STATE OF MICHIGAN

COURT OF APPEALS

WOLVERINE ENGINEERS & SURVEYORS, INC.,	UNPUBLISHED November 17, 2011
Plaintiff-Appellant,	
v	No. 299988 Ingham Circuit Court
CITY OF LESLIE,	LC No. 10-000179-CK
Defendant-Appellee.	

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Rolland D. Olney (now deceased) was defendant's city manager from October 2000 to September 2007. Olney averred that in February 2006, the city of Leslie requested and authorized plaintiff to perform engineering work on a proposed reconstruction project. Olney averred that he oversaw the work plaintiff performed and agreed "to the compensation Wolverine was to be paid by the City of Leslie for its work." Donald B. Heck, the president of Wolverine, swore that Olney "represented to me and others at Wolverine that he was acting and instructing us in his capacity as the City Manager for the City of Leslie."

Plaintiff filed a complaint on Feb 12, 2010, claiming that defendant owed $79,000 pursuant to a contract for engineering work performed on the "Main Street Project." Alternatively, plaintiff argued that it was entitled to the reasonable value of its services under a theory of quantum meruit. Defendant sought summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing in part that Olney did not have the power or authority to contractually bind the city and that none of the procedures the city charter required were followed. The city argued that quantum meruit was unavailable under the circumstances of this case and that it was not unjustly enriched because plaintiff's work had no value, and it did not use it. The court granted the motion, and plaintiff now appeals.

A trial court's decision whether to grant a motion for summary disposition is a question of law that this Court reviews de novo. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313

(2007). "The proper construction and interpretation of a contract is a question of law we review de novo." *Perry v Sied*, 461 Mich 680, 681 n 1; 611 NW2d 516 (2000). Whether the undisputed facts establish an enforceable contract is also a question of law that we review de novo.

"[A] claim of quantum meruit is equitable in nature." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 199; 729 NW2d 898 (2006). Equity cases are reviewed de novo. *Trachik v Mandeville*, 487 Mich 38, 44; 790 NW2d 260 (2010). And, although whether a party has been unjustly enriched is generally a question of fact, whether a claim for unjust enrichment can be maintained is a question of law this Court reviews de novo. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006).

Article 11 of the city of Leslie's charter provides that the power to contract "is vested" in the city council and that all contracts must be authorized by the council and signed by the mayor and clerk. The city clerk swore that she searched the council's minutes and records and found no evidence that the council authorized or entered into a contract with plaintiff for the Main Street project. She could also not find any formal action empowering Olney to enter into a contract with plaintiff for the Main Street project on behalf of the council. In *Johnson v Menominee*, 173 Mich App 690, 693-694; 434 NW2d 211 (1988), this Court opined:

> It is fundamental that those dealing with public officials must take notice of the powers of the officials. *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655, 660; 173 NW2d 236 (1969). Persons dealing with a municipal corporation through one of its officers must at their peril take notice of the authority of the particular officer to bind the corporation. *Id*. If the officer's act is beyond the limits of his or her authority, the municipality is not bound. *Id.*, p 661. Additionally, individual city council members have no power to bind the municipality. *Rasch v East Jordan*, 141 Mich App 336, 345; 367 NW2d 856 (1985).

In *Superior Ambulance Serv*, 19 Mich App at 657-658, the plaintiff sued the city for $3,107 in ambulance services it allegedly rendered to the city. Following a bench trial, the trial court granted the city's motion for judgment of no cause of action. *Id*. at 658-659. This Court affirmed. The relevant facts are as follows:

> Plaintiff corporation had provided ambulance service for the Wayne county and Washtenaw county area including defendant city. A witness for the plaintiff testified to a verbal contract entered into between the plaintiff and the chief of police of the defendant city, whereby plaintiff was to answer all emergency police and fire calls and they (defendant) would take care of payment of the calls. Plaintiff for some years answered the emergency calls of defendant's police and fire departments. From time to time plaintiff submitted bills to the persons who received the service and if they refused or failed to pay, defendant city was billed as guarantor of collections. The persons who did not pay were considered "indigent" by plaintiff corporation. Plaintiff billed the city for such services and presented the bills to defendant's chief of police who examined them before

> submitting them to the city controller who in turn forwarded the bills to the city council for approval or rejection. Plaintiff received payments from defendant city for services rendered until 1965. In 1966 plaintiff informed defendant by letter that unless payments were forthcoming for services on official calls plaintiff would be forced to discontinue such service. In accord with that letter the ambulance service was subsequently discontinued. [*Id*. at 658.]

The parties acknowledged that there was no written contract, but argued whether the police chief could bind the municipality for the services rendered. *Id*. at 659. This Court agreed with the trial court that plaintiff failed to present any statute, resolution, ordinance, or charter vesting the police chief authority to bind the city. *Id*. at 660.

The present case is similar to *Superior Ambulance Serv*. According to the affidavit of the city clerk, the council never authorized any contract with plaintiff or authorized Olney to contract on its behalf regarding the Main Street project. The city is not bound when Olney acted beyond the limits of his authority. *Johnson*, 173 Mich App at 693-694. Plaintiff failed to take notice at its peril that Olney did not have the authority to bind defendant. *Id*. Moreover, Olney's role as an individual council member could not bind the municipality. *Id*.

As a preliminary matter, it does not appear that defendant was unjustly enriched by the work plaintiff performed. Defendant asserts that the work plaintiff performed had no value to the city because the city did not use it. Plaintiff has not explained how defendant was unjustly enriched under these circumstances. It is unclear how engineering work that the city does not intend to use provides it a benefit. Moreover, even assuming that defendant was unjustly enriched by the work plaintiff performed, quantum meruit is still unavailable.

Our Supreme Court has denied quantum meruit in many similar cases between a city and an alleged contractor. In *Stratton v Detroit*, 246 Mich 139; 224 NW 649 (1929) it denied quantum meruit in a claim against the city for services expended but not authorized under the parties express contract, stating as follows:

> It may seem hard to hold that the city can have the benefit of plaintiffs' services and not be bound to pay therefor. But it is an unavoidable consequence to those who attempt to contract with municipalities in total disregard of the limitations placed upon their powers, and which have been found necessary to safeguard the rights of their citizens. [*Id.* at 147.]

In *Black v Common Council of Detroit*, 119 Mich 571; 78 NW 660 (1899), a contract the city council entered into was not authorized under the city charter. The Court noted that

> [t]hose who deal with the agents of a municipal corporation must take notice of the restrictions in its charter in respect to the powers of the corporation and its agents, and the mode in which such powers may be exercised, and must see to it that the contracts on which they rely are authorized by the charter. * * * Where

> the contract is void, a contractor cannot recover of the corporation in any form,--neither under the contract nor *quantum meruit*. All who deal with a municipal corporation must see that the contract upon which they rely is within its powers. [*Id.* at 577 (citations and quotation marks omitted).]

Still, an implied contract may be found when the municipal corporation possessed the authority to enter the contract and retained its benefit, but a defect or irregularity prevented the formation of a valid contract. See *Webb v Wakefield Twp*, 239 Mich 521, 527-229; 215 NW 43 (1927); see also *Baker v Kalamazoo*, 269 Mich 14, 20; 256 NW 606 (1934). The Court concluded in *Baker* that there was no unjust retention of benefits where the city commission did not take any action to accept the benefits of the plaintiffs' services or know that the plaintiffs were doing work outside the scope of the original contract. *Id.* at 20-21.

Here, it was within the authority of city to contract for the engineering work at issue. But as in *Baker*, there is no evidence that the council accepted any benefits of the contract or that the council was aware that plaintiff was performing the work but remained silent. Plaintiff did not send defendant a bill for the work, despite performing under the alleged contract for nearly three years. Additionally, as in *Baker*, Olney possessed no authority to accept benefits of the work on behalf of the city. *Id.* at 20.

In sum, plaintiff failed to show that defendant was unjustly enriched. Even if plaintiff could make such a showing, recovery under the doctrine of quantum meruit is not permitted against a municipal corporation in these circumstances.

There is no indication that agency principles can overrule the general requirement that those contracting with a municipality be aware of whether a particular officer is acting within the limitations set in the city charter in respect to the power of contract. Plaintiff provides no legal basis showing that the doctrines of implied, apparent, or inherent agency overrule the long-standing principle that one "dealing with a municipal corporation through its officers must at their peril take notice of the authority of the particular officers to bind the corporation."[1] *Rens v Grand Rapids*, 73 Mich 237, 247; 41 NW 263 (1889). A municipality is not bound when its officers act beyond the limits of their authority. *Id.*

Plaintiff argues summary disposition was premature because discovery was necessary to find evidence that defendant had in the past engaged in similar conduct in violation of the city charter. But even if defendant were routinely honoring agreements that were not properly authorized under the charter, this would not change the fact that plaintiff failed to ensure it had a valid contract with the city, so it was operating at its own peril when it performed the work at

[1] "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims . . . and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

issue. The fact that others may have been operating at their peril without a bona fide contract does nothing to change plaintiff's claims.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey