

STATE OF MICHIGAN
COURT OF APPEALS

HUSSEIN AMR,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 187980

Wayne Circuit Court

LC No. 94-422-102-CK

NORMA SUE CLEARY and AUTOMATIVE
TRANSCRIPTION INC., a Michigan
corporation, jointly and severally,

Defendant-Appellees.

Before: Gribbs, P.J., and Holbrook, Jr., and J. L. Martlew,*JJ.

Martlew, J. (dissenting)

PER CURIAM.

I agree that the jurisdictional issues raised by defendant Norma Sue Cleary are moot because plaintiff/appellant did not challenge her dismissal by the trial court. However, I respectfully dissent from the balance of the majority opinion.

Plaintiff has presented a genuine issue of material fact as to whether R & J Transcription, Inc. existed as a valid corporation. MCL 450.1221 MSA 21.200 (221), provides:

The corporate existence shall begin on the effective date of the articles of incorporation as provided in §131. Filing is conclusive evidence that all conditions precedent required to be performed under the act have been fulfilled and that the corporation has been formed under this act, except in an action or special proceeding by the attorney general.

Further....

a corporation properly formed does not lose its *de facto* existence through the non-performance of conditions subsequent to incorporation, such as failure to adopt or file by-laws,

* Circuit judge, sitting on the Court of Appeals by assignment.

elect officers or pay fees. *Bergy Brothers v. Zeeland Cedar Pig*, 415 Mich 286, 294; 327NWd 305 (1982).

MCL 450.1803; MSA 21.200 (803), allows a corporation to be dissolved by action of a *majority* of the incorporators or directors, but only if all of the following are true: the corporation has not commenced business, has not issued any shares, has no debts or other liabilities, and has received no payments on subscriptions for shares or has returned any such payments to those entitled thereto. If these conditions are not satisfied, dissolution may only be affected pursuant to MCL 450.1804; MSA 21.200 (804), by action of the Board of Directors and the shareholders.

In this case, there is no dispute that the articles of incorporation for R & J Transcription, Inc. were properly filed. Moreover, plaintiff has submitted exhibits which tend to show that the corporation commenced business. Plaintiff's affidavit establishes that he made at least partial payment for his subscribed shares, by transferring furniture and other assets to the corporation. Accordingly, there are genuine issues of fact regarding the existence of R & J Transcriptions, Inc. and whether it was properly dissolved by Ms. Cleary. Since these questions exist, there is also a genuine fact question about whether Automative Transcription is a successor corporation to R & J. The fact that Automative was formed a month after Ms. Cleary dissolved R & J is not dispositive.

As a general rule, a corporation that purchases the assets of another incurs no liability for the debts of the selling corporation. Exceptions exist where the transaction amounts to a consolidation or merger, where the transaction was fraudulent, or where the transferee corporation is a mere continuation or reincarnation of the old corporation. *Turner v. Bituminous Casualty Co*, 397 Mich 406, 417 n 3; 244 NWd 873 (1976). In this case, plaintiff claims that Automative Transcription is a continuation or reincarnation of R & J Transcriptions, Inc., formed for the express purpose of receiving the assets of the predecessor corporation so that Ms Cleary could continue her medical transcription business without having to share profits with plaintiff. Based upon plaintiff's affidavits and exhibits, there seem to be genuine issues of material fact about these transactions.

The trial court's order granting summary disposition to Automative Transcription should be reversed and the case should be remanded for further proceedings.

/s/ Jeffrey L. Martlew