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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-22**

Jeffrey Neely,
Respondent,

vs.

Cullen Homes Inc.,
Relator,
Department of Employment and Economic Development,
Respondent.

**Filed November 23, 2010
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 233855032

Jeffrey Neely, Orlando, Florida (respondent employee)

Kenneth Hertz, Hertz Law Offices, P.A., Columbia Heights, Minnesota (for relator)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator, a corporation, challenges the determination of an unemployment-law judge (ULJ) that the corporation is responsible for paying unemployment taxes on wages

paid to respondent, a caretaker for an apartment building owned by the corporation. We affirm.

FACTS

From the relevant time period of January 1, 2008 to April 12, 2009, respondent Jeffrey Neely worked as a caretaker for an apartment building owned by relator Cullen Homes Inc. (Cullen Homes).¹ When his employment was terminated, Neely applied for unemployment benefits. Neely was found ineligible for benefits, but his application alerted respondent Minnesota Department of Employment and Economic Development (DEED) to the fact that Cullen Homes had never reported Neely's wages or paid unemployment-insurance taxes on them.

William Cullen, the sole owner of Cullen Homes, asserted that Neely had assured him that he was an independent contractor. William Cullen also asserted that from January 2008 through November 1, 2008, his brother, David Cullen, was the actual owner of the apartment building and Neely's employer. William Cullen agreed that after David Cullen assigned all of his interest in the building to Cullen Homes on November 3, 2008, Cullen Homes was Neely's employer.

The ULJ referred the issue of whether Neely was an independent contractor or a Cullen Homes employee to a DEED auditor. The auditor spoke with David Cullen, who

¹ For the purposes of this opinion, Cullen Homes, vendee on a contract for deed, is the owner of the property. *See Stiernagle v. County of Waseca*, 511 N.W.2d 4, 5 (Minn. 1994) (recognizing that it is well-established law that a contract for deed vests in the vendee an equitable title in fee with the bare legal title remaining in the vendor as security, and therefore holding that a contract for deed vendor is not an "owner" for purposes of homestead classification).

stated that Neely was his employee from January 2008 to October 2008. Based on that statement and other evidence not challenged in this appeal, the auditor opined that Neely was an employee and not an independent contractor. Cullen Homes does not appeal that determination.

The ULJ then conducted a hearing to determine who employed Neely from January through October. At the hearing, William Cullen testified that David Cullen took control of the apartment building in 2006 and transferred it back to Cullen Homes on November 3, 2008. But William Cullen did not support his claim of transfer with any documentation. The ULJ left the record open for William Cullen to submit documentation of transfer of the property.

William Cullen submitted a letter stating that the brothers simply had “an agreement” that the apartment building was transferred to David Cullen: there was no quitclaim deed or other documentation of a transfer. Attached to the letter was a copy of the November 2008 written agreement in which David Cullen purportedly released all claims to the property to Cullen Homes. This agreement states that Cullen Homes is the “actual owner of record,” and describes David Cullen as “the owner of understanding.”

Based on evidence that Cullen Homes owned the apartment building throughout Neely’s employment, the ULJ determined that “William Cullen and Cullen Homes were Neely’s employer for all of 2008.” The ULJ affirmed the decision on reconsideration. Cullen Homes appeals by writ of certiorari.

DECISION

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand for further proceedings, reverse or modify the decision if the relator's substantial rights were prejudiced because the ULJ's decision violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2008). We view the ULJ's factual findings “in the light most favorable to the decision,” and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Cullen Homes argues that the evidence does not support the ULJ's finding that Neely was an employee of Cullen Homes from January to November 2008, because Cullen Homes did not actually own the apartment building until November 3, 2008. We disagree. The record, including the 2008 agreement, demonstrates that Cullen Homes never legally transferred an interest in the apartment building to David Cullen.²

Minn. Stat. § 268.035, subd 13 (2008) defines “employee” as

- (1) every individual who is performing or has performed services for an employer in employment; or
- (2) each individual employed to perform or assist in performing the work of any agent or employee of the employer shall be considered to be an employee of that

² Corporations are generally considered legal entities separate from the shareholders. *Milwaukee Motor Transp. Co. v. Comm'r of Taxation*, 292 Minn. 66, 71, 193 N.W.2d 605, 608 (1971). Therefore, because Cullen Homes is a corporation, regardless of whether Dave Cullen “split” from William Cullen and Cullen Homes in 2006, as Cullen Homes claims, Cullen Homes remained the owner of the apartment building during all of 2008.

employer whether the individual was hired or paid directly by that employer or by the agent or employee, provided the employer had actual or constructive knowledge of the work.

As caretaker of the property, Neely performed services that benefitted Cullen Homes (i.e., Neely performed services *for* Cullen Homes), qualifying Neely as Cullen Homes's employee.

William Cullen argues that Cullen Homes's apparent lack of revenue from the property from January through October 2008, David Cullen's statement to the DEED auditor that Neely was David Cullen's employee during that period, and the written agreement that requires David Cullen to be current in contract-for-deed payments on the apartment building require a determination that Cullen Homes was not Neely's employer for that period. We disagree, but, as DEED correctly points out, even if this evidence could establish that Cullen Homes did not acquire ownership of the apartment building and status as Neely's employer until November 2008, Cullen Homes remains responsible for unemployment taxes on Neely's wages under Minn. Stat. § 268.064, subd. 1 (2008), which provides that a person who acquires an employer's business or assets "is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, business or assets acquired,^[3] for any amounts due and unpaid by the employer."

Affirmed.

³ The record in this case plainly supports that the reasonable value of the apartment building, which was \$577,500 according to a 2008 property tax assessment, exceeds the unemployment-insurance taxes owed on the \$19,656 in income imputed to Neely from January until November 2008.