STATE OF MICHIGAN

COURT OF APPEALS

SILVER STALLION DEVELOPMENT CORPORATION, Plaintiff-Appellant, v CITY OF PONTIAC, CLARENCE E. PHILLIPS, FRED LEEB, and WILLIAMS & WILLIAMS MARKETING, Defendants-Appellees.	UNPUBLISHED September 20, 2011 No. 298649 Oakland Circuit Court LC No. 2009-105475-CZ

Before: SAWYER, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's grant of summary disposition in favor of defendants[1] pursuant to MCR 2.116(C)(10) in this contract dispute involving the Pontiac Silverdome. Because the trial court properly granted summary disposition in favor of defendants on plaintiff's breach of contract claims and racial discrimination claims, we affirm and remand for proceedings consistent with this opinion.

[1] In addition to defendant City of Pontiac, plaintiff has named Clarence E. Phillips, Mayor of the City of Pontiac, and Fred Leeb, Emergency Financial Manager of the City of Pontiac in their representative capacities. Defendants report in their brief on appeal that Phillips' term as mayor ended in January 2010, and he passed away on September 1, 2010. Leeb's term as emergency financial manager for defendant City expired on July 1, 2010. Williams & Williams Marketing, Inc., represented defendant City of Pontiac in marketing and holding the auction for the sale of the Silverdome. In the interest of efficiency, we will refer to defendants City of Pontiac, Phillips, Leeb, and Williams and Williams, collectively as "defendants" unless otherwise stated.

As the trial court observed in its opinion and order, "[i]t is common knowledge that until recently the defendant City owned a football stadium that for several years was lacking an NFL franchise," namely the Silverdome, located at 1200 Featherstone Road, Pontiac, Michigan. Since 2002, when the Detroit Lions stopped playing professional football games at the Silverdome, the property has remained largely vacant and unused save for several isolated events. Fred Leeb, Emergency Financial Manager of the City of Pontiac, averred that since the Detroit Lions left the Silverdome, the city of Pontiac incurred approximately $1.5 million per year of ongoing expenses involved in maintaining the Silverdome itself and 127 acres surrounding the property. According to Leeb, the sale of the Pontiac Silverdome was an "important component in the [financial] turnaround of the City," because returning the Silverdome to a private owner would allow the city of Pontiac to realize property and income tax revenues from the site and in turn, hopefully, the surrounding businesses.

On June 11, 2007, defendant City issued a "Request for Proposal and Qualifications for Purchase/Redevelopment of Pontiac Silverdome Site" beginning a public bid process for the sale and redevelopment of the Silverdome property. The deadline for responses under the request for proposals was October 11, 2007 at 5:00 pm. And the request for proposals included the following waiver language:

> H. No Claims Against City
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> Prospective Purchasers shall hold harmless [Defendant], including its elected and appointed officials, employees and agents by reason of any or all of the following: (i) any aspects of this [request for proposal]; (ii) the selection process or any part thereof, any informalities or defects in the selection process; (iii) the rejection of any offer or all such offers, the acceptance of any offer, any statement, representations, acts or omissions of [Defendant]; (iv) the exercise of any discretions set forth in or concerning any of the foregoing; and (v) any other matters arising out of all or any of the foregoing.

H. Wallace Parker, plaintiff's President, averred that plaintiff participated in the 2007 bid process by providing a bid packet including an earnest deposit of $100,000, financial data, and proof of funding. Defendant City rejected all of the bids submitted in the 2007 bid process including plaintiff's proposal and requested that new proposals be submitted.

On February 22, 2008, plaintiff submitted a new proposal to defendant City. Based on that proposal and further negotiations between the parties, plaintiff and defendant City "agreed upon the terms of a non-binding Term Sheet . . . for the sale and redevelopment of the Property." On May 29, 2008, defendant City approved the Term Sheet and began preparations for city council and mayoral review and approval of an Agreement of Purchase and Sale. In August 2008, plaintiff and defendant City entered into an "Agreement of Purchase and Sale," dated August 5, 2008 whereby defendant city agreed to sell, and plaintiff agreed to purchase and redevelop the Silverdome property. The Agreement of Purchase and Sale set the purchase price at $20,000,000 and called for an earnest money deposit in the amount of $100,000. The Agreement of Purchase and Sale also provided that "Closing shall take place on a mutually acceptable date within 10 days after notice from [plaintiff] to City, but in all events, on or before . . . November 1, 2008, if at all." The Agreement of Purchase and Sale further provided that "the

failure to timely close this transaction by November 1, 2008 (unless such deadline is extended by mutual agreement) shall result in the automatic termination of this Agreement, subject only to [certain default] remedies set forth in Paragraph 9, as applicable." An October 14, 2008 letter indicates that parties later mutually agreed to a closing date of October 31, 2008.

Pursuant to the Agreement of Purchase and Sale, plaintiff was entitled to perform environmental testing on the property. Paragraph 5(e) of the Agreement of Purchase and Sale stated specifically:

> In the event the result of any investigatory activities identify any environmental conditions which are unacceptable, in [plaintiff's] sole discretion, [plaintiff] may elect to terminate this Agreement by providing written notice to the City no later than 75 days from the Effective Date, but in no event later than November 1, 2008. Failure to timely provide such notice shall be deemed a waiver of such termination rights. Upon [plaintiff's] provision of a notice to terminate, the Earnest Money Deposit shall be returned to [plaintiff], this Agreement shall thereafter be of no further force or effect, and the parties shall be deemed to have waived all claims against the other related to the Property. However, [plaintiff] may not terminate this Agreement unless the City has had a reasonable opportunity to cure the conditions rendering the Property unacceptable to [plaintiff.] (Agreement of Purchase and Sale, p 4.)

In a letter dated October 16, 2008, plaintiff notified defendant of "a number of environmental concerns" raised by an environmental consultant plaintiff hired to perform an environmental assessment of the Silverdome property. Plaintiff further stated that "our lender will not allow us to close until all environmental matters are remedied and these remedies are reflected in [our environmental consultant's] report." Plaintiff closed the letter stating, "[w]e remain ready and willing [to] close this sale on October 31, 2008 as planned if these issues are remedied. But, we must have assurances . . . immediately so that we may have [our environmental consultant] conduct a follow-up assessment and complete its report in time to deliver it to our lenders so that we may close on the scheduled date." Plaintiff sent a follow-up letter on October 21, 2008 reiterating that it had found certain environmental problems at the Silverdome and informing defendant City that it stood "ready to close once these matters have been remedied," but believed that based on the environmental issues and the necessary clean-up involved, that "the earliest possible closing date would be approximately 4 weeks from now."

Defendant City responded on October 22, 2008 via electronic mail. Defendant City first quoted Paragraph 5(e) of the Agreement of Purchase and Sale. Defendant City then explained that "[o]ur reading of the Agreement is that the 75 day deadline expires on October 22, 2008, and that [plaintiff] had elected not to terminate the Agreement, as it has not requested return of the Earnest Money Deposit." Defendant also stated that it would proceed with the required closing date set forth in the Agreement of Purchase and Sale, and that defendant would not grant additional time for closing to occur noting a significant delay by plaintiff in raising the environmental issues. Defendant City also warned plaintiff that if plaintiff failed to close on November 1, 2008, that defendant City "may choose to retain the Earnest money Deposit and/or commence an action for specific performance.

The mutually agreed upon closing date passed. On November 6, 2008, defendant City notified plaintiff that defendant City considered the Agreement of Purchase and Sale terminated by its own terms, and therefore plaintiff forfeited the $100,000 earnest money deposit. Paragraph 8(e) of the Agreement of Purchase and Sale provides that "the failure to close this transaction by November 1, 2008, (unless such deadline is extended by mutual agreement) shall result in the automatic termination of this Agreement, subject only to the remedies set forth in Paragraph 9, as applicable." In the November 6, 2008 letter, defendant City invited plaintiff to, "at any time, resubmit a proposal (either in its prior form or in some modified form, such a proposal would be considered by City officials." By way of a copy of the November 6, 2008, letter, defendant instructed the escrow agent to forward the earned money deposit to defendant. There is no evidence in the record that plaintiff sought to recover the earnest money deposit via legal action or otherwise.

Apparently, the parties then entered into a Limited Access Agreement in which defendant City allowed plaintiff access to the property to conduct environmental sampling at its own cost. Several months passed and on February 3, 2009, defendant City sent another letter to plaintiff reiterating that the Agreement of Purchase and Sale had terminated on November 1, 2008 by its own terms. Defendant City stated that it had recently received new proposals from other developers and that talks were ongoing. Defendant City reminded plaintiff that if it still wished to acquire the property, it needed to re-submit an agreement and then once again secure City Council approval of the Agreement.

On March 24, 2009, plaintiff submitted a new proposal to defendant City. Negotiations continued between plaintiff and defendant City, and on May 12, 2009, defendant City submitted to plaintiff "a proposed Real Estate Purchase Agreement" for the Silverdome property setting forth a purchase price of $19,000,000. In the letter, defendant City stated that time was "critical," and for that reason, defendant City's emergency financial manager, defendant Leeb, required that the Proposed Real Estate Purchase Agreement would need to be finalized within 14 days, or by May 26, 2009.

Plaintiff responded on May 18, 2009, with a counter-proposal. Defendant responded on May 29, 2009 stating that defendant City found the counter-proposal "unacceptable" because plaintiff changed most of the "key terms" including "price, earnest money deposit, sign, closing date, and environmental terms and conditions." Defendant City also stated that it viewed "the parties as being at an impasse, and further [saw] no realistic way to reach a meeting of the minds in order to proceed with this transaction," and no longer intended to pursue plaintiff's proposal. Citing a recent trespass by one of plaintiff's representatives on the Silverdome property, defendant City stated that it would no longer grant access to plaintiff to the property and also informed plaintiff that it viewed the trespass as "further justification for breaking off negotiations."

Nevertheless, negotiations between the parties continued and on June 1, 2009 the parties agreed in principle to a deal to sell the Silverdome property for $17,000,000 provided that plaintiff would make a $1,000,000 earnest money deposit by June 12, 2009. On June 8, 2009, plaintiff alerted defendant City that it would not be able to make the deposit on June 12, 2009 as anticipated by the parties. Defendant City responded that it was free of any obligations with any party to sell the Silverdome property and that it was actively marketing the property and

pursuing discussions with several parties. But defendant City encouraged plaintiff to continue pursuing financing for the $1,000,000 earnest money deposit and stated that it would continue negotiations when plaintiff could provide the $1,000,000 letter of credit.

Defendant Leeb testified that he continued to negotiate on behalf of defendant City with prospective purchasers including plaintiff, but all of his negotiations were "ineffectual" because no buyers wanted to put up cash to purchase the property. Leeb stated that "due to past difficulties in dealing with City administrations, the depressed state of the local economy, and the high cost of demolition, three major real estate developers stated that they would not take on the Silverdome project even if it were provided to them at no cost." According to Leeb, in order to stop the "cash bleeding" that was occurring due to the high cost of maintaining the Silverdome, defendant City decided that the property should be auctioned prior to the winter months in 2009. Defendant City hired defendant Williams & Williams Marketing, Inc., a nationally known auctioneer to aggressively market and then auction the property.

In its complaint, plaintiff acknowledges that defendant City announced in September 2009 that it had hired defendant defendant Williams & Williams Marketing, Inc. to auction the Silverdome Property. Defendant City continued to identify and negotiate with potential bidders including plaintiff as the auction approached in an attempt to encourage potential buyers who were not interested in the auction to submit firm financing commitments. Defendant City had arranged with defendant Williams & Williams Marketing, Inc. that it could cancel the auction at any time and accept a private offer.

On November 12, 2009, plaintiff sent a letter to defendant Williams & Williams Marketing, Inc, stating that plaintiff "was in a different position from those who have also entered the bid process" because plaintiff "previously paid, and have an agreement with, the City of Pontiac in the amount of $17 Million minus $100,000 already paid." The letter also noted that plaintiff was including the bid application per the auction requirements and that defendant City was already in possession of plaintiff's complete packet.

Jacob D. Erhard, deputy general counsel for defendant Williams & Williams Marketing, Inc. averred that in order to bid in the auction, the Bid Agreement and Terms & Conditions of Auction, required, amongst other requirements, a bid deposit of $250,000. Erhard testified that he became aware on November 13, 2009, that plaintiff had not submitted the required $250,000 bid deposit. According to Erhard, Erhard called plaintiff's offices and spoke with H. Wallace Parker, plaintiff's president. According to Erhard, Erhard informed Parker that although defendant Williams & Williams Marketing was in possession of an executed bid agreement and sealed bid from plaintiff, they were not in receipt of plaintiff's required bid deposit. According to Erhard, Parker explained that plaintiff was in a different position than other bidders because of its previous negotiations and attempts to purchase the Silverdome from defendant City. Erhard stated that he told Parker that previous negotiations had nothing to do with the current auction process and that plaintiff was not exempt from the required $250,000 bid deposit if plaintiff wanted to participate in the auction. Erhard stated that Parker threatened to file an injunction blocking the auction or sale of the Silverdome property if defendant City did not allow plaintiff to participate in the auction without tendering the bid deposit. Erhard stated that he told Parker that he could proceed in any manner he chose, but that plaintiff was still required to tender the bid deposit to take part in the auction.

On the day of the auction, November 16, 2009, Dan Falls, vice president of defendant Williams & Williams Marketing, placed a call to plaintiff and asked for Parker. Falls did not reach Parker but instead spoke to an unnamed employee who stated that he was familiar with the auction and bid process. Falls testified that he told the unnamed employee that defendant Williams & Williams Marketing was still not in possession of plaintiff's bid deposit and if plaintiff wanted to participate, plaintiff needed to tender the bid deposit to defendant Williams & Williams Marketing by 1:00 pm that day. Instead, on the same date, plaintiff filed this action seeking an injunction to prevent the sale of the property by virtue of its verified complaint for injunction. Plaintiff alleged that defendant City was attempting to auction the Silverdome property contrary to a purchase agreement between plaintiff and defendant City, and also alleged racial discrimination. Plaintiff requested that the circuit court enjoin defendants from proceeding with the sale of the Silverdome to any other bidders other than plaintiff and to appoint a receiver to facilitate specific performance of, and execution, and enforcement of the purchase agreement.

The auction went on as planned with the first phase on November 12, 2009 for sealed bids, and then the second phase, an open auction, on November 16, 2009. Three parties that had provided proper sealed bids were present for the second phase of the auction. The winning bid in the amount of $583,000 was placed by Andreas Apostolopoulos.

According to the trial court, because it was too late to restrain the sale by the time plaintiff's verified complaint for injunction came before the trial court, the trial court temporarily restrained the transfer of the property to preserve the status quo and set the matter for a hearing. After a hearing on the matter, the trial court found no basis for continuing the temporary restraining order and denied a preliminary injunction stating specifically that, "[t]here is no evidence before the Court that the defendant has any claim to the property that would require that the property not be sold." The trial court did not reach plaintiff's race discrimination claim for the reason that the typical remedy for race discrimination claims is money damages.

Defendant City executed a contract for sale of the Silverdome property at the auction award price of $583,000 on December 4, 2009. The real estate transaction closed on December 23, 2009. The warranty deed transferring the property is dated December 23, 2009.

Defendants filed their motion for summary disposition on January 20, 2010 requesting that all plaintiff's claims be dismissed with prejudice. The trial court entertained oral argument on defendant's motion on February 24, 2010. At the close of discussion, the trial court took the matter under advisement, and asked the parties to keep the trial court advised of any further developments. The trial court granted defendants' motion for summary disposition in a written opinion and order on May 27, 2010. The trial court stated that the facts of the case were "fundamentally undisputed" and held as follows:

> The arguments addressing the evidence are persuasive. As to any claim for specific performance or breach of contract, the undisputed evidence shows that the contract between the plaintiff and the City expired when the parties failed to close in November of 2008. The partied continued to negotiate but never entered into a new agreement. As to the claim for race discrimination, the defendant have failed to present any evidence whatsoever that race had anything to do with the parties' failure to close on the sale of the property. Neither has the

> plaintiff presented any law suggesting that a corporation can have a claim for race discrimination.
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> As to plaintiff's argument that discovery is incomplete, a party seeking to avoid summary disposition on the grounds that discovery is incomplete must provide the court with some basis to conclude that further discovery stands a fair chance of supporting a claim. *Village of Dimondale v Grable*, 240 Mich App 553, 567; 618 NW2d 23 (2000). The plaintiff has offered this Court nothing to suggest that there might be evidentiary support for a discrimination claim.

It is from this order that plaintiff now appeals as of right.

This Court reviews the grant or denial of a motion for summary disposition under MCR 2.116(C)(10) de novo. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). A motion brought under MCR 2.116(C)(10) is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). The moving party has the initial burden of supporting its position with affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b) and (4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to show a genuine issue of disputed fact for trial. *Id*.; *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009). Summary disposition is proper if there is "no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham*, 480 Mich at 111. There is a genuine issue of material fact when "reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Plaintiff first argues that the trial court erred in granting summary disposition concerning the expiration of the purchase agreement because genuine issues of material fact exist regarding whether the purchase agreement expired. Defendants respond that no genuine issues of material fact exist and the trial court properly dismissed plaintiff's breach of contract claim because it is undisputed that the only potentially enforceable contract between the parties expired by its own terms on November 1, 2008.

The applicability of the statute of frauds presents a question of law subject to de novo review. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). A contract that is void under the statute of frauds is a nullity. *Jefferson v Kern*, 219 Mich 294, 298; 189 NW 195 (1922). The statute of frauds, MCL 566.106, provides that,

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

While the parties continued to negotiate over a period of years in an attempt to come to an agreement for the sale and purchase of the Silverdome property, the record is clear that only one of the parties' agreements was actually reduced to writing and executed by defendant City: the August 5, 2008 Agreement of Purchase and Sale. For that reason, any other oral agreements or proposals not executed by defendant City violate the statute of frauds, and are therefore nullities and must not to be considered in our analysis. MCL 566.106; *Kern*, 219 Mich at 298.

Accordingly, we turn our attention to the terms of the August 5, 2008 Agreement of Purchase and Sale. "The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). Unambiguous contracts must be enforced as written. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). Absent ambiguity, contractual interpretation begins and ends with the actual words of a written agreement. See *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Unambiguous contract language should be enforced according to the plain and ordinary meaning of its terms. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2004); *Daimler Chrysler v Wesco Distribution, Inc*, 281 Mich App 240, 248; 760 NW2d 828 (2008).

The Agreement of Purchase and Sale provided that "Closing shall take place on a mutually acceptable date within 10 days after notice from [plaintiff] to City, but in all events, on or before . . . November 1, 2008, if at all." The Agreement of Purchase and Sale further provided that "the failure to timely close this transaction by November 1, 2008 (unless such deadline is extended by mutual agreement) shall result in the automatic termination of this Agreement, subject only to [certain default] remedies set forth in Paragraph 9, as applicable." While the record indicates that the parties mutually agreed to a closing date of October 31, 2008, it is equally clear that the closing did not take place on October 31, 2008. In fact, the closing did not take place at any other time prior to November 1, 2008, or on the last acceptable date pursuant to the terms of the contract, November 1, 2008. Because closing did not occur on or before November 1, 2008, and there is no evidence that the parties extended the closing deadline in writing, then by virtue of the plain and unambiguous language of the Agreement of Purchase and Sale, the failure to timely close the transaction resulted in "automatic termination of [the] Agreement[.]" The plain language of the Agreement for Purchase and Sale is unambiguous, and because unambiguous contracts must be enforced as written, plaintiff has failed to present a genuine issue of material fact concerning the expiration of the purchase agreement. *Rory*, 473 Mich at 468. We conclude that the trial court properly dismissed plaintiff's breach of contract claim for the reason that no genuine issues of material fact exist on this record with regard to the expiration of the Agreement for Purchase and Sale.

Further, to the extent plaintiff continues to argue that promissory estoppel applies, its claim fails. This matter involved an express contract that contained an integration clause; therefore, it would have been unreasonable as a matter of law for plaintiff to rely on any alleged outside representations to support a promissory estoppel claim. *UAW–GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 504; 579 NW2d 411 (1998). Moreover, plaintiff has not demonstrated any detriment as a result of the agreement that expired years ago. The evidence is to the contrary. The record demonstrates that plaintiff continued to negotiate with defendants in an effort to create a new sale contract each time at a reduced sale price rather than

attempting to enforce the 2008 agreement as a result of its supposed detrimental reliance on that contract. Plaintiff has not shown error.

Plaintiff next argues that the trial court erred in granting summary disposition concerning its racial discrimination claim on the ground that no evidence was presented establishing disputed issues of material fact. Because this case involves the negotiation of a contract for the sale of property, we assume plaintiff is availing itself of the protections afforded by the Equal Protection Clause found in the Fourteenth Amendment and also 42 USC 1981. The Fourteenth Amendment of the federal constitution, US Const, Am XIV, and Const 1963, art 1, § 2 guarantee equal protection of the laws. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v Cleburne Living Ctr, Inc*, 473 US 432, 439; 105 S Ct 3249; 87 L Ed 2d 313 (1985); *Great Lakes Society v Georgetown Twp*, 281 Mich App 396, 427; 761 NW2d 371 (2008). 42 USC 1981 specifically protects the right to make and enforce contracts, and states in particular that "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . ." To prove a violation of both the Fourteenth Amendment and §1981, a plaintiff must show that the defendant purposefully discriminated based on race. *General Building Contractors Assoc, Inc v Pennsylvania*, 458 US 375, 391; 102 S Ct 3141; 73 L Ed 2d 835 (1982). Showing a mere disparate impact on a specific race is insufficient. *Id*. at 383 n 8. Purposeful discrimination can be shown by direct or circumstantial evidence. *Amini v Oberlin College*, 440 F 3d 350, 358 (CA 6, 2006).

Our review of the record reveals a complete and utter dearth of either direct or indirect evidence that any of defendants intentionally discriminated against plaintiff Silver Stallion Development Corporation or its president, Parker, at any time during the negotiation of the 2008 agreement, during the period that closing approached on the executed 2008 agreement, or for that matter, at any time during the long relationship between the parties. Plaintiff presents only its own unsupported allegations of racial discrimination in its complaint and brief on appeal. Plaintiff offers absolutely no documentary evidence, direct, indirect, or otherwise, that defendants subjected plaintiff to any degree of racial animus during any of the contract negotiations. Plaintiff presents no testimony or affidavits in support of its allegations that it was intentionally treated differently based on race. To the contrary, there is a multitude of documentary evidence in the record that defendants in fact repeatedly encouraged plaintiff to continue negotiations and to secure financing for the purchase even after plaintiff failed to close on the property at the time of the 2008 agreement. Because plaintiff's argument is wholly unsupported by the record, plaintiff has not sustained its burden it to show a genuine issue of disputed fact for trial, and therefore plaintiff's racial discrimination claim cannot survive summary disposition. *Quinto*, 451 Mich at 362; *Innovative Adult Foster Care, Inc*, 285 Mich App at 475. [2]

[2] We need not reach the broader legal question involving a corporation's standing to assert racial discrimination claims because even if we were to give the benefit of the doubt to plaintiff

Finally, plaintiff contends that the trial court erred in granting summary disposition prior to the close of discovery on the ground that no evidence was presented addressing the contract or racial discrimination claims. "[S]ummary disposition before the completion of discovery is proper only where further discovery does not stand a fair chance of uncovering factual support for the opposing party's position." *Patterson v Kleiman*, 199 Mich App 191, 193; 500 NW2d 761 (1993). "[A] party opposing a motion for summary disposition because discovery is not complete must provide some independent evidence that a factual dispute exists." *Van Vorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004), quoting *Mich Nat'l Bank v Metro Institutional Food Serv, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). But, unless the party opposing the motion can assert what facts are disputed or likely to be uncovered by further discovery, incomplete discovery will not bar a motion for summary disposition. *Van Vorous*, 262 Mich App at 477. Based on the record before us, we conclude that plaintiff has not met its burden showing that discovery would have produced additional facts that show a factual dispute exists between it and any of defendants.

In accordance with our authority, this Court awards costs to defendants as the prevailing parties pursuant to MCR 7.219(A). Further, pursuant to MCL 600.2445(3) and MCR 7.216(C)(1)(a), (2), this Court sua sponte orders damages against plaintiff for this vexatious appeal. Plaintiff took this frivolous appeal "without any reasonable basis for belief that there was a meritorious issue to be determined on appeal[.]" The record was devoid of merit supporting any of plaintiff's claims both in the trial court and on appeal. Plaintiff attempted to thwart the sale of the Silverdome to another qualified buyer even though it had no contractual basis to do so. This action is especially disconcerting considering the fact that it was so well known that defendant City was suffering financially and needed to sell the Silverdome property because it could no longer afford the significant maintenance costs. The trial court shall award reasonable attorney fees in favor of defendants in an amount to be determined by the trial court together with any other damages or costs it deems appropriate as a result of plaintiff's engagement in these baseless, vexatious proceedings.

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio

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corporation and assume without deciding that plaintiff corporation had standing to bring such a cause of action, that cause of action would fail on this scarce record.