

STATE OF MICHIGAN
COURT OF APPEALS

FRANK MONTI,

Plaintiff-Appellee,

and

MADISON NATIONAL BANK,

Intervening Plaintiff,

v

ROBERT GABBARD and GABBARD & CO.,

Defendants.

UNPUBLISHED

July 17, 1998

No. 195703

Oakland Circuit Court

LC No. 93-468197 CZ

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Appellant National Security & Investigations, Inc. (“NSI”) appeals as of right from a post-judgment order. We affirm.

This case arises out of plaintiff Frank Monti’s¹ efforts to collect on a money judgment entered against defendant Gabbard & Co. in a handicap discrimination suit. The trial court determined that NSI is a successor to defendant Gabbard & Co. and, therefore, liable for defendant Gabbard & Co.’s obligations to plaintiff and intervening plaintiff Madison National Bank.

NSI first argues that the trial court erred by improperly joining NSI as a defendant post-judgment and that this error precluded NSI from seeking a full trial on the issue of successor liability. We initially note that there is no order in the record that formally joined NSI as a defendant in this case. NSI did contend below in a brief that it was improperly brought into this case. However, NSI did not press this issue before the trial court at oral argument, but rather simply argued the merits of substantive issues before the court. Thus, the trial court made no ruling with respect to this issue. Finally, there is no indication in the record that NSI demanded a full trial or objected to the lack of a full trial.

Accordingly, we conclude that this issue is not

preserved. *Federated Publications, Inc v Mich State Univ Bd of Trustees*, 221 Mich App 103, 119; 561 NW2d 433 (1997); *Vander Bossche v Valley Pub*, 203 Mich App 632, 641; 513 NW2d 225 (1994).

Next, NSI argues that the court erred in applying *Stevens v McLouth Steel Products Corp*, 433 Mich 365; 446 NW2d 95 (1989), for the purpose of determining whether NSI is liable for defendant Gabbard & Co.'s obligations. NSI argues that the successor liability doctrine set forth in *Stevens* is inapplicable in this case because NSI is a small service corporation and there was no substantial sale of assets from defendant Gabbard & Co. to NSI. However, *Stevens* does not stand for the proposition that a condition precedent to the imposition of successor liability is a substantial sale of assets between two manufacturing corporations. Rather, *Stevens* indicates that the rationale for imposing successor liability in, as here, an employment discrimination case is to give a complete remedy to the employee, who otherwise might not be able to collect against the predecessor employer, and to discourage employers from evading their obligations under the guise of corporate transfers of ownership. *Id.* at 371-372. We conclude that this case falls within the rationale of *Stevens* and that the trial court, therefore, did not err in applying *Stevens* for the purpose of determining whether NSI is a successor of defendant Gabbard & Co. We further conclude that the trial court's findings under the *Stevens* factors are not clearly erroneous. MCR 2.613(C).²

Finally, we conclude that NSI has abandoned its arguments concerning the Bank's perfected first-priority security interest in NSI's assets and the trial court's alleged prejudice against defendant Robert Gabbard. *Mitchell v Dahlberg*, 215 Mich App 718, 728; 547 NW2d 74 (1996.); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

¹ Plaintiff died during this litigation and his case was apparently continued by his wife as executrix of his estate.

² In particular, the trial court found that NSI had "notice of the charge." See *Stevens, supra* at 372-379. We note that in September, 1995, the jury in plaintiff's discrimination suit rendered a verdict against defendant Gabbard & Co., a security firm. Defendant Robert Gabbard (Gabbard) was the president and sole stockholder of defendant Gabbard & Co. Gabbard's wife was a director of defendant Gabbard & Co. In October, 1995, Gabbard's wife incorporated NSI, another security firm. Gabbard's wife was the sole stockholder, director and president of NSI. Gabbard became NSI's general manager. Gabbard apparently held a license for both defendant Gabbard & Co. and NSI. We therefore conclude that the trial court's finding with respect to notice by NSI was not clearly erroneous. NSI has not contended otherwise.