

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEW G. BATCHELOR,

Plaintiff,

v

BARNES CONSTRUCTION COMPANY,

Defendant/Third-Party
Plaintiff-Appellant,

v

A. J. VENEKLASEN CONSTRUCTION
COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
October 18, 1996

No. 181288
LC No. 91-070661-NO

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Third-party plaintiff appeals as of right from the October 31, 1994, order of the Kent County Circuit Court granting third-party defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings.

The trial court erred in granting third-party defendant's motion for summary disposition on the grounds that the parties to this contract were not competent and that there was no mutuality of agreement with regard to the indemnification provision because genuine fact questions existed with regard to those issues. See *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). There is a genuine issue of material fact whether third-party defendant's representative, Mr. Al Rose, had apparent authority to bind it to the contract for indemnification. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 528; 529 NW2d 318 (1995). The actions of Rose as third-party defendant's lead negotiator on the project, coupled with the belief of third-party plaintiff's project manager that Rose was defendant's contact person on this project, could have reasonably led third-

party plaintiff to believe that Rose was third-party defendant's authorized agent. Further, summary disposition was improper because the subsequent performance of the work could constitute ratification of the agreement, and thus third-party defendant would be estopped from denying that its agent was authorized to act on its behalf. *David v Serges*, 373 Mich 442; 129 NW2d 882 (1964); *Langell v Boscaglia*, 330 Mich 655; 48 NW2d 119 (1951); *Hutton v Roberts*, 182 Mich App 153, 162; 451 NW2d 536 (1989); *Bruno v Zwirkoski*, 124 Mich App 664, 668; 335 NW2d 120 (1983). Finally, summary disposition was improperly granted because a fact question existed with regard to mutuality of agreement. In other words, when viewed in a light most favorable to third-party plaintiff, the evidence indicates that third-party defendant's agent assented to the agreement in an objective manner; he signed it. *Reed v Citizens Ins Co*, 198 Mich App 443, 449; 499 NW2d 22 (1993).

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

/s/ Janet T. Neff

/s/ Marilyn Kelly

/s/ Jeanne Stempien