COURT OF APPEALS
DECISION
DATED AND FILED

June 12, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1121 **Cir. Ct. No. 2010TJ154**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

PAUL DAVIS RESTORATION OF S.E. WISCONSIN, INC.,

PLAINTIFF-RESPONDENT,

V.

PAUL DAVIS RESTORATION OF NORTHEAST WISCONSIN,

DEFENDANT-APPELLANT,

DENMARK STATE BANK,

GARNISHEE.

APPEAL from an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Reversed*.

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Paul Davis Restoration of Northeast Wisconsin ("Northeast") appeals an order denying its motion to dismiss a garnishment action filed by Paul Davis Restoration of S.E. Wisconsin, Inc. ("Southeast"). Northeast

argues that because it is a "doing business as" designee, the underlying judgment against it is "void as unenforceable" and cannot form the basis for the present garnishment action. We agree and, therefore, reverse the circuit court's order.[1]

BACKGROUND

¶2 The parties are franchises of Paul Davis Restoration. Southeast filed a statement of claim, alleging that Northeast violated the franchise agreement by performing work in Southeast's territory without providing proper notification or compensation. The parties proceeded to binding arbitration and Southeast was awarded $101,693.[2] Southeast moved the circuit court to confirm the award and named "Paul Davis Restoration of Northeast Wisconsin / Matthew Everett" as defendants. Because Everett was never made a party to the arbitration action, he objected to being named as a defendant in the motion to confirm the arbitration award.

¶3 Southeast subsequently moved the Milwaukee County Circuit Court to enter judgment against not only Everett personally, but also EA Green Bay LLC, which operated the subject franchise business under the Paul Davis Restoration trade name. The circuit court did not enter judgment against either Everett or EA Green Bay LLC but, rather, against the d/b/a designee—"Paul Davis Restoration of Northeast Wisconsin."

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[1] In light of our holding, we need not address Northeast's alternative arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

[2] Southeast also sought to confirm an arbitration award against Paul Davis Restoration of Fox Valley. The judgment against Paul Davis Restoration of Fox Valley is not the subject of this appeal.

¶4 Southeast then filed a garnishment action in Brown County seeking to enforce the judgment. The garnishee bank account was held by Denmark State Bank under the name "EA Green Bay LLC d/b/a Paul Davis Restoration & Remodeling of NE WI d/b/a Building Werks." Northeast moved to dismiss the action, claiming the underlying judgment against it was unenforceable and could not form the basis for the garnishment action. The circuit court denied the motion to dismiss and ordered the bank to release account funds to satisfy the judgment. This appeal follows.

DISCUSSION

¶5 Northeast argues that the underlying judgment against it is void as unenforceable because a d/b/a designee is not a legal entity.[3] Citing ***Jacob v. West Bend Mutual Insurance Co.***, 203 Wis. 2d 524, 553 N.W.2d 800 (Ct. App. 1996), and ***Binon v. Great Northern Insurance Co.***, 218 Wis. 2d 26, 580 N.W.2d 370 (Ct. App. 1998), the circuit court acknowledged that a d/b/a designee has no independent legal status and is indistinct from the person or entity underlying the assumed name. Based on its conclusion that EA Green Bay LLC and "Paul Davis Restoration of Northeast Wisconsin" are the same entity, the court held that the bank account was subject to garnishment. ***Jacob*** and ***Binon***, however, do not support the court's ultimate determination.

[3] In its brief, Southeast notes that Northeast's present argument cannot be reconciled with the position its counsel took during a hearing on the motion to confirm the arbitration award. To the extent Southeast appears to be raising a judicial estoppel claim, its argument is undeveloped and this court need not address it. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we decline to consider arguments that are undeveloped or unsupported by citation to authority).

¶6 In ***Jacob***, a couple sued a general contractor and masonry subcontractor, along with their insurers, alleging defects in masonry construction on the exterior walls of their home. ***Jacob***, 203 Wis. 2d at 530. The subcontractor was Michael Limbach d/b/a Michael Limbach Construction. The couple, however, named Michael Limbach Construction as a defendant, without naming either Limbach or his personal representative.[4] ***Id.*** at 529-30. Believing that any judgment against the d/b/a designee posed no jeopardy to Limbach's estate, counsel for the estate decided she would not actively defend the action. ***Id.*** at 531.

¶7 Although not required to answer whether counsel's strategy was correct, the ***Jacob*** court observed "that certain law arguably supports her position." ***Id.*** at 537, n.7. The court noted that a d/b/a designation is "merely descriptive of the person or corporation who does business under some other name; it does not create or constitute an entity distinct from the person operating the business." ***Id.*** The court further noted that a deceased party cannot be named in a proceeding and the estate's personal representative was never substituted as a party. ***Id.*** The court's discussion, therefore, supports Northeast's contention that the judgment against it alone, as a d/b/a designee, is unenforceable.

¶8 The ***Binon*** case likewise supports this contention. In the context of an insurance coverage dispute, the court addressed whether "Arrow Motors, Inc. d/b/a Lease Associates Group" was a motor vehicle handler within the meaning of WIS. STAT. § 632.32(2)(b) (2009-10). ***Binon***, 218 Wis. 2d at 34. Because the statute's description of a motor vehicle handler did not mention the "leasing" of vehicles, and the case involved a leasing situation, the Binons argued the statute

[4] Michael Limbach was deceased at the time the action was commenced.

did not apply. ***Id.*** The court rejected this argument. The subject insurance policies identified the insured as "Arrow Motors, Inc. d/b/a Lease Associates Group." Because the policies named both the d/b/a designee *and* the entity underlying the d/b/a designee, the court concluded it would look to all the activities and services of Arrow Motors, "not merely the activities of its leasing division, Lease Associates Group, which has no independent legal status or significance." ***Id.*** at 35.

¶9 In light of these cases, it follows that had judgment been entered against EA Green Bay LLC, any assets held under its d/b/a designation could have been garnished to satisfy the judgment. The converse, however, is not true. Because the judgment confirming the arbitration award was entered only against the d/b/a designee, a legal nonentity, it is unenforceable. The circuit court, therefore, erred by denying Northeast's motion to dismiss the garnishment action.

By the Court.—Order reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).