

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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METAL DESIGN & MANUFACTURING, LLC,

Plaintiff-Appellant,

v

LIFETIME PRODUCTS, INC., LIFETIME  
ROOFING, INC., LIFETIME TILE ROOFING,  
INC., and DAVID DIXON,

Defendants-Appellees.

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UNPUBLISHED

December 19, 2006

No. 268140

Livingston Circuit Court

LC No. 04-20788-CK

Before: Whitbeck, CJ., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff appeals by right the grant of summary disposition in favor of defendants pursuant to MCL 2.116(C)(10). We reverse and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a fabricator of custom copper roofing products. Defendants install custom roofing. Over the course of many months, plaintiff offered to supply copper roofing products to defendants' job sites throughout the country. These offers were by way of form fabrication quotes, submitted to defendants and utilized by defendants in the ordinary course of business. Plaintiff's quotes, in addition to price, quantity, and other terms, contained the notation, "COST OF COLLECTION, INCLUDING LEGAL EXPENSES SHALL BE THE RESPONSIBILITY OF THE CUSTOMER."

A dispute developed over money that plaintiff claimed was due for material supplied under the terms of the quotes. Defendants disputed the amount of plaintiff's claim. Eventually, plaintiff filed a multicount suit. One of the claims made was for an account stated in the amount of \$31,837.01. During the course of discovery some counts of the complaint were dismissed. After considerable negotiation, the parties agreed to settle and compromised the plaintiff's claim for \$ 29,352.69. All other claims were dismissed. They agreed to try to settle the disputed claim for costs and fees. That attempt failed, and both sides then moved for summary disposition. After briefing and argument, the trial court ruled that plaintiff's claim for costs and fees was not enforceable because there was no writing. MCL 440.2201(1). The court also found that defendants had a right to litigate disputed amounts of the plaintiff's claim.

We review the grant of a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We review the entire record to determine whether the moving party is entitled to judgment as a matter of law. In making this determination, we give every reasonable inference to the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

We agree with plaintiff that defendants accepted the material identified to the contract within the terms of the Uniform Commercial Code (UCC). MCL 440.2606. While MCL 440.2201(1), the UCC statute of frauds provision, generally requires a writing for the sale of goods for the price of more than \$1,000, a writing is not required where the buyer accepts the goods. MCL 440.2201(3)(c) Here, the fabrication quote was an offer and the use of the copper roofing material by defendants was an acceptance. Acceptance by defendants obligated payment. MCL 440.2607(1).

Moreover, the extended dealings between the parties, the quote memoranda, and an acknowledgement by defendants' president, David Dixon, indicating reliance on the fabrication quotes, create questions of fact notwithstanding affidavits to the contrary. MCL 440.2208(1), (2). On the facts of this case, defendants cannot logically or legally claim reliance on price, quantity, and other terms of the fabrication quotes and claim ignorance of another clear and unambiguous term requiring a buyer to bear the costs associated with collection.

There is also a fact question regarding the reasonable amount of the costs of collection. We agree with defendants that plaintiff cannot claim any costs or fees for anything beyond the price of goods. MCL 440.2703(e); MCL 440.2709(1).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder