FILED
OCT 24 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-347 / 88-1637

326

CARL L. McKNIGHT and DEE A. McKNIGHT,

Appellants,

vs.

NORTH AMERICAN MANUFACTURING CO., an Iowa Corporation; SCHAEFF NAMCO, INC., f/k/a NAMCO, INC. an Iowa Corporation; and ELMER K. HANSEN, Individually and as a representative of the Defendant Class,

Appellees.

Appeal from the Iowa District Court for Boone County, Carl D. Baker, Judge.

Appellants appeal the district court decision granting summary judgment to defendants. **AFFIRMED.**

Glenn L. Norris and Thomas A. Palmer of Hawkins & Norris, Des Moines, and Lad Grove, for appellants.

James A. Lorentzen, Michael D. Huppert, and Ronald M. Rankin of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee Hansen.

Richard G. Santi and R. Mark Cory of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for appellee Schaeff-Namco.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM

Plaintiffs Carl L. McKnight and Dee A. McKnight appeal from separate orders of the district court, granting summary judgment to the defendants, North American Manufacturing Co., Schaeff Namco, Inc., and Elmer K. Hansen. The summary judgment arises from a product liability action against the corporation which manufactured the product, the stockholders of the dissolved corporation, and the successor corporation which purchased the assets of the manufacturing corporation. The district court granted summary judgment to the successor corporation and the individual stockholders of the dissolved corporation. We affirm.

The facts precipitating this action are not complicated. On July 4, 1984, Carl McKnight was injured while using a Grain-O-Vator power auger wagon on his farm. He fell into the wagon and became entangled in the auger in the bottom of the hopper. His injuries resulted in amputation of his right leg and severe disfigurement of his left foot and ankle which may require future amputation.

This Grain-O-Vator was manufactured by North American Manufacturing Company (North American) before 1976, although the exact date is not known. North American, a closely held Iowa corporation, was ninety percent owned by defendant Elmer K. Hansen, who designed the Grain-O-Vator.

In 1978 the stockholders of North American sold the assets of the corporation to Namco, Inc. (Namco), an Iowa corporation. The sale transferred to Namco the land, the building, all the equipment, trade names, and most of the patent and patent rights. The sale price was $1,500,000. North American filed Articles of Dissolution in August of 1978, after receiving a certificate of dissolution from the Iowa Secretary of State. Approximately two years after the North American dissolution, a distribution of assets was made to its shareholders. In 1981, Namco became Shaeff-Namco, Inc. (Shaeff-Namco), which has continued the Grain-O-Vator product line.

Carl McKnight and his wife filed this product liability suit, alleging the Grain-O-Vator was improperly designed. They named as defendants North American, Schaeff-Namco, and Elmer Hansen, individually and as a representative of the shareholders of the dissolved corporation.

Both Schaeff-Namco and Hansen served motions for summary judgment, contending no genuine issue of material fact remained to be resolved. They argued the cause of action was barred by statute which provides for the survival of a cause of action against shareholders of a corporation for two years after the dissolution. The district court granted Hansens' motion. Schaeff-Namco's first motion for summary judgment was denied. A second motion was submitted which included the affidavits of two

attorneys involved in drafting the agreement to sell the assets of North American. The district court granted this motion for summary judgment and dismissed the action as to Schaeff-Namco. The McKnights now appeal both summary judgments. We affirm.

The McKnights raise four issues for our consideration. They maintain the district court erred: 1) in granting summary judgment to shareholders of a corporation dissolved more than two years before plaintiff's injury; 2) in granting summary judgment to a successor corporation which purchased the assets for cash where language of the agreement to sell was ambiguous; 3) in disregarding alternative theories of successor liability applied in other jurisdictions; and 4) in denying injured parties a tort remedy.

In reviewing the grant or denial of a summary judgment motion, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to that party the benefit of any doubt as to the propriety of granting summary judgment. Brown v. United Fire & Casualty Co., 432 N.W.2d 708, 709 (Iowa App. 1988), citing D.R.R. v. English Enterprises, CATV, 356 N.W.2d 580, 582 (Iowa App. 1984). Our task on appeal is to determine only whether a genuine issue of material fact exists, and whether the law was correctly applied, and to reverse the

grant of summary judgment if it appears from the record there is an unresolved issue of material fact. Meylor v. Brown, 281 N.W.2d 632, 634 (Iowa 1979).

I. The McKnights ask this court to infer from North America's postdissolution activity that it voluntarily assumed liability past the two-year postdissolution period specified in the Agreement to Sell and mandated by the Iowa Business Corporations Act.

The Articles of Dissolution of North American Manufacturing were filed on August 31, 1978. The corporate entity was properly dissolved, almost six years before the McKnight's injury and eight years before this action was commenced.

Iowa Code section 596A.102, the Business Corporations Act, states in pertinent part:

> The dissolution of a corporation or the expiration of its period of duration, *shall not* take away or impair any remedy available to or against such corporation, its directors, *officers, or shareholders, for* any right or claim existing, or any liability incurred, prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration.

Although there is a dearth of Iowa case law applying section 596A.102, our supreme court has, on one occasion, addressed this issue. In State v. Bi-States Constr. Co., 269 N.W.2d 455 (Iowa 1978), the court reversed a district court judgment against a dissolved construction company, ruling section 596A.102 barred the action. Citing with

approval Bishop v. Schield Bantam Co., 293 F. Supp. 94 (N.D. Iowa 1968), the court concurred section 496A.102 was not intended to prolong beyond the two-year period the time within which suits can be brought against dissolved corporations. Id. at 457. Absent a statute like section 496A.102, any cause of action against a dissolved corporation would abate upon dissolution. As stated in Bishop:

> There should be a definite point in time at which the existence of a corporation and the transaction of its business are terminated. To allow, as the plaintiff contends, the continued prosecution of lawsuits perverts the definiteness and orderly process of dissolution so as to produce a continuous dribble of business activity contrary to the intent of the winding up provisions of the statute.

Bishop v. Schield Bantam Co., 293 F. Supp. at 96.

The trial court was correct in rejecting McKnight's assertion the contractual language, the undistributed escrow account, and the existence of an insurance policy providing product liability coverage comprised North American's voluntary assumption of liability beyond two years.

II. McKnights contend because language of the agreement was ambiguous regarding liability for postdissolution injury caused by a predissolution product, an implied assumption of liability by the successor corporation can be imposed by the trial court.

The general rule is when one company sells assets to another, the purchasing company is not liable for the debts and liabilities of the transferor. DeLapp v. Xtraman, Inc., 417 N.W.2d 219, 220 (Iowa 1987). There are four well-settled exceptions in Iowa. A purchasing company may be liable if any of four circumstances exist: (a) there is an agreement to assume such debts or liabilities; (b) there is a consolidation of the two corporations; (c) the purchasing corporation is a mere continuation of the selling corporation; or (d) the transaction was fraudulent in fact. Id. McKnights argue the absence of the term "express agreement" in DeLapp allows us to imply an agreement to assume successor liability in this case. The trial court concluded no intent to assume liability will be implied when there is clear evidence of the intent of parties not to have the successor assume any liability. We agree with the trial court's finding there was clear evidence of the defendants' intent not to assume liability for products manufactured and shipped by the selling corporation, and therefore, no factual dispute existed regarding this issue.

III. & IV. The McKnights further argue it is against public policy to deny injured parties a tort remedy, and they urge us to adopt alternative theories of successor liability utilized in other jurisdictions. We decline to do so. The supreme court considered "the exodus from the

traditional rules of successor corporate liability" in DeLapp and rejected the invitation. DeLapp v. Xtraman, 417 N.W.2d at 220. In declining to adopt the product-line exception to the traditional rule of successor corporate liability, the court suggested such a change in the law must come from the legislature. Id. at 223. DeLapp is controlling in the instant case.

AFFIRMED.