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NO. COA07-1016

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

RUSSEL N. FOSTER,
Plaintiff,

v.

Mecklenburg County
No. 06 CVS 19007

UNIFI, INC.,
Defendant.

Court of Appeals

Appeal by plaintiff from an order entered 16 April 2007 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 March 2008.

Slip Opinion

Griffin Smith, Candace Helms & Helms, P.A., by R. Kenneth Helms, Jr., and Wigger Law Firm, by Jarrel L. Wigger, for plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Mel J. Garofalo and Sarah Reamer, for defendant-appellee.

MARTIN, Chief Judge.

On or about 30 September 2003, plaintiff, a commercial truck driver, drove a tractor trailer truck to a warehouse in Yadkinville owned by Unifi Manufacturing Inc. ("Unifi Manufacturing"). Unifi Manufacturing employees loaded the truck with goods, and plaintiff left the warehouse in the truck, intending to transport the goods to another location. The truck flipped over, injuring plaintiff. Plaintiff filed suit against defendant Unifi, Inc. ("Unifi"), alleging that Unifi's agents were negligent in failing to properly

inspect and secure the goods on the truck, causing the load to shift and the truck to flip over. On 8 March 2007, Unifi moved for summary judgment, claiming that plaintiff had filed suit against the wrong corporate entity. The trial court granted the motion. Plaintiff appeals.

Plaintiff argues that the trial court erred in granting defendant Unifi's motion for summary judgment because Unifi Manufacturing acted on behalf of, and as an agent of, defendant Unifi on the basis of apparent authority. We disagree. We review the grant of summary judgment *de novo*. *Falk Integrated Techs., Inc. v. Stack*, 132 N.C. App. 807, 809, 513 S.E.2d 572, 574 (1999). Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2007).

Our Supreme Court has held that a parent corporation and its subsidiaries are, in general, distinct legal entities:

Ordinarily, a corporation retains its separate and distinct identity where its stock is owned partly or entirely by another corporation The fact that a corporation owns the controlling stock of another does not destroy the identity of the latter as a distinct legal entity; and, ordinarily, no liability may be imposed upon the latter for the torts of the subsidiary corporation. The facts that corporations have common officers, occupy common offices, and to a certain extent transact business for each other do not make the one corporation liable for the action of the other, except upon established legal

principles. However, a corporation which exercises actual control over another, operating the latter as a mere instrumentality or tool, is liable for the torts of the corporation thus controlled. In such instances, the separate identities of parent and subsidiary or affiliated corporations may be disregarded.

B-W Acceptance Corp. v. Spencer, 268 N.C. 1, 8, 149 S.E.2d 570, 575 (1966) (citations and internal quotation marks omitted).

According to the materials before the trial court, Unifi Manufacturing is a wholly-owned subsidiary of Unifi. Unifi and Unifi Manufacturing each maintain their own corporate books, hold separate annual meetings, and file corporate documents separately with the North Carolina Secretary of State. With the exception of one individual, the Boards of Directors of Unifi and Unifi Manufacturing are composed of different members. There is no evidence, and plaintiff does not argue, that Unifi operates Unifi Manufacturing as a mere instrumentality or tool.

There is also no evidence that Unifi Manufacturing was an authorized agent of Unifi, and we can find no authority indicating that a subsidiary is considered to be an agent to its parent corporation's principal solely as a result of the corporate relationship. Further, apparent authority that would give rise to an agency relationship did not exist. In order for apparent authority to be established, a third party must have "dealt with the agent in reliance, thereon, in good faith, and in the exercise of reasonable prudence, in which case the principal will be bound by the acts of the agent" *Norfolk S. R.R. Co. v. Smitherman*, 178 N.C. 595, 599, 101 S.E. 208, 210 (1919). Here,

there was no showing of any reliance by plaintiff on an agency relationship between Unifi and Unifi Manufacturing. To the contrary, corporate documents for both Unifi and Unifi Manufacturing that clarify the corporate structure of both entities and confirm that they are separate corporations were available to plaintiff from the North Carolina Secretary of State. Plaintiff's argument has no merit.

Plaintiff further argues that because Unifi was the shipper of the goods that were loaded on plaintiff's truck, it is responsible for the negligent loading of the goods, relying on *Yandell v. National Fireproofing Corp.*, 239 N.C. 1, 7, 79 S.E.2d 223, 227 (1953). The *Yandell* Court stated:

Since it is not engaged in operating a railroad, the law does not put on the shipper of freight the specific duties owing by carriers by rail to the employees of a consignee who unload railroad cars. But it does lay on the shipper the general duty so to conduct its business as not negligently to injure another by any agency set in operation by it.

Yandell, 239 N.C. at 7, 79 S.E.2d at 227.

Plaintiff claims that Unifi Manufacturing is Unifi's agent and thus Unifi is liable for torts that were caused by an "agency set in operation by [Unifi]." *Id.* However, as previously discussed, there is no evidence or authority to suggest that Unifi Manufacturing was an agent of Unifi, and, to the contrary, a parent and its subsidiary are generally considered to be separate legal entities. Thus, there has been no evidence showing, even in the

light most favorable to plaintiff, that he was injured by "any agency set in operation by" defendant Unifi.

For the reasons stated above, there is no genuine issue of material fact with respect to any negligent act by defendant Unifi, and defendant was entitled to judgment as a matter of law.

Affirmed.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).