COURT OF APPEALS
DECISION
DATED AND FILED

January 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP904 **Cir. Ct. No. 2009CV2605**

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

BOU-MATIC LLC,

PLAINTIFF-RESPONDENT,

V.

CARL LEGG D/B/A GENESIS,

DEFENDANT-APPELLANT,

GENESIS GROUP, LLC, GENESIS GROUP 1, LLC AND GENESIS GROUP, INC.,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Dane County: SHELLEY GAYLORD, Judge. *Affirmed*.

Before Lundsten, Higginbotham, Kloppenburg, JJ.

¶1 PER CURIAM. Carl Legg, d/b/a Genesis, appeals a judgment holding him personally liable for debts to Bou-Matic, LLC. Legg contends that he

signed the contracts in question as an agent for Genesis Group, LLC or Genesis Group, Inc. After trial to the court, the court found that Legg failed to sufficiently disclose his principal at the time the first Dealership Agreement was signed in March, 2006, making Legg personally liable until he disclosed his principal in August 2007. The court further ruled that Legg again became personally liable when he changed the corporate structure in January 2008 without notifying Bou-Matic. Legg argues that documentary evidence satisfies his burden of showing that Bou-Matic knew or should have known that it was dealing with a limited liability business rather than an individual with personal liability. We reject that argument and affirm the judgment.

¶2 The law regarding liability of a partially disclosed agent is set forth in ***Benjamin Plumbing, Inc. v. Barnes***, 162 Wis. 2d 837, 848-49, 470 N.W.2d 888 (1991). An agent is considered a party to a contract and held liable for its breach where the principal is only partially disclosed. A principal is partially disclosed when, "at the time of contracting, the other party has notice that the agent is acting for a principal but has no notice of the principal's corporate or other business organization identity." ***Id.*** An agent is liable when the contracting party is not aware of the principal's corporate status. ***Id.*** at 850. Because the contracting party needs notice of the principal's corporate status, "the use of a trade name is normally not sufficient disclosure." ***Id.*** at 851. Failure to use the "Inc." notation in correspondence between the agent and a third party or in the contract itself is often critical in determining whether there was adequate disclosure of corporate status. ***Id.*** The agent has the burden of proving the principal's corporate was disclosed. The contracting party does not have any duty to inquire into the corporate status of the principal. ***Id.*** The contracting party is generally said to have notice of the principal's identity if the party knows, has

reason to know, or should know if it, or has been given notification of the fact. ***Id.*** at 852. However, there "must be more than a mere suspicion of the principal's corporate status." ***Id.***

¶3 "[W]hether the contracting party has sufficient notice of the principal's corporate identity is a question of fact." ***Id.*** The circuit court's findings of fact must be upheld unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). The circuit court made credibility findings against Legg regarding his claim that he verbally disclosed his principal to a Bou-Matic employee. Therefore, Legg's argument relies entirely on documentary evidence. The parties disagree about the standard of review this court should apply, particularly whether this court should give deference to the inferences the circuit court drew from the documentary evidence. We need not resolve that dispute because, even without giving deference to the trial court's inferences, we agree with its finding that the documentary evidence does not satisfy Legg's burden of proving adequate disclosure of his principal.

¶4 Many of the documents Legg relies upon were submitted to Bou-Matic before the first Dealership Agreement was signed and before Genesis LLC was created. Legg's business plan, dealership application, financing statement, IRS forms and corporate authorization dated February 15, 2006, all predate creation of Genesis Group, LLC. Disclosures of a non-existent, potential principal is not sufficient. ***Fredendall v. Taylor***, 23 WI 538, 540-41 (1868). The documents show Legg's intent to have a principal, but do not adequately disclose the principal's identity when the principal has not yet been created. Legg did not identify an actual, existing principal, and impermissibly left Bou-Matic to determine whether he had formed the corporation as intended. *See* ***Benjamin Plumbing***, 162 Wis. 2d at 851.

¶5 In the Dealership Agreements themselves, Legg did not identify Genesis Group, LLC. The agreements identified Legg or "Genesis" as the dealer with no reference to Genesis being a limited liability corporation. The invoices, correspondence and e-mails also referred to Genesis without any indication that it was a limited liability corporation. Legg's failure to use the "LLC" notation in correspondence was critical in determining whether he adequately disclosed the corporate status. *See* ***id.*** The documents that refer to "Genesis" display nothing more than Bou-Matic's knowledge of a trade name, which is insufficient to relieve Legg of personal liability. ***Id.***

¶6 Legg also refers to two checks from Bou-Matic regarding a separate rental agreement. However, he failed to show that the person who wrote the checks had knowledge, responsibility or authority with respect to the Dealer Agreements which could be imputed to Bou-Matic. Information that may have passed through accountants is not necessarily sufficient to establish notice to a contracting party. ***Philipp Lithographing Co. v. Babich***, 27 Wis. 2d 645, 649-50, 135 N.W.2d 343 (1965). David Candelmo, Bou-Matic's controller, testified that the checks were written by the "AP Specialist" which was an accounting position. No one in Bou-Matic's accounting department had responsibilities for establishing dealerships. Legg did not establish that Bou-Matic knew, had reason to know or should have known that it was contracting with a limited liability corporation and that Legg was merely an agent who accepted no personal responsibilities under the contracts he signed.

¶7 In January 2008, Legg changed the name of Genesis Group, LLC to Genesis Group I, LLC, administratively dissolved Genesis Group I, LLC, and created Genesis Group, Inc. to take its place. He did not notify Bou-Matic of any of these changes, and was therefore still professed to act as an agent for Genesis

Group, LLC, an entity that had been dissolved. Legg again professed to act on behalf of a non-existent principal.[1]

¶8 Under the Dealership Agreements, Bou-Matic's advance, written consent was required for any transfer of the dealership. When a party to a contract changes its status, that information must be clearly provided to the other contracting party to give it an opportunity to protect itself by making appropriate changes to the contract. Unilateral substitution of parties to a contract without notice to the other side might adversely affect the solvency of a party or its ability to fulfill the terms of the agreement. Legg's failure to inform Bou-Matic of the changes to Genesis Group's corporate structure unfairly disadvantaged Bou-Matic. Legg cannot evade personal responsibility by claiming that Genesis Group has sole liability in one or more of its incarnations when he failed to inform Bou-Matic of his principal.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

[1] Legg argues for the first time on appeal that the corporation was a "continuing operation." We do not consider issues raised for the first time on appeal. ***State v. Holland Plastics Co.***, 111 Wis. 2d 497, 504-05, 331 N.W.2d 320 (1983).