STATE OF MICHIGAN

COURT OF APPEALS

CONSTRUCTION & RENOVATION EDUCATION, INC.,

Plaintiff-Appellant,

V

DETROIT BOARD OF EDUCATION, NELIDA BRAVO, MARVIS COFIELD, W. FRANK FOUNTAIN, MARK A. MURRAY, GLENDA D. PRICE, GERALD K. SMITH, WEST SIDE LOCAL NO 174 UAW, and JIM BAKER,

Defendants-Appellees.

UNPUBLISHED
December 20, 2002

No. 234081
Wayne Circuit Court
LC No. 00-040744-CK

Before: Jansen, P.J., and Holbrook, Jr. and Cooper, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's grant of summary disposition to all defendants. We affirm.

This case arises out of an alleged shortage of payment to plaintiff on its contract with defendant West Side Local No. 174 UAW ("Local 174"). On July 1, 1993, defendants Local 174 and Detroit Board of Education ("DBE") entered into a contract that required Local 174 to provide adult education and training on DBE's behalf for the school year beginning August 30, 1993 and continuing through June 30, 1994. The amount due Local 174 under the contract was a percentage of the amount DBE would ultimately receive from the state. Thereafter, Local 174's president, Jim Baker, entered Local 174 into a contract with plaintiff. According to plaintiff's complaint, the contract required plaintiff to provide the aforementioned adult educational training for Local 174. In exchange for these services, the contract stated that plaintiff would be entitled to a portion of the funds Local 174 received. Plaintiff fully performed the services required by its contract with Local 174.

Pursuant to DBE's contract with Local 174, DBE was required to make two payments, with the final payment due "on or about June 30, 1994." DBE was late in its first payment under the contract, and did not pay anything toward the final balance until early December 1994. Upon receipt of DBE's payment, Local 174 promptly paid plaintiff its share of the payment. In February 1995, DBE made its last payment to Local 174 on the contract. Local 174 required

plaintiff to sign a "Settlement Agreement, Release and Waiver" before it released plaintiff's payment. The agreement stated in pertinent part that: "[Plaintiff] . . . discharges Local 174, its administrators, employees, agents, . . . and other representatives, both individually and in their representative capacity, from any and all . . . contracts . . . ."

Plaintiff signed the Agreement, but subsequently attempted to determine if there was any shortage in DBE's payments to Local 174. Plaintiff's attorney, in December of 1996, received information from the state indicating that DBE failed to fully pay its contract obligation to Local 174. Plaintiff however did not bring suit against DBE and Local 174 until December 2000.

I

Plaintiff initially argues that the trial court erroneously granted DBE's motion for summary disposition because questions of fact remained concerning whether the contract claim actually accrued on June 30, 1994. Without deciding this issue, we find that summary disposition was appropriate under the trial court's alternative grounds for granting DBE's motion. We review a trial court's grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Summary disposition is proper under MCR 2.116(C)(7) if a claim is barred by the statute of limitations. When reviewing a motion brought pursuant to MCR 2.116(C)(7), a court must accept the contents of the complaint as true unless contradicted by affidavits, depositions, admissions, or other documentary evidence. *Maiden, supra* at 119. Conversely, "[a] motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone." *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). A motion brought under MCR 2.116(C)(8) should be granted if the plaintiff has failed to state a claim upon which relief could be granted and further factual development would not justify recovery. *Beaudrie, supra* at 129-130.

In addition to determining that the statute of limitations barred plaintiff's claim against DBE, the trial court also concluded that plaintiff failed to establish that it even had a contract with DBE. Plaintiff brought a third-party contract claim and a quantum meruit claim against DBE. During the hearing on DBE's motion for summary disposition, plaintiff's counsel stipulated that plaintiff never had a direct contract with DBE and that its claim was based upon a third-party beneficiary theory.[1] According to plaintiff, this third-party claim arose out of DBE's contract with Local 174.

In order to pursue a claim for breach of contract, a non-party to the contract must show that he was an intended beneficiary. Third-party beneficiary law in Michigan is codified at MCL 600.1405, and generally requires that to be considered a third-party beneficiary a party must be "directly referred to in the contract." See *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999). Plaintiff fails to refute the fact that the agreement between Local 174 and DBE does

[1] Plaintiff's counsel stipulated during the hearing on defendants' motions that "we did not have a direct contract, CARE did not have a direct contract with [DBE], okay. . . . I did not intend to mislead this Court or anybody else. I think it is pretty clear we attached the contracts, pretty clear we never intended to allege we had a contract with [sic] directly."

not mention plaintiff or a class to which plaintiff may belong. Because the contract between Local 174 and DBE does not directly refer to plaintiff, plaintiff is precluded from recovering on its third-party beneficiary claim. Plaintiff's argument that further discovery would provide proof of a direct contract with DBE is meritless given plaintiff's stipulation at trial that no such contract existed. See *Staff v Marder*, 242 Mich App 521, 535; 619 NW2d 57 (2000) (stipulations of fact are binding on the parties).

We also find that plaintiff's quantum meruit claim is devoid of merit. A plaintiff may not bring a quantum meruit claim if it fully performed its services under a valid express contract. *Barber v SMH, Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). For example, in *Shurlow Tile & Carpet Co v Farhat*, 60 Mich App 486; 231 NW2d 384 (1975), a construction subcontractor, after failing to fully recover from its general contractor, claimed quantum meruit against the owner of a building that the subcontractor tiled and carpeted. Applying the rule from *Giestert v Scheffler*, 316 Mich 325, 326; 25 NW2d 241 (1946), this Court held that the express contract between the general contractor and the subcontractor precluded the subcontractor's quantum meruit claim. *Shurlow Tile*, *supra* at 491. In this case, plaintiff does not dispute that it fully performed its training services under a valid express contract with Local 174. Thus, plaintiff may not recover from DBE in quantum meruit for the same services.

For these reasons, we find that the trial court appropriately granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8).

II

Plaintiff next asserts that the trial court erred when it found that its claims against Local 174 and Jim Baker were barred by the statute of limitations. We disagree. Again, if a claim is brought after the applicable period of limitations has expired, summary disposition is appropriate under MCR 2.116(C)(7).

There is a six year period of limitations in breach of contract claims. MCL 600.5807(8). In the instant case, plaintiff filed its complaint on December 19, 2000. According to plaintiff, Local 174 breached an implied covenant of good faith when it refused to attempt to recover the alleged additional monies that DBE was contractually bound to pay. Plaintiff maintains that Local 174 actively pursued further payments from DBE until at least December 1996. However, plaintiff alleges that it was not informed until April 1997 that Local 174 decided against taking legal action against DBE. Conversely, Local 174 alleges that plaintiff's claim actually accrued on June 30, 1994, when the final payment for plaintiff's services was late.

When construing contracts, the principal goal is to ascertain and give effect to the intention of the parties. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 603; 576 NW2d 392 (1997). When reviewing an ambiguous contract, a court may determine the parties' intentions by considering the contract's language, its subject matter, and the circumstances surrounding the making of the agreement. *Stillman v Goldfarb*, 172 Mich App 231, 239; 431 NW2d 247 (1988). "A plaintiff's cause of action accrues when all the elements have occurred and can be alleged in a complaint." *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 78; 592 NW2d 112 (1999). The period of limitations begins to run on the day the contract is breached and not when a plaintiff subjectively believes the breach occurred. *Id*.; *In re Easterbrook*, 114 Mich App 739, 748; 319 NW2d 655 (1982).

The contract between plaintiff and Local 174 in the instant case simply indicates that the funding for the programs would be by state monies and that plaintiff would be paid a percentage of the funds that Local 174 received. Even assuming arguendo that the contract could be construed as requiring Local 174 to actively pursue payment in good faith, Local 174 should have brought suit as soon as DBE failed to perform. Local 174's contract with DBE states that the educational programs would end on June 30, 1994, and that final payment would be made to Local 174 on or about that date.[2] Thus, we find that Local 174's cause of action accrued when the final payment was late in June of 1994. See *Jackson, supra* at 78. The subsequent refusal of Local 174 to pursue litigation is not controlling because the breach occurred when Local 174 initially failed to take action against DBE for failure to tender the final payment in June 1994. Consequently, we find that the period of limitations on plaintiff's contract claim began to run on June 30, 1994, and that the trial court properly granted summary disposition.

Because this issue is dispositive, we need not consider plaintiff's remaining arguments on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper

[2] We note that the term "about", as used in this context is commonly understood as meaning in close proximity to the fixed date. See *People v Fochtman*, 226 Mich 53, 62; 197 NW 166 (1924).