STATE OF MICHIGAN

COURT OF APPEALS

JUDY MOORE, as Personal Representative of the Estate of GARRY MOORE, deceased,

Plaintiff-Appellee,

v

BATES SERVICE COMPANY,

Defendant-Appellant.

UNPUBLISHED
November 7, 1997

No. 197445
Wayne Circuit Court
LC No. 95-507744-NO

Before: Holbrook, Jr., P.J., and Reilly and R.J. Danhof*, JJ.

PER CURIAM.

In this negligence action, defendant appeals by leave granted from the trial court's order denying its first and second motions for summary disposition. We reverse.

Plaintiff's decedent, Garry Moore, was fatally injured during the course of his employment for Cadillac Asphalt Paving Company when he attempted to manually engage the hydraulic unit underneath a dump truck and the spinning shaft of the unit broke apart and struck him in the head. Moore's family received worker's compensation benefits from the Edward C. Levy Company (Levy), the parent corporation of Cadillac. Plaintiff subsequently brought this third-party liability action against defendant, the title owner of the dump truck, pursuant to the owner liability statute, MCL 257.401; MSA 9.2101. The trial court denied defendant's motions for summary disposition, finding that a question of fact remained regarding whether defendant was a mere shell corporation of Levy, and whether Moore's injuries were a result of his own negligence. We granted defendant's application for leave to appeal.

On appeal, defendant argues that, because its corporate form was a mere shell or instrumentality of Levy, this Court should pierce the corporate veil in reverse and find that the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.131; 17.237(131), bars plaintiff's third-party liability claim against it. The question whether a corporation is a particular worker's "employer" for purposes of the WDCA is a question of law for the courts to decide if the evidence on the matter is reasonably susceptible of but a single inference. *Kidder v Miller-Davis Co*, 455 Mich 25, 37; 564 NW2d 872 (1997); *Nichol v Billot*, 406 Mich 284, 302-303; 279 NW2d

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

761 (1979). Only where the evidence bearing on the corporation's status is disputed, or where conflicting inferences may reasonably be drawn from the known facts, is the issue one for the trier of fact to decide. *Id.*

Both parties rely on *Wells v Firestone Tire & Rubber Co*, 421 Mich 641; 364 NW2d 670 (1984), in which the Michigan Supreme Court utilized the economic reality test to determine "which of two separate corporations, parent or subsidiary, was plaintiff's actual employer for purposes of the Worker's Disability Compensation Act." Here, however, no serious argument can be made that plaintiff's decedent's "employer" in economic reality was Bates, rather than Levy. See *Isom v Limitorque Corp,* 193 Mich App 518, 521; 484 NW2d 716 (1992) (application of economic reality test is inappropriate where the plaintiff has not disputed that the defendant-corporation was merely a division of the same parent corporation that employed the plaintiff). Instead, defendant argues that plaintiff's third-party claim under the owner liability statute is precluded because Bates and Levy were in actuality a single entity and, therefore, Bates is immune under the exclusive remedy provision of the WDCA.

In general, the law respects the separate corporate entity of a corporation. However, where a corporation is organized and controlled so as to make it a mere instrumentality or conduit of another corporation, its separate and distinct corporate entity may be ignored by the courts and the two corporations regarded as one entity. *Herman v Mobile Homes Corp,* 317 Mich 233; 26 NW2d 757 (1947); *In re Culhane's Estate,* 269 Mich 68; 256 NW2d 807 (1934). Here, the evidence establishes that Bates Service Company was incorporated in 1961 for the purpose of holding title to certain motor vehicles to be used exclusively by Levy and its various other subsidiary corporations. Bates neither purchased the vehicles nor maintained them. Although Levy did not own an equity interest in Bates, the corporate officers and directors of Bates over the years appear to have been persons directly related to appellant's counsel's law firm—which drafted the incorporation documents—and at least tangentially related to Levy. The officers and directors held no meetings and maintained no corporate books. Bates had no direct employees and, therefore, did not maintain worker's compensation insurance. According to documentary evidence submitted by plaintiff, Bates last filed an annual report with the state commerce department in 1993. Levy vice president Robert Flucker testified at deposition that Bates' separate corporate entity had outlived its usefulness many years ago, but that steps to dissolve the corporation had never been initiated.

Under these facts, we conclude that Bates was an undercapitalized shell corporation of Levy. No evidence suggests, however, that Bates' corporate entity was created or maintained to perpetrate a fraud or for some other improper purpose, such as creating a shield to avoid the payment of worker's compensation benefits to employees, such as plaintiff. See *Wells, supra* at 652. Indeed, worker's compensation benefits were paid to plaintiff by Levy. Accordingly, we hold that the evidence is reasonably susceptible of but a single inference that Bates and Levy were in actuality a single entity, and, therefore, the exclusive remedy provision of the WDCA immunizes defendant Bates from liability under the owner liability statute.

Reversed and remanded for entry of summary disposition in favor of defendant pursuant to MCR 2.116(C)(4). We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Maureen Pulte Reilly
/s/ Robert J. Danhof