STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0180

David Peterson,
Respondent,

vs.

Industrial Door Company, Inc.,
d/b/a Industrial Spring Company,
Appellant.

Filed January 15, 2008
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-06-7273

Stuart L. Goldenberg, Goldenberg & Johnson, PLLC, 33 South Sixth Street, Suite 4530, Minneapolis, MN 55402 (for respondent)

Richard P. Mahoney, Victor Lund, Mahoney, Dougherty and Mahoney, P.A., 801 Park Avenue, Minneapolis, MN 55404 (for appellant)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Respondent David Peterson was injured on the job and brought a product liability claim against his employer, appellant Industrial Door Company. The district court

granted appellant partial summary judgment on respondent's claims against it in its capacity as employer, but denied summary judgment on respondent's product liability claims asserted against appellant in its capacity as manufacturer/designer. Appellant challenges this decision, arguing that the district court erred in determining that it continued to have subject matter jurisdiction over respondent's claims against appellant. We affirm.

D E C I S I O N

Appellant Industrial Spring Company[1] brought a motion to dismiss respondent David Peterson's complaint for lack of subject matter jurisdiction. Because both parties submitted evidence outside the pleadings, the court converted appellant's motion to dismiss into a motion for summary judgment. *See* Minn. R. Civ. P. 12.02; *Black v. Snyder*, 471 N.W.2d 715, 718 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991). The district court found that appellant qualified as respondent's employer and dismissed all claims against appellant in its capacity as employer pursuant to the workers' compensation act's exclusive-remedy provision. *See* Minn. Stat. § 176.031 (2006). But the court expressly declined to grant summary judgment on respondent's claims against appellant in its capacity as alleged designer/manufacturer of the allegedly-defective mandrel machine.

When charged with reviewing summary-judgment determinations, this court considers "(1) whether there are any genuine issues of material fact and (2) whether the

[1] The district court uses Industrial Spring Company (ISC) as the name of the defendant company throughout its order, although ISC is a division of Industrial Door Company, which is the legal entity named as appellant here.

[district court] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "[I]t is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried." *Anderson v. Twin City Rapid Transit Co*., 250 Minn. 167, 186, 84 N.W.2d 593, 605 (1957). A court reviewing a grant of summary judgment on appeal must view the record in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). But whether subject matter jurisdiction exists is a question of law that this court reviews de novo. *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. App. 2006).

Minnesota's workers' compensation act provides an employer with immunity from tort actions, subject to certain limited exceptions. Minn. Stat. § 176.031; *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995). Here, the record indicates that respondent made a workers' compensation claim against appellant and continues to collect workers' compensation benefits. And the district court determined that appellant is respondent's employer and immune from any claims made against it in that capacity. Thus, respondent's product liability claims can go forward only if respondent establishes that appellant can be held liable for respondent's injuries because appellant is the designer/manufacturer of the allegedly defective machine that caused respondent's injuries.

The record indicates that in 1981 appellant acquired all the assets of Twin City Spring (TCS) and that TCS thereafter ceased operations. The record also indicates that the allegedly defective machine responsible for injuring respondent was originally

designed and manufactured by a TCS employee and that the machine was among the assets appellant acquired from TCS.

When one company transfers all of its assets to another company, the general rule is that the purchasing company is not liable for the debts or liabilities of the transferring corporation. *J.F. Anderson Lumber Co. v. Myers*, 296 Minn. 33, 37, 206 N.W.2d 365, 368 (Minn. 1973). But there are exceptions to this rule: "(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." *Id*. at 37-38, 368-69. In such instances, a purchasing company can be held liable in its capacity as corporate successor for the torts committed by the entity whose assets it acquired. *Id.* at 38, 369.

Here, appellant's general manager asserted that the 1981 transaction was an asset sale. But the general manager admitted that he was a child when the transaction took place. And appellant offered no other evidence in support of its contention that the transaction was an asset sale instead of a merger. If the transaction was a merger, appellant inherited all of TCS's liabilities, including its potential liability for respondent's product liability claims. On this record, we conclude that there is sufficient evidence to support the district court's determination that there exists a material factual dispute as to whether the 1981 transaction between TCS and appellant constituted a merger or a simple asset sale.

It is not clear from the district court's findings on what theory the court based its determination that appellant had potential tort liability as the alleged designer/manufacturer of the defective machine. But application of the dual persona doctrine, coupled with evidence of a merger between appellant and TCS, would result in respondent's claims coming under an exception to the workers' compensation act's general rule of tort immunity for employers. *See Kaess v. Armstrong Cork Co.*, 403 N.W.2d 643, 645 (Minn. 1987) (explaining the dual persona doctrine).

The dual persona doctrine renders an employer vulnerable to tort suits by an employee if the employer "possesses a second persona so completely independent from and unrelated to his status as employer that by established standards the law recognizes it as a separate legal person." *Id.* (quoting 2A A. Larson, *The Law of Workmen's Compensation* § 72.81, at 14-229 (1976 & Cum. Supp. 1980)). In *Konken v. Oakland Farmers Elevator Co.*, this court acknowledged that allowing such an exception to the workers' compensation act's exclusive-remedy provision is consistent with the fact that, "[a]lthough the Workers' Compensation Act generally bars employees from bringing common law actions against their employers, it allows common law actions against third-party tortfeasors." 425 N.W.2d 302, 304 (Minn. App. 1988), *review denied* (Minn. Aug. 24, 1988).

In conclusion, because a material factual dispute exists as to whether the transaction between appellant and TCS constituted a merger, the dual persona exception to the workers' compensation act's exclusive-remedy provision provides a potential basis for the district court's exercise of subject matter jurisdiction over respondent's product

liability claims. Accordingly, we conclude that the district court did not err in finding that appellant "has not convinced the Court that the workers' compensation statute . . . immunizes it from a products liability action" and in declining to grant summary judgment for appellant on respondent's product liability claims.

Affirmed.