

STATE OF MICHIGAN
COURT OF APPEALS

JENEE S. HERBOLSHEIMER, Personal
Representative of the Estate of ROYCE S.
HERBOLSHEIMER, deceased,

UNPUBLISHED
November 30, 2001

Plaintiff-Appellant,

v

No. 224679
Saginaw Circuit Court
LC No. 93-057487-NP

COLLINS & AIKMAN PRODUCTS, INC.,

Defendant-Appellee,

and

WARNER & SWASEY COMPANY, SMS
HOLDING COMPANY, INC., and SAGINAW
MACHINE SYSTEMS, INC.,

Defendants.

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiff appeals as of right the final judgment entered in this case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent suffered a fatal injury in the course of his employment with Saginaw Machine Systems, Inc (SMS), while working on a turning machine. This appeal concerns plaintiff's assertion of successor liability against defendant Collins & Aikman Products, Inc. The Saginaw Machine and Tool Division of the Wickes Corporation (SMT) modified the turning machine for its own use, creating the defect that led to decedent's injury. Wickes combined SMT with other divisions, and created the Wickes Machine Tool Group, Inc., (WMTG). In 1983 SMS Holding Company, Inc., purchased all of WMTG's stock from Wickes, and changed the corporation's name to SMS. SMS conceded that it is a successor in liability to SMT.

The Wickes Corporation filed for bankruptcy in 1984. It then changed its name to Wickes Companies, Inc. On July 15, 1992, Wickes Companies, Inc., changed its name to

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

Collins & Aikman Group. On July 13, 1994, Collins & Aikman Group merged into its wholly owned subsidiary, Collins & Aikman Products Co. Plaintiff maintains that this defendant is liable as a successor to SMT.

In a prior appeal, a panel of this Court determined that SMS was entitled to summary disposition.

In this case, SMS voluntarily concedes that it is a successor to the liability of SMT, at least for the purposes of this appeal. Plaintiff alleges that the modifications made to the window of the decedent's machine by SMT were negligent and caused the decedent's death. This machine was modified only for SMT's own use. It was never sold or leased. It came under the power of SMS only after the entire corporation with all its assets was bought by the holding company and the name changed to SMS. The decedent was never an employee of SMT. While there is a conceptual third party here, SMT, for which SMS has assumed liability, we must look further to find an actual legal obligation on the part of SMT toward the decedent. The difficulty in this, as in *Corr [v Willamette Industries, Inc]*, 105 Wash 2d 217, 220-223; 713 P2d 92 (1986)], is that the machine was never used by anyone other than employees of SMT. Therefore, SMT only had an obligation to its own employees. Even if we extend this obligation to decedent in some way, we must also extend the immunities that go with it. This duty to provide a safe workplace was covered by the WDCA, so if an SMT employee had been injured, he could only have received worker's compensation benefits and would have been precluded from suit by the exclusive remedy provision of the WDCA. Thus, the decedent here could not have sued SMT had he been injured as an employee of SMT, and he was only in a position to be injured by the machine as an employee of SMS. [*Herbolsheimer v SMS Holding Co, Inc*, 239 Mich App 236, 252-253; 608 NW2d 487 (2000)].

The Court found that it would be unfair to impose liability based on a transfer of assets where it would not otherwise arise. *Id.*, 254. Where the case against defendant is also based on the actions of SMT, there is no basis for imposing liability on it. The Wickes Corporation sold all of the WMTG assets to SMS, and SMS assumed its liabilities prior to its affiliation with defendant. There is no basis for finding defendant the successor to liabilities generated by SMT. *Foster v Cone-Blanchard Machine Co*, 460 Mich 696, 703-704; 597 NW2d 506 (1999).

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post