08/13/96 JOHN ANDERSEN v. NORTHERN HYDRAULICS

1996 | Cited 0 times | Court of Appeals of Minnesota | August 13, 1996

UNPUBLISHED

OPINION

TOUSSAINT, Chief Judge

Appellant Northern Hydraulics, Inc., claims that respondent Mr. Heater Corporation is the successor corporation, for liability purposes, to the manufacturer of an allegedly defective product and challenges the trial court's grant of summary judgment for respondent on this issue. We affirm.

DECISION

A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.

Fabio v. Bellomo , 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

In Minnesota, where one corporation sells or otherwise transfers all of its assets to another corporation, the successor is generally not liable for the debts and liabilities of the transferor, except

(1) where the purchaser expressly or impliedly agrees to assume such debts;

(2) where the transaction amounts to a consolidation or merger of the corporation;

(3) where the purchasing corporation is merely a continuation of the selling corporation; and

(4) where the transaction is entered into fraudulently in order to escape liability for such debts.

J.F. Anderson Lumber Co. v. Myers , 296 Minn. 33, 37-38, 206 N.W.2d 365, 368-69 (1973); see Cooper v. Lakewood Engineering & Mfg. Co. , 45 F.3d 243, 245 (8th Cir. 1995) (iterating standard). Appellant contends that respondent is the successor for liability purposes to ENERCO, the manufacturer of an allegedly defective product that injured John Andersen, arguing (1) respondent is a "mere

continuation" of ENERCO, (2) the transfer of assets from ENERCO to respondent by way of an intervening sale of the assets to the B.D. Wait Corporation, ENERCO's Canadian distributor, was a fraudulent conveyance made to escape liability for potential lawsuits, and (3) respondent assumed liability for ENERCO's debts.

I.

Successor liability exists "where the purchasing corporation is merely a continuation of the selling corporation." J.F. Anderson, 296 Minn. at 38, 206 N.W.2d at 368-69. In Niccum v. Hydra Tool Corp. , 438 N.W.2d 96 (Minn. 1989), the Minnesota Supreme Court held:

Under the traditional rule mere continuation "refers principally to a 'reorganization' of the original corporation" under federal bankruptcy law or through state statutory devices. J.F. Anderson , 296 Minn. at 38, 206 N.W.2d at 369. This court held that "continuity of business, name, and management alone, is not, we think, sufficient basis for holding a transferee liable for the debts of the transferor." Id. If there is no continuation of the corporate entity -shareholders, stock, and directors -- the successor corporation is not liable.

Id. at 99.

Appellant asserts that respondent is a mere continuation of ENERCO under Niccum because the two corporations shared the same corporate officers, majority shareholders, registered agent, and business address and both manufactured and sold heaters under the "Mr. Heater" trademark. But Niccum held that "mere continuation refers principally to a reorganization of the original corporation under federal bankruptcy law or through state statutory devices," id. , and here, other Niccum considerations such as continuation of the corporate entity are not present. For instance, there was no continuity of stock between ENERCO and respondent, and there was an intervening sale of ENERCO's assets to B.D. Wait before respondent purchased the goods. Moreover, as noted above, the Minnesota Supreme Court has held that

continuity of business, name, and management alone, is not, we think, sufficient basis for holding a transferee liable to the debts of the transferor.

Id. (quoting J.F. Anderson , 296 Minn. at 38, 206 N.W.2d at 369).

II.

Successor liability occurs where a transaction is entered into fraudulently by a corporation in order to escape responsibility for liabilities or debts. J.F. Anderson, 296 Minn. at 38, 206 N.W.2d at 368-69. Appellant contends there is significant evidence that the various transactions among ENERCO, B.D. Wait, and respondent were fraudulent conveyances made to avoid liability for future products

liability suits and also was for inadequate compensation, arguing (1) ENERCO's sale of assets to B.D. Wait and the subsequent purchase of the assets by respondent almost two years later was a "strawman triangle" designed to shelter distribution revenues from liability for products manufactured by ENERCO, and (2) the sale of assets to B.D. Wait by ENERCO was intended to be temporary, as the Exclusive Distributorship Agreement between B.D. Wait and respondent required B.D. Wait to sell the assets back to respondent upon termination of the agreement.

We find the transfer of assets from ENERCO to B.D. Wait and the subsequent purchase of the assets by respondent from B.D. Wait to be arms'-length transactions. For example, B.D. Wait gave ENERCO $261,000 cash and a $75,000 promissory note for the purchase of its "Mr. Heater" manufacturing business, adequate consideration for those assets, especially in light of the fact that appellant has offered no evidence as to what the fair market value of the assets was at the time of the sale. Likewise, the conveyance between B.D. Wait and Mr. Heater was for adequate consideration.

In addition, even if ENERCO formed respondent corporation for the specific purpose of avoiding its debts, it is not clear that this would create successor liability. See J.F. Anderson , 296 Minn. at 39, 206 N.W.2d at 369-70 (holding that new corporation formed by husband and wife in order to avoid paying debts of their first corporation, and to which assets of first corporation were transferred, was not responsible for debts of transferring corporation); Carstedt v. Grindeland , 406 N.W.2d 39 (Minn. App. 1987) (holding that evidence on a summary judgment motion did not establish a "mere continuance" or a "fraudulent conveyance" when a father, allegedly in order to escape future royalty payments to a patent holder, sold his business to his son, thus destroying a royalty obligation, even though son's business began operation without interruption after his father sold it to him for adequate consideration, the son's business used the same premises and telephone as the father's business, employed substantially the same employees as the father's business, and used the same trademark and substantially the same trade name).

III.

Successor liability arises where the purchaser expressly or impliedly agrees to assume the transferor's debts or liabilities. J.F. Anderson, 206 Minn. at 37-38, 206 N.W.2d at 368. Appellant argues that respondent's assumption of liability for ENERCO's products under its Exclusive Distributorship Agreement with B.D. Wait creates successor liability. The Exclusive Distributorship Agreement, however, did not include ENERCO as a party, was intended to be of limited duration, and was not in effect at the time John Andersen was injured in 1992.

Affirmed.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.