STATE OF MICHIGAN

COURT OF APPEALS

BANKSTON CONSTRUCTION, INC.,	UNPUBLISHED June 29, 2004
Plaintiff-Appellant,	
V	No. 241988 Wayne Circuit Court
CITY OF DETROIT,	LC No. 00-000691-CK
Defendant-Appellee.	

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

I

In 1997, the Detroit Water and Sewage Department (DWSD) opened a bidding process for the hauling of solidified stabilized sludge[1] from its wastewater treatment facility. Plaintiff's bid was identified as the low bid in July of 1997, and the contract was formally awarded when it was approved by the Detroit City Council in April of 1998. Prior to the formal awarding of the contract to haul solidified stabilized sludge to plaintiff, and again in January 1999, DWSD solicited bids for the hauling and disposal of raw sludge on what it contended was an emergency effort to remain in compliance with the requirements of its NPDES permit. Each of these emergency contracts was awarded to another company named City Management.

In January 2000, plaintiff filed its complaint against defendant alleging that the awarding of these emergency contracts to City Management constituted a breach of plaintiff's contract

[1] Sludge is a solid waste product removed from wastewater before the treated wastewater is released into the Detroit River (pursuant to the requirements of a National Pollution Discharge Elimination System permit governing the wastewater treatment plant). Sludge is either incinerated and hauled away as ash, hauled away and disposed of as raw sludge (otherwise referred to as "sludge cake"), or hauled away to landfills in a solidified, stabilized form. Sludge is solidified and stabilized by adding lime or similar substances to raw sludge to raise its pH.

with defendant. Specifically, plaintiff asserted that its offer to haul solidified stabilized sludge was implicitly accepted by the defendant after it submitted the low bid in July 1997, and that because the offer was accepted it was entitled to begin hauling solidified stabilized sludge immediately thereafter. Plaintiff contends that it had an output contract with defendant that entitled it to haul a specific amount of sludge, and that defendant's award of emergency contracts to City Management in 1997 and 1999 to haul raw sludge breached its contract with defendant by reducing the sludge available for plaintiff to haul to an amount less than that established by the contract, causing damages to it by diminishing the revenues that plaintiff was able and entitled to earn under the terms of the contract. Plaintiff also asserts that because the language of the contract required plaintiff to be ready and able to haul up to 2000 tons of solidified stabilized sludge per day, defendant's failure to make that amount available for plaintiff to haul constituted a breach of an implied covenant of good faith and dealing.

Defendant moved for summary disposition under MCR 2.116(C)(10) and also moved for sanctions, asserting that there was no contract between plaintiff and defendant until the Detroit City Council formally awarded the contract in April 1998, that the contract between plaintiff and defendant was not an output contract and that there was no guarantee under the contract that there would be a specific amount of solidified stabilized solidified sludge for plaintiff to haul, and that defendant neither breached the express language of the contract or any requirement of good faith dealing with the plaintiff. The trial court granted defendant's motion for summary disposition, finding that there was no contract between plaintiff and defendant until April 1998, and that defendant had not breached the contract in any respect. The trial court denied defendant's motion for sanctions.

II

We review de novo the grant of a motion for summary disposition under MCR 2.116(C)(10), considering the facts in the light most favorable to the nonmoving party. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. The adverse party may not rest on mere allegations or denials of a pleading, but must, by affidavits or other appropriate means, set forth specific facts to show that there is a genuine issue for trial. All supporting and opposing material submitted must be considered by the court." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000) (citations omitted).

III

On appeal, plaintiff first asserts that the trial court erred in finding that there was not an implied contract between plaintiff and defendant prior to formal approval of the contract by the Detroit City Council in April 1998. We disagree. It is a well known principle of contract law that "[b]efore a contract can be completed, there must be an offer and acceptance." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). In this regard (and as this Court has previously noted), contracting with municipal governments can be especially risky:

> "It is fundamental that those dealing with public officials must take notice of the powers of the officials. 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. If the officer's act is beyond the limits

> of his or her authority, the municipality is not bound." [*Booker v Detroit*, 251 Mich App 167; 650 NW2d 680 (2002) rev'd in part on other grounds, remanded in part on other grounds ___ Mich ___; 668 NW2d 623 (Docket Nos. 121712, 121856, decided September 18, 2003) (quoting *Johnson v Menominee*, 173 Mich App 690, 693-694; 434 NW2d 211 (1988).]

Both plaintiff and defendant, below and on appeal, acknowledge that Detroit Ordinance 570-H applies to this case. The ordinance states, in relevant part, that "[t]he following contracts and amendments thereto shall not be entered into without city council approval: Goods and services over the value of five thousand dollars." Detroit Ordinance 570-H § 1. It is undisputed that the contract was not formally awarded until its approval by the Detroit City Council in April, 1998. Under *Booker, supra*, and Ordinance 570-H, it is clear that there could be no acceptance of plaintiff's bid absent city council approval. Accordingly, the trial court correctly rejected plaintiff's assertion that there was an implied contract before April 1998.

Plaintiff next argues that the trial court erred in concluding that its contract with defendant was not an output contract, and that plaintiff was not entitled to haul a minimum tonnage of stabilized solidified sludge under the terms of the contract. Again, we disagree. "When the terms of a contract are unambiguous, the meaning of the contract is interpreted from the language alone." *Dignan v Michigan Public Sch Employees Retirement Bd*, 253 Mich App 571, 578-579; 659 NW2d 629 (2002). The relevant language of the contract states:

> *As needed*, the Contractor agrees to furnish operators and equipment 24 hours per day, 365 days a year in sufficient quantity to load and haul *up to* 2000 wet tons per 12 hour day and deliver such amounts to designated landfills.
>
> * * *
>
> Unless otherwise directed by DWSD, all material solidified and stabilized between the hours of 3:30 p.m. to 3:30 a.m. shall be loaded and hauled off the Wastewater Plant site between the hours of 3:30 a.m. to 3:30 p.m. . . . . The quantity of solidified stabilized material that the Contractor may receive for loading and hauling from this 12 hour production period is *expected to vary* from *zero* wet tons to *1000* wet tons. This quantity is *indefinite* and *not guaranteed* and the City *will not assume responsibility or accept blame of any kind if the quantity* to be removed proves to be greater *or less than the amounts stated*.
>
> Unless otherwise directed by DWSD, all material solidified and stabilized between the hours of 3:30 a.m. to 3:30 p.m. shall be loaded and hauled off the Wastewater Plant site by 3:30 p.m. of the same day . . . . The quantity of solidified stabilized material that the Contractor may receive for loading and hauling from the 3:30 a.m. to 3:30 p.m. production is also *expected to vary* from *zero* wet tons to *1000* wet tons. This quantity is *indefinite* and *not guaranteed* and the City *will not assume responsibility or accept blame of any kind if the quantity* to be removed proves to be greater *or less than the amounts stated*.
>
> * * *

> The Contractor acknowledges and agrees that DWSD has and reserves the right to *let other contracts of a similar nature* to this Contract. The necessity of letting any other contracts will be determined solely by the Director or his Designee.
>
> * * *
>
> The City reserves *the right to let other contracts* for the *loading*, solidification, stabilization, *hauling*, and/or disposal of solidified stabilized and/or unsolidified unstabilized sludge and scum . . . (emphasis added).

As is apparent from the plain language of the contract, plaintiff had no entitlement to haul a specific amount of solidified stabilized sludge and defendant was unrestrained in its ability to award contracts to haul raw sludge as it deemed necessary, even if the amount of solidified stabilized sludge was reduced by the awarding of such additional contracts. The trial court correctly dismissed this claim.

Finally, we disagree with the plaintiff's assertions that trial court erred by rejecting plaintiff's claim that the defendant's conduct in contracting with plaintiff constituted a breach of an implied covenant of good faith and fair dealing. "Michigan does not recognize a claim for breach of an implied covenant of good faith and fair dealing." *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003) (citing *Ulrich v Federal Land Bank of St Paul*, 192 Mich App 194, 197; 480 NW2d 910 (1991)). Accordingly, the trial court properly dismissed this claim. *Id*.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper