STATE OF MICHIGAN

COURT OF APPEALS

EDUCATION CAMPUS INVESTORS LLC, also known as ECI,

Plaintiff-Appellant,

v

STEELCASE, INC., and NORMAN PYRAMID LLC,

Defendants-Appellees,

and

PARACOM LLC,

Defendant.

UNPUBLISHED
October 19, 2017

No. 334558
Kent Circuit Court
LC No. 15-010645-CK

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant Steelcase ("Steelcase") on plaintiff's breach of contract claim. We affirm.

Plaintiff and Steelcase had entered into negotiations for plaintiff to acquire real estate owned by Steelcase in Gaines Township, commonly known as the Pyramid Building. According to plaintiff, there were initial discussions of the donation of the property by Steelcase. But plaintiff was unwilling to accept restrictions placed on the donation, so the discussion then moved to the purchase of the property by plaintiff.

The further negotiations resulted in the parties entering into a purchase agreement. But during the inspection period, plaintiff states that various defects in the building were discovered. Additionally, plaintiff says that it discovered various issues regarding easements affecting the property. Because these issues could not be resolved by the deadline, plaintiff terminated the purchase agreement.

According to plaintiff, Steelcase then indicated that it would have been willing to extend the time in order to resolve the inspections issues. As a result, the parties resumed negotiations for the property. Plaintiff claims that it requested Steelcase's "magic number" for the sale of the property. According to plaintiff, Steelcase responded that it would sell the property for $3

million if plaintiff would forego further inspections and close within 60 days. Plaintiff states that it responded by agreeing to pay $3 million and to close within 60 days. Plaintiff maintains that Steelcase responded by email accepting the offer.

Plaintiff claims that while it was proceeding to close the sale, Steelcase began "secretly and covertly" negotiating with Norman Pyramid, LLC, to purchase the property. In fact, Steelcase entered into a purchase agreement with Norman Pyramid. Plaintiff then filed the instant action, alleging breach of contract. The trial court granted summary disposition in favor of defendant on plaintiff's first amended complaint, but allowed plaintiff to file a second amended complaint.[1] The trial court, however, again granted summary disposition in favor of Steelcase.

We review the trial court's grant of summary disposition de novo. *Eerdmans v Maki*, 226 Mich App 360, 363; 573 NW2d 329 (1997). With a motion brought under MCR 2.116(C)(10), the evidence is viewed in the light most favorable to the nonmoving party and it must be determined whether a genuine issue of material fact exists. *Id.*

In its opinion, the trial court states that plaintiff "attempts to cobble together a new contract by quoting its e-mail offer to Defendant Steelcase on April 22, 2015, and Steelcase's reply on April 24, 2015." After quoting both emails, the trial court concludes as follows:

> By its terms, the e-mail from ECI presented an "offer" to Steelcase, and the reply from Steelcase cannot be viewed as "an acceptance [that] is unambiguous and in strict conformance with the offer," *see Kloian* [*v Domino's Pizza, LLC*, 273 Mich App 449, 453; 733 NW2d 760 (2006)], so "no contract [was] formed" that ECI can cite to support its breach-of-contract claim.

We agree with the trial court. Steelcase's e-mail reply to plaintiff's offer reads as follows:

> Thanks Jerry—this is great news. I will get Nic working on this. As we discussed, we will continue to operate in parallel paths…where we work the deal with you to close in 60 days and continue down the path of planning to demo the building.
>
> Also, in talking with our IT they are planning a 5-6 month timeframe to exit. I know internally we will be putting pressure on this timeline, so I would expect more of a 4-5 month timeframe.
>
> Given that how would you feel about the following structure of the agreement:
>
> --closing on June 30th

[1] Plaintiff originally had additional claims against Steelcase and the other defendants. But with the dismissal of all claims under the first amended complaint, and with the filing of the second amended complaint, only a breach of contract claim against Steelcase remained.

> --building handover, September 30th (allowing some work, construction, repairs, etc. to occur, however, with prior approval of Steelcase)
>
> --Steelcase cover operating expenses until building hand over (utility bills…electric, gas, water, etc.) as well as any costs related specifically to our data center.
>
> --ECI to cover all other costs
>
> Thanks again—I will give you a call over the weekend or Monday.

We agree with the trial court that reasonable minds could not differ that this response by Steelcase does not constitute an acceptance of plaintiff's offer.

> This Court reviewed the factors necessary for there to be an enforceable contract:
>
> A valid contract requires mutual assent on all essential terms. *Kamalnath v Mercy Memorial Hosp. Corp.,* 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Mere discussions and negotiation cannot be a substitute for the formal requirements of a contract. *Id.* at 549. Before a contract can be completed, there must be an offer and acceptance. *Pakideh v Franklin Commercial Mortgage Group, Inc.,* 213 Mich App 636, 640; 540 NW2d 777 (1995). An offer is defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement Contracts, 2d, § 24; see also *Cheydleur v Hills,* 415 F.Supp. 451, 453 (ED Mich, 1976). Acceptance must be unambiguous and in strict conformance with the offer. *Pakideh, supra* at 640, 540 NW2d 777.

If Steelcase were intending to accept the offer, there would be no need for it to continue to plan to demolish the building.[2] Moreover, if the e-mail was intended to operate as an acceptance of plaintiff's offer, there would be no reason to present a proposal on the structure of the agreement and to see how plaintiff would "feel about" that structure. Clearly, the parties, while on the path to an agreement, were still working out the details of the agreement. And Steelcase clearly was not yet convinced that an agreement would be reached as it was going to continue with planning to demolish the building. The e-mail exchange reflects nothing more than discussions and negotiations.

Plaintiff points to two items in the Steelcase e-mail that suggest an acceptance of plaintiff's offer. First, plaintiff refers to the "enthusiastic exclamation in response." We assume that this refers to the opening line of "this is great news." That can hardly be viewed as the equivalent of saying, "We accept." This is particularly true when the very next acceptance says that he will get their attorney "working on this." Rather, it reflects excitement over the parties

[2] Earlier in the parties' negotiations, Steelcase had indicated that, instead of either selling or donating the building, it may just demolish it.

getting close to a deal and that it was time to get the attorneys involved working out the specifics of an agreement. The other item plaintiff points to is the line "the deal with you to close in 60 days …." But plaintiff conveniently leaves out the remainder of the sentence, which reads: "and continue down the path of planning to demo the building." Rather than being the equivalent of "we accept," these lines together lead to only one reasonable conclusion: that Steelcase was excited about the parties being close to a deal, that the discussions and negotiations were progressing, but recognizing that a deal might not be reached and they needed to continue preparing their alternative plan of demolition.

Plaintiff also argues that summary disposition was premature because discovery had not yet been completed. Plaintiff, however, points to no possible evidence that could be discovered that would establish a genuine issue of material fact that Steelcase had accepted plaintiff's offer. Indeed, it is impossible to imagine what undiscovered evidence could be lurking out there that would prove acceptance. Steelcase's acceptance of the offer would have to have been in writing and that written acceptance would have to have been delivered to plaintiff. *Eerdmans*, 226 Mich App at 365. Therefore, plaintiff would already possess any such evidence. But the most that plaintiff has brought forward is the above e-mail. We fail to see how any further discovery would yield any evidence that would allow a jury to conclude that Steelcase had accepted plaintiff's offer.

Because we conclude that no reasonable trier of fact could conclude that Steelcase accepted plaintiff's offer, and therefore summary disposition was appropriate under MCR 2.116(C)(10), we need not address the parties' remaining issues regarding whether the e-mail exchanges satisfy the mirror-image rule and the statute of frauds, or whether plaintiff had stated a claim.

Affirmed. Defendants may tax costs.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey