STATE OF MICHIGAN

COURT OF APPEALS

MEDCO HEALTH CARE SERVICES, INC., d/b/a TEMPORARY HEALTH CARE,

Plaintiff–Appellant,

v

KENNETH BRAGG, DAVID JORDANN, MED-CARE MANAGEMENT CORPORATION and BRAGG & ASSOCIATES, INC.,

Defendants–Appellees.

UNPUBLISHED
May 28, 1996

No. 174335
LC No. 93-304260 CK

MEDCO HEALTH CARE SERVICES, INC., d/b/a TEMPORARY HEALTH CARE,

Plaintiff–Appellee,

v

KENNETH BRAGG, DAVID JORDANN, and MED-CARE MANAGEMENT CORPORATION,

Defendants–Appellants,

and

BRAGG & ASSOCIATES, INC.,

Defendant.

No. 175548
LC No. 93-304260 CK

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals as of right from a judgment of liability on a contractual debt which was entered against defendant Bragg & Associates, Inc. only. Defendants Kenneth Bragg, David Jordann and Med-Care Management Corporation ("Medcare") appeal by right from an order denying them mediation sanctions. We affirm.

Pursuant to a contract, plaintiff provided defendants with temporary health care employees for defendants' adult foster care and rehabilitation programs. After plaintiff failed to receive payment for its services, plaintiff commenced this action against defendants Bragg, Jordann and Medcare Management Corporation. Defendant Bragg & Associates, Inc. ("Bragg & Associates") was subsequently added as a defendant. Following a bench trial, the trial court held that although Bragg & Associates, did not exist as a corporation at the time of the contract, it ratified and adopted the contract and thus adopted all liability for it. The trial court held that Bragg and Jordann could not be held individually liable for the contract, and thus entered judgment in plaintiff's favor with regard to defendant Bragg & Associates, only.

Plaintiff contends that the trial court erred in determining that defendants Bragg and Jordann were not personally liable for the debt owed on the contract because a corporation had not yet been formed when the contract was made. Individuals who conduct business in the name of a nonexistent corporation may be held personally liable for any debts incurred, unless the corporation exists either de fact or dejure. *Bergy Bros Inc v Zeeland Feeder Pig, Inc*, 415 Mich 286, 294; 327 NW2d 305 (1982). A corporation will be held liable for preincorporation contracts made by the promoters or incorporators if the corporation subsequently ratifies or adopts the contracts, and the promoters will not be held liable. *Henderson v Sprout Bros, Inc*, 176 Mich App 661, 673; 176 NW2d 661 (1989); *Campbell v Rukamp*, 260 Mich 43, 46-47; 244 NW 222 (1932). In this case, Bragg & Associates came into existence as a corporation only a few weeks after the contract was formed, and the corporation ratified the contract with plaintiff. Also, plaintiff's employees testified that they believed Bragg & Associates was incorporated at the time of the contract, and that they were conducting business with a corporation, Bragg & Associates. Under these circumstances, we conclude that the trial court properly determined that Bragg and Jordann were not personally liable on the contract.

Plaintiff also argues that Bragg and Jordann were personally liable for the contract as agents of an undisclosed or partially disclosed principal. A principal will be found to be undisclosed unless the party transacting with the agent has notice that the agent is acting for the principal and of the principal's identity. *Penton Publishing, Inc v Markey*, 212 Mich App 624, 626; 538 NW2d 104 (1995). An agent who has contracted for an undisclosed principal is personally liable for the contractual obligations. *Id*. Here, plaintiff's employees testified that they believed that they were contracting with a corporation, Bragg & Associates. Thus, plaintiff had notice of the principal, and Bragg and Jordann cannot be held personally liable as agents of an undisclosed principal.

Defendants Bragg, Jordann and Med-Care contend that the trial court erred in denying them mediation sanctions. Plaintiff filed a "limited acceptance" of the mediation award, pursuant to MCR 2.403(L)(3)(b), which became a rejection when Bragg, Jordann and Med-Care also rejected.[1] As defendants acknowledge, the aggregate verdict which plaintiff obtained was more favorable than the mediation evaluation, and thus defendants were not entitled to sanctions pursuant to MCR 2.403(O)(a).

Defendants contend, however, that the aggregate verdict provisions of MCR 2.403(O)(4) should not apply because the defendant against which the verdict was rendered, Bragg & Associates, was not a party at the time of mediation, and thus not included in the mediation award. We do not agree, because the award was joint and several and would have been the same whether or not Bragg & Associates was a party at the time of mediation. It is unlikely that any party would have changed their responses to mediation if Bragg & Associates had been a party, and thus its absence had no effect. The trial court did not abuse its discretion in denying mediation sanctions to defendants.

Affirmed.

s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard

[1] Defendant Bragg & Associates, Inc. was added as a party after mediation had occurred.