IN THE COURT OF APPEALS OF IOWA

No. 3-451 / 12-1832
Filed July 10, 2013

FLOYD VALLEY GRAIN, LLC,
Plaintiff-Appellant,

vs.

CTB, INC.; CTB, INC. a/k/a and/or n/k/a and/or f/k/a CTB, INC., a Berkshire Hathaway Company; CTB, INC., and/or a/k/a and/or n/k/a and/or f/k/a BROCK GRAIN SYSTEMS and/or BROCK INDUSTRIAL SYSTEMS and/or BROCK MANUFACTURING GRAIN CONDITIONING GROUP and/or BEARD INDUSTRIES,
Defendants-Appellees.

Appeal from the Iowa District Court for Plymouth County, John D. Ackerman, Judge.

Floyd Valley Grain, LLC appeals from the district court's summary judgment ruling in favor of CTB, Inc. on a question of successor liability for an allegedly defective product. **AFFIRMED.**

Brett J. Beatie of Beatie Law Firm, P.C., Des Moines, for appellant.

Andrew D. Hall and Laura N. Martino of Grefe & Sidney, P.L.C., Des Moines, for appellees.

Heard by Potterfield, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Floyd Valley Grain, LLC (Floyd) appeals from the district court's summary judgment ruling in favor of CTB, Inc. (CTB)[1] on a question of successor liability for an allegedly defective product. Floyd contends Indiana law governs this dispute and has adopted, or would adopt, an exception to the general rule that a successor is not liable for its predecessor's defective products. Alternatively, should this court find Iowa law applies, Floyd urges us to overrule *Pancratz v. Monsanto Co.*, 547 N.W.2d 198 (Iowa 1996), and adopt the product line exception and the continuity of enterprise exception to the general rule of non-liability. We affirm.

I. Background Facts & Proceedings

This case arises out of a dispute over whether Floyd may hold a successor, CTB, liable for damages sustained from an allegedly defective product that a predecessor, Beard Industries, Inc. (Beard), sold to Floyd. The material facts in this case are not in dispute.

In 1998, Beard sold a grain dryer to Floyd. Beard was incorporated in Indiana and was in the business of manufacturing and selling grain dryers. Floyd was a limited liability company organized in Iowa and was in the business of buying and selling corn and soybeans for its customers.

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[1] In its petition, Floyd refers to all of the captioned defendants, including, CTB, Inc.; CTB, Inc., a Berkshire Hathaway Company; Brock Grain Systems; Brock Industrial Systems; and Brock Manufacturing Grain Conditioning Group, as CTB. For the sake of consistency and ease of reference, we will refer to the defendants named in the petition as CTB.

In 2002, Beard sold its assets and trade names to CTB, an Indiana corporation with its principal place of business in Indiana. Pursuant to the sale agreement, CTB assumed certain operating liabilities but did not assume any "product liability claims or lawsuits relating to products manufactured or sold by [Beard] prior to the closing." In addition, Beard's owners agreed to work for CTB for one year after the sale and thereafter agreed not to compete against CTB. Beard's owners did not become directors or officers of CTB nor did they obtain any ownership interest in CTB. After the sale, CTB continued to produce and market grain dryers under the same trade names and in the same Indiana factory Beard had used. Beard then wound up its business, published a notice of its dissolution in March 2002, and subsequently dissolved.

In 2009, the grain dryer that Beard sold to Floyd caught fire. The fire caused extensive damage to Floyd's property.

In 2011, Floyd sued both Beard and CTB. Floyd alleged the grain dryer caused the fire and pleaded claims of failure to warn, design defect, manufacturing defect, and breach of implied warranty. Floyd then voluntarily dismissed its claim against Beard pursuant to Indiana Code section 23-1-45-7 (2011), barring all claims against a dissolved corporation unless the claim is commenced within two years after the required notice of dissolution is published.

CTB filed a motion for summary judgment asserting that under Iowa law a corporation purchasing the assets of another corporation does not assume liability for the transferring corporation's debts and liabilities unless one of four exceptions applies. CTB argued none of the four exceptions applied in this case.

Floyd conceded that none of the four exceptions currently recognized in Iowa applied to this case. Floyd countered, however, that under Iowa choice-of-law rules Indiana law governs this case. Floyd asserted that Indiana law recognizes a fifth exception, the product line exception, to the general rule of non-liability. Floyd then sought partial summary judgment on the narrow issue of whether CTB could be held liable to the extent that Beard would have been liable but for the sale and dissolution of Beard.

The district court granted CTB's motion for summary judgment and denied Floyd's motion for partial summary judgment. The court found that neither Iowa law nor Indiana law recognized the so-called product line exception to the general rule of non-liability.

Floyd appealed the district court decision.

II. Standard of Review

We review the district court's summary judgment decision for corrections of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). Summary judgment is appropriate where "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*; *see also* Iowa R. Civ. P. 1.981(3). In reviewing the district court decision, we view the evidence in a light most favorable to the nonmoving party. *Mueller*, 818 N.W.2d at 253.

III. Analysis

Floyd contends that under an Iowa choice-of-law analysis, Indiana law governs this dispute. As a threshold question to the application of a choice-of-

law analysis, we must consider whether there is a true conflict between Iowa law and Indiana law. *See Jones v. Winnebago Indus., Inc.*, 460 F. Supp. 2d 953, 963–64 (N.D. Iowa 2006); *Fuerste v. Bemis*, 156 N.W.2d 831, 834 (Iowa 1968). To that end, we will set forth the current state of Iowa law and Indiana law on the issue of successor liability.

Under Iowa law, "[a]s a general rule, a corporation that purchases the assets of another corporation assumes no liability for the transferring corporation's debts and liabilities." *Pancratz v. Monsanto Co.*, 547 N.W.2d 198, 200 (Iowa 1996); *see also DeLapp v. Xtraman, Inc.*, 417 N.W.2d 219, 223 (1987). *Pancratz* recognized four exceptions to the general rule of non-liability in the following circumstances: "(1) the buyer agrees to be held liable; (2) the two corporations consolidate or merge; (3) the buyer is a 'mere continuation' of the seller; or (4) the transaction amounts to fraud." *Pancratz*, 547 N.W.2d at 200–01.

Under Indiana law, as a general rule, "[w]hen one corporation purchases the assets of another, the buyer does not assume the debts and liabilities of the seller." *Ziese & Sons Excavating, Inc. v. Boyer Const. Corp.*, 965 N.E.2d 713, 722 (Ind. Ct. App. 2012) (quoting *Sorenson v. Allied Prods. Corp.*, 706 N.E.2d 1097, 1099 (Ind. Ct. App. 1999)). Indiana courts recognize four exceptions to the general rule of non-liability: "(1) an implied or express agreement to assume liabilities; (2) a fraudulent sale of assets done for the purpose of evading liability; (3) a purchase that is a de facto consolidation or merger; or (4) where the purchaser is a mere continuation of the seller." *Id.*

Floyd concedes that the four generally recognized exceptions under Iowa law and Indiana law are the same and neither Iowa nor Indiana have adopted any other exceptions. Floyd argues, however, that there is a conflict between Iowa law and Indiana law because the Indiana Supreme Court would adopt the product line exception. Under the product line exception, "a party which acquires a manufacturing business and continues the output of its line of products . . . assumes strict tort liability for defects in units of the same product line previously manufactured and distributed by the entity from which the business was acquired." *Ray v. Alad Corp.*, 136 Cal. Rptr. 574, 582 (Cal. 1977). To support its claim that Indiana would adopt the product line exception, Floyd relies primarily on *Guerrero v. Allison Engine Co.*, 725 N.E.2d 479 (Ind. Ct. App. 2000).

In *Guerrero*, the Indiana Court of Appeals recognized the jurisprudential split in authority over whether to recognize the product line exception as a fifth exception to the general rule of successor non-liability. *See Guerrero*, 725 N.E.2d at 483. After a thorough examination of the rationale behind the product line exception, the *Guerrero* court did not reach the question of whether the product line exception applies under Indiana law. *See id.* at 483–87. Rather, the court held that none of the relevant exceptions to the general rule of successor non-liability, including the product line exception, apply because the predecessor corporation continued to exist. *Id.* at 487. The court concluded,

> The product line exception *may* be an appropriate means by which to balance the seemingly juxtaposed concepts of strict liability under the Indiana Product Liability Act, and freedom of contract—long supported by common law, as well as both state and federal constitutions. However, considering that the predecessor corporation continues to exist, the inequities which would warrant

> our full consideration of this proposed fifth exception to successor non-liability under Indiana law are not present.

Floyd also cites to an unreported Indiana circuit court decision to support the proposition that Indiana courts have adopted the product line exception. In a statement not central to the holding of the case, the court asserted "Indiana recognizes the product line successor theory of liability in product liability cases under certain circumstances." *P.R. Mallory & Co. v. Am. States Ins. Co.*, No. 54C01-0005-CP-00156, 2004 WL 1737489, at *6 (Ind. Cir. Ct. July 29, 2004) (citing *Guerrero*, 725 N.E.2d at 487). In light of our analysis of *Guerrero*, we believe Floyd overstated the current status of Indiana law on the applicability of the product line exception.

In over a decade of jurisprudence following the *Guerrero* decision, the Indiana Supreme Court or the Indiana Court of Appeals could have, in an appropriate case, adopted the product line exception; they did not. *See, e.g.*, *Ziese*, 965 N.E.2d at 722 (recognizing the four general exceptions to the asset purchase doctrine and making no mention of the product line and continuity of enterprise exceptions). It is incumbent on Indiana courts, not us, to chart the course of Indiana law in this area. As neither Iowa law nor Indiana law have adopted the product line exception, we conclude there is no conflict between Iowa law and Indiana law on the general rule of successor non-liability. *See id.*; *Pancratz*, 547 N.W.2d at 201. Thus, a choice-of-law analysis is unnecessary. *See Jones*, 460 F. Supp. 2d at 963–64; *Fuerste*, 156 N.W.2d at 834.

Alternatively, Floyd contends Iowa law governs this case. Floyd urges us to adopt the product line exception and the continuity of enterprise exception,

overruling *Pancratz v. Monsanto Co.*, 547 N.W.2d 198 (Iowa 1996). *Pancratz* reaffirmed a rejection of the product line exception to the general rule of non-liability for successors. *See* 547 N.W.2d at 201 (citing *DeLapp*, 417 N.W.2d at 223). *Pancratz* also considered an expansion of the mere continuation exception—the so-called continuity of enterprise approach. *See id.* The continuity of enterprise exception expands upon the mere continuation exception by focusing "on continuity of the seller's *business operation* and not the continuity of its management and ownership." *See id.* (internal citation and quotation marks omitted). *Pancratz* expressly rejected an expansion of the mere continuation exception. *See id.*

Floyd concedes that under the well-established and existing principles of Iowa law elucidating the general rule of successor non-liability and the four carefully carved exceptions to that rule, CTB is not liable. The Iowa Supreme Court in *Pancratz* declined to adopt the product line exception and the continuity of enterprise exception. *See id.* It is the prerogative of the Iowa Supreme Court to overrule its prior holdings. *See State v. Eichler*, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves."). Accordingly, we decline to overrule *Pancratz*.

IV. Conclusion

As neither Iowa law nor Indiana law have adopted the product line exception, we conclude there is no conflict between Iowa law and Indiana law on the general rule of successor non-liability. We decline to adopt the product line exception and the continuity of enterprise exception. As Floyd concedes that

CTB is not liable under the general rule of successor non-liability and the four carefully carved exceptions to that rule, we affirm.

AFFIRMED.