

STATE OF MICHIGAN
COURT OF APPEALS

METROVENTURES/USA, INC.,

Plaintiff/Counter-Defendant-
Appellee,

v

DETROIT HOUSING COMMISSION,

Defendant/Counter-Plaintiff-
Appellant,

and

CITY OF DETROIT,

Defendant.

UNPUBLISHED

July 6, 2006

No. 267502

Wayne Circuit Court

LC No. 04-436291-CZ

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

The Detroit Housing Commission (DHC) contracted to develop public housing with funding assistance from the U.S. Department of Housing and Urban Development (HUD). The procurement process by which an agency such as the DHC may procure property and services under a grant from HUD is set forth by 24 CFR 85.36. It states that the agency can procure goods and services pursuant to (1) small purchase procedures, (2) sealed bids (formal advertising), or (3) competitive proposals. 24 CFR 85.36(d)(1)-(3). If, however, none of those methods are feasible to award a contract, the agency can procure goods and services through a noncompetitive proposal if, among other things, a public exigency or emergency exists that will not permit a delay resulting from competitive solicitation. 24 CFR 85.36(d)(4).

In early April 2003, the DHC received notice that to qualify for Replacement Housing Factor (RHF) funding, it had to submit a plan to HUD for approval by May 30, 2003. The DHC

then turned to plaintiff for “technical assistance for the preparation and submission” of its RHF plan. Jeffrey Bond, the DHC purchasing officer, issued a purchase order for services from plaintiff as an “exigent procurement” on the ground that the DHC could not procure the services needed to help it prepare its RHF plan in time for the submission date to HUD. Plaintiff relied upon this contract in performing the services in question at a price of \$175,000. A week later, the DHC adopted a resolution to ratify the decision and submit it to HUD for approval. Afterward, HUD denied the request to award a contract in the amount of \$175,000 to Metroventures/USA on the ground that it violated “the federal procurement requirements found in 24 CFR 85.36. HUD declined to reconsider the refusal of the contract because the DHC’s delay in preparing an RHF plan did not constitute an emergency/exigency situation under its regulations. This lawsuit ensued and the trial court granted plaintiff’s motion for summary disposition, finding the defendant liable on the contract.

II. STANDARD OF REVIEW

The trial court’s ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

III. ANALYSIS

Defendant contends that it is not bound by the contract because the official who procured it acted without authority. See *Johnson v Menominee*, 173 Mich App 690, 693-694; 434 NW2d 211 (1988). However, defendant ratified the official’s act by adoption of a resolution and by accepting the benefits of his act with knowledge of the material facts. *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 431-432; 683 NW2d 171 (2004), rev’d in part on other grounds 472 Mich 192 (2005).

Defendant further contends that the contract was contingent upon approval by HUD. It has not cited any law or regulation showing that such is the case. At best, 24 CFR 85.36(g)(2) requires pre-award review of the procurement documents only under certain circumstances and then only “on request.” Defendant has not shown that there was such a request. Rather, when defendant ratified the contract through the resolution, it also resolved to submit the matter to HUD for ratification and approval. That was done after execution of the contract at issue, and a party to an existing bilateral agreement cannot modify it unilaterally. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372; 666 NW2d 251 (2003). Accordingly,

defendant has failed to establish error warranting reversal.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette