussing the rates with him. Plaintiff admitted that it comparison-shopped for rates and stayed with DEM through the years because of their lower rates.

Plaintiff also alleges that DEM's new president, Decker, made misrepresentations. Because plaintiff's owner admitted that she never discussed the rates with Decker and that he

never represented that her company would only be charged actual costs, we fail to see how Decker's reaffirmance of previous agreements translates into Decker representing that DEM would only bill for actual costs.

Plaintiff also alleges that defendants faxed the MESC form to convince plaintiff that its charges were synonymous with actual costs. However, plaintiff's owner admitted that she did not request the form, did not know why it was sent, and did not discuss it with anyone. . Decker also did not know why the fax was sent and mentioned that the rates were unrelated to plaintiff's charges. From the evidence presented, plaintiff has failed to raise a genuine issue of material fact with respect to whether the MESC form was sent to mislead it into thinking DEM was charging actual costs, and thus summary disposition was properly granted in defendants' favor.

With respect to the breach of contract claims, plaintiff argues that the parties' oral and written agreements required that only costs be charged, and that defendants breached the contracts by charging inflated rates. To constitute an enforceable agreement, an oral promise must satisfy the essential contractual elements: competent parties, proper subject matter, legal consideration, mutuality of agreement, and mutuality of obligation. *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989). Simmons admitted that Decker never told her that plaintiff would be charged only actual costs. Additionally, the two companies did not discuss the rates until just before the termination of their relationship in 1999. There was no breach of an oral agreement in this case because there never was a mutual agreement that the charged rates mirrored actual costs incurred.

Plaintiff also argues that defendants breached the parties' written agreement because it states that defendant will charge only actual costs. We disagree with plaintiff's interpretation of the contract. "A cardinal principle of construction is that a contract is to be construed as a whole, and all parts are to be harmonized as far as possible." *Czapp v Cox*, 179 Mich App 216, 219; 445 NW2d 218 (1989). "If the contractual language is clear and unambiguous, its meaning is a question of law." *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). Here, paragraph 1 of the agreement refers to a separate document outlining the terms and conditions of the relationship. Subparagraph 3(d) requires plaintiff to pay defendant in accordance with procedures described therein for all costs incurred in connection to the arrangement. Reading subparagraph 3(d) in conjunction with paragraph 1, the unambiguous and reasonable interpretation provides that defendant is not limited to charging only actual costs since the relevant rates are included in a separate document. Even if, as plaintiffs contends, a separate rate sheet was not attached, plaintiff's owner was aware of the document, and the law presumes one who signs a written agreement knows the nature of the instrument and understands its contents. *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000). The written agreement never declared the charged rates would represent only actual costs, hence DEM's charges did not constitute a breach of contract. The trial court properly granted summary disposition.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell