

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF RIVER ROUGE,

Plaintiff-Appellee,

v

CITY OF ECORSE,

Defendant/Third-Party Plaintiff-
Appellant,

v

PETER W. MACUGA and MACUGA, LIDDLE,
& DUBIN, P.C.,

Third-Party Defendants.

UNPUBLISHED

August 2, 2012

No. 303920

Wayne Circuit Court

LC No. 09-003028-CK

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Defendant City of Ecorse appeals as of right from a stipulated final order dismissing certain claims involved in this case; however, Ecorse's appeal concerns an earlier order that granted summary disposition under MCR 2.116(C)(10) to plaintiff City of River Rouge on its breach of contract claim against Ecorse. We affirm.

This case stems from an air-quality monitoring study conducted by Integrated Environmental, Inc. (Integrated), in River Rouge around a steel plant owned by the United States Steel Corporation (U.S. Steel). The study lasted from May 2003 to November 2007. River Rouge commissioned the study to obtain evidence to support a potential toxic-tort case against U.S. Steel for suspected air pollution. River Rouge, a class representing River Rouge residents, Ecorse, and a class representing Ecorse residents proceeded with claims against U.S. Steel in federal court; the claims were consolidated.

The various plaintiffs were represented by three lawyers. River Rouge was represented by James Murphy, Ecorse was represented by Peter Macuga, and the plaintiffs in the class action were represented by Jason Thompson and Macuga. All three planned to rely on the expert testimony of Dr. Rick Harding of Integrated, who had been monitoring air samples for pollution

during the course of the air-quality study. The air monitoring provided scientifically credible evidence that enabled Dr. Harding to validate his expert opinion that U.S. Steel was responsible for damage-causing pollution. The parties agreed to share the cost of creating one expert-witness report using Dr. Harding for all three consolidated cases; the split agreed to was 25% to River Rouge, 25% to Ecorse, and 50% to the class. The direct costs of creating the report resulted in \$320,345.08 in fees, and each party paid its respective share.

On February 10, 2005, just before filing its complaint against U.S. Steel, Ecorse entered into a contract with Macuga and his firm to represent it in its case against U.S. Steel. The contingent-fee agreement between Macuga and Ecorse stated:

Clients engages [sic] and employs Attorneys to represent Clients and, if necessary, to prosecute the claim and cause of action, and if necessary, institute and prosecute litigation. Attorneys are authorized to do anything, within their discretion, necessary in achieving that end. . . . It is further agreed that no compromise or settlement of any claim, or any part thereof, will be made by the Attorneys without consent of the Clients.

The Mayor of Ecorse when the agreement was signed was Larry Salisbury. Ecorse did not challenge the authority of Macuga to incur the costs of preparing the expert-witness report, as evidenced by the payment of its 25% share of the *direct* witness-report fees (\$80,086.27) to Integrated.

In December 2007, by way of e-mail, Thompson and Macuga agreed to a reimbursement for River Rouge of the costs of conducting the air-quality study using the same 25/25/50 split used to pay the direct costs of preparing the expert-witness report. Macuga, in effect, committed Ecorse to pay \$171,421.66 to River Rouge. Macuga indicated that he agreed to reimburse River Rouge for the costs of conducting the air-monitoring study because the study was integral to the expert-witness report and the expert-witness report was integral to recovering damages in the case against U.S. Steel. Ultimately, U.S. Steel decided to settle each action separately, negotiating first with River Rouge, then Ecorse, and finally the class. River Rouge settled for \$550,000.00 and then, relying on Macuga's recommendation, Ecorse also settled for \$550,000.00.

In January 2008, Macuga sent a letter via facsimile to members of the new Ecorse administration—Mayor Herbert Worthy, City Controller Erwin Hollenquest, and City Attorney Esly Williams—to inform them of the status of the ongoing lawsuit against U.S. Steel. In that letter, Macuga mentioned the “approximately \$100,000.00” already paid to Integrated and stated that “further Plaintiff expert witness fees are anticipated in the approximate amount of \$180,000.00.” In two subsequent letters to Ecorse about settling the lawsuit with U.S. Steel, Macuga was silent concerning Ecorse's obligation to River Rouge. According to Esly Williams, in a conversation before the passage of the city's March 25, 2008, resolution granting authority to Macuga to settle Ecorse's claims against U.S. Steel, Macuga informed Williams that after his \$100,000.00 attorney fee was paid out of the settlement proceeds, the only amount left to be paid by Ecorse was a bill for approximately \$8,000.00 owed to Integrated that was previously invoiced and had remained unpaid; this was for Ecorse's portion of the direct costs of producing

the expert-witness report. Macuga seemed to confirm this in a letter sent on April 21, 2008, which stated:

As you know the City of Ecorse has recently been sent again an invoice . . . in the amount of \$8,050.64 dated July 31, 2007. This is the only charge that the City of Ecorse still owes for its share of the litigation expert costs incurred during the litigation of the controversy. Upon payment of this invoice, the City of Ecorse will owe no more expert fees for trial litigation costs for the US Steel consolidated controversy.

In June 2008, after all three cases were settled, River Rouge requested payment from Ecorse in the amount of \$171,421.66, which Ecorse refused. River Rouge then filed its complaint against Ecorse for breach of contract and unjust enrichment on February 6, 2009, in the Wayne Circuit Court. On June 23, 2010, River Rouge filed its motion for summary disposition against Ecorse on its claim for breach of contract. River Rouge argued that the cost-allocation agreement was an enforceable contract because Macuga had actual and apparent authority to bind Ecorse to the contract as a “litigation expense.” The trial court granted summary disposition, reasoning that Macuga had actual and apparent authority to bind Ecorse to the contract.

The standard of review for a trial court’s ruling on a motion for summary disposition is *de novo*. *Healing Place at North Oakland Medical Center v Allstate Ins Co*, 277 Mich App 51, 56; 744 NW2d 174 (2007). River Rouge filed for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The order granting summary disposition did not specify under which court rule the court was granting summary disposition, but it is clear that the court considered evidence outside the pleadings in reaching its conclusion. Thus, we presume that summary disposition was granted under MCR 2.116(C)(10). A motion for summary disposition filed under MCR 2.116(C)(10) should be granted when no genuine issue of material fact exists “and the moving party is entitled to judgment as a matter of law.” *Healing Place*, 277 Mich App at 55-56. “A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ.” *Id.* at 56.

The central issue in the case is whether Macuga had actual authority¹ to bind Ecorse to pay 25% of the fees for the Integrated air-quality study that was used to form the expert-witness report used in the consolidated case against U.S. Steel.

Ecorse cites *Birou v Thompson-Brown Co*, 67 Mich App 502, 506; 241 NW2d 265 (1976), for the proposition that generally, questions relating to the scope of an agency relationship are questions of fact for the jury, rendering summary disposition inappropriate.

¹ As explained in *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992), “Actual authority may be express or implied. . . . An agent has implied authority from his principal to do business in the principal’s behalf in accordance with the general custom, usage and procedures in that business.”

However, as River Rouge points out in its brief, Ecorse omitted the very next sentence of the *Birou* opinion stating specifically that when a written agreement defines the agent-principal relationship, it is up to the trial judge to determine the relationship. *Id.* Here, a written agreement is in issue.

Under Michigan law, “an attorney often acts as his client’s agent, and his authority may be governed by what he is expressly authorized to do as well as by his implied authority.” *Uniprop, Inc v Morganroth*, 260 Mich App 442, 447; 678 NW2d 638 (2004). Ecorse cites several cases in its brief in support of the proposition that an agent may not bind a principal to a contract without authorization.² Here, however, Ecorse entered into an *attorney agreement* that authorized Macuga to represent Ecorse and to prosecute litigation against U.S. Steel; it specifically stated that he was “authorized to do anything, within his discretion, necessary in achieving that end.” Macuga had express actual authority to enter into the agreement.

Further, Macuga had implied actual authority in this case. “An agent has implied authority from his principal to do business in the principal’s behalf in accordance with the general custom, usage and procedures in that business.” *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). “After the agency relationship and the extent of the agent’s authority have been shown, the principal has the burden of proving that the agent’s authority was limited.” *Id.* We conclude that the attorney-client relationship sufficiently established a degree of authority, and Ecorse has not met its burden of proving that Macuga’s authority was limited, especially in light of its approval to share the direct costs of preparing the expert-witness report.

In addition, where authority is conferred on an agent in ambiguous terms, and the agent, in good faith, adopts a permissible construction, the principal is estopped from asserting that the authority assumed in accordance with such construction was not the authority intended to be conferred. See *Berry v Haldeman*, 111 Mich 667, 673-674; 70 NW 325 (1897). Macuga, in good faith, adopted a permissible construction of the terms of the retainer agreement and therefore Ecorse is estopped from asserting—as against River Rouge—that the authority was not intended.

Ecorse asserts that the cost-sharing agreement entered into by Macuga is not a litigation expense, but rather “akin to settlement of a separate and independent (potential) claim, for which Macuga needed the approval of the Ecorse City Council.” If the agreement to pay 25% of the costs for the air-monitoring study is a separate settlement, then Macuga would have needed to get Ecorse’s approval before entering into the contract. However, because the air-quality monitoring data was necessary for the formation of the expert-witness report, and because the expert-witness report was necessary for prosecuting Ecorse’s claim against U.S. Steel, the cost of

² One general rule is that a city “officer, body or board *Duly* [sic] *authorized* must act in behalf of the municipality, otherwise a valid contract cannot be created.” *Superior Ambulance v City of Lincoln Park*, 19 Mich App 655, 651; 173 NW2d 236 (1969) (emphasis added; internal citations and quotation marks omitted).

conducting the air-monitoring can correctly be characterized as a litigation expense, not a settlement of a separate claim.

In his January 2008 letter, Macuga specifically informed the new Ecorse mayor and city attorney that he had formed the cost-sharing agreement and that Ecorse would have to pay approximately \$180,000.00. In subsequent letters, however, Macuga neglected to remind Ecorse of this expense, and even went so far as to say that after an unpaid \$8,000.00 invoice for the direct costs of creating the expert-witness report was satisfied, Ecorse “will owe no more expert fees for trial litigation costs” While Macuga’s failure to adequately inform his client about costs incurred during the course of litigation is unacceptable, it does not change the fact that he did have the actual (express and implied) authority³ to bind Ecorse to the cost-sharing agreement in the first place.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

³ This Court finds it likely that Macuga also had apparent authority to bind Ecorse to the agreement, see, generally, *Central Wholesale Co v Sefa*, 351 Mich 17, 25; 87 NW2d 94 (1957), but because we find that Macuga had actual authority, it is not necessary for us to reach the issue.