ELMER C. DONALDSON AND HELEN C. DONALDSON, his wife, PLAINTIFFS vs. LODGE AND SHIPLEY, INC., LODGE AND SHIPLEY COMPANY, W. E. SHIPLEY MACHINERY COMPANY, MONARCH MACHINE TOOL COMPANY, INC. RUDEL MACHINERY COMPANY, INC., MANUFLEX CORPORATION, CUSHMAN INDUSTRIES, INC., and E & D CHUCK COMPANY, DEFENDANTS, Franklin County Branch, Civil Action - Law No. A.D. 1992 - 440

DONALDSON v. LODGE & SHIPLEY, INC., ET AL.

Summary Judgment - Products Liability - Successor Liability

1. Summary judgment will be granted only where the pleadings, answers to interrogatories, admissions and affidavits clearly demonstrate an absence of any disputed material fact.

2. Pennsylvania law generally states that when one corporation sells or transfers all if its assets to a successor corporation, the successor does not acquire the transferor corporation's liabilities because of that succession

3. Pennsylvania also recognizes exceptions to the general rule of successor liability, such as the product line exception.

4. the product line exception states that when a successor corporation acquires all or substantially all of the former corporation's manufacturing assets and continues the same manufacturing operation, liability may be imposed upon the successor for injury caused by defects in that product line, even if manufactured and distributed by the former corporation.

5. The product line exception should only be applied after a fact specific case-by-case analysis by the court.

6. Relevant to the court's inquire (although not determinative) is, *inter alia,* whether the successor held itself out as a continuation of the former corporation; whether the successor corporation acquired the former's goodwill associated with the product line, a product name, employees or customers from the former corporation; and whether the purchase of the manufacturing assets extinguished the plaintiff's remedy against the former corporation.

Philip S. Cosentino, Esquire, Attorney for plaintiffs
John F. Yaninek, Esquire, Attorney for W. E. Shipley Machinery and Rudel Machinery Company, defendants
William P. Douglas, Esquire, Attorney for Monarch Machine Tool company, Defendant Manuflex Corporation, defendants

OPINION AND ORDER

Kaye, J., February 5, 1997:

Before this Court is a motion for summary judgment filed by Monarch Machine Tool Company ("defendant Monarch") The defendants Rudel Machinery ("defendant Rudel") and W. E. Shipley Machinery Company ("defendant Shipley"), oppose the entry of summary judgment in defendant Monarch's favor. The plaintiffs have joined in the co-defendants' brief in opposition to the motion for summary judgment. The motion has been briefed and argued and is now ripe for disposition. The pertinent facts, and reasonable inferences draw therefrom, in a light most favorable to plaintiffs and defendants Rudel and Shipely[1] , are as follows:

FACTS

On August 25, 1990, the plaintiff Elmer Donaldson, an employee of the Frick Company, suffered personal injury when a piece flew from the lathe[2] he was working with and struck him in the head. The lathe, a Numeriturn IV model, serial number 50491, was manufactured by defendant Lodge and Shipley, Inc. ("defendant L&S") in 1979. Defendant Shipley sold the lathe to the Frick Company. Following the plaintiff's injuries, in 1992, he and his wife instituted a cause of action against the named defendants by writ of summons.

Also in 1992, defendant L&S was in the process of going out of business. On July 29, 1992, a secured creditor of L&S, named Reprise Special Situation Venture Fund II ("Reprise"), entered into a Secured Party Sale Agreement with defendant Monarch. Pursuant to their agreement, defendant Monarch purchased certain L&S assets relating to the "Turning Product Line" of L&S including, *inter alia,* finished goods inventory, patterns, fixtures, patents and trademarks. However, the patent for the Numeriturn Lathe was not purchased by Monarch. Numerous other remaining assets were also not purchased by Monarch since these were subject to security interests and claims of third parties.

The plaintiffs filed a Complaint on September 20, 1994 alleging that all defendants were liable in strict liability, negligence, and breach of express and implied warranties. An

[1] See *O'Neill v. Checker Motors Corp.*, 339 Pa.Super. 430, 567 A.2d 680 (1989).
[2] A lathe is a turning machine that was part of L&S's Turning Products Line

Answer and New Matter was filed by defendants Rudel and Shipley on October 21, 1994 along with a Cross Claim against defendants L&S, Monarch and Manuflex. Thereafter, defendant Monarch filed its Answer and New Matter along with a Cross Claim against defendants Rudel and Manuflex. Now before this Court is the Motion for Summary Judgment filed by defendant Monarch. In support of its motion, defendant Monarch asserts that there can be no claim against it since Monarch merely purchased some L&S assets from a secured creditor. Defendant Monarch argues that there is no basis under Pennsylvania law to support any successor liability claim against it. In opposition to the motion, the plaintiffs and defendants Rudel and Shipley maintain that summary judgment is improper at this stage in the proceedings since there are disputed facts relevant to determining whether the product line exception to general successor liability principles should apply to defendant Monarch. For the reasons that follow, we agree that summary judgment in defendant Monarch's favor is improper.

DISCUSSION

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, summary judgment may be granted only "whenever there is no genuine issue of material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report". The moving party, defendant Monarch, has the burden of establishing the absence of any disputed material fact. *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 533 A.2d 900 (1989). Summary judgment will be granted only where the pleadings, answers to interrogatories, admissions and affidavits clearly and without doubt establish the right to such a judgment. *McNeal v. Easton*, 143 Pa.Cmwlth. 151, 598 A.2d 638 (1991); Pa.R.C.P. 1035.1 In ruling on the motion, the Court must examine the record in the light most favorable to the parties opposing the motion, and must accept as true all well-pleaded facts in the opposing party's pleadings. See *Penn Center House, supra;* See also *O'Neill, supra.* All reasonable inferences must be drawn in favor of the parties opposing the motion. *Id.*

Initially, we note that both parties recognize that it is well settled in Pennsylvania that "when one company sells or transfers all of its assets to a successor company, the successor does not acquire the liabilities of the transferor corporation merely because of its succession to the transferor's assets." *Husak v. Berkel Incorporated,* 234 Pa.Super. 452, 341 A.2d 174 (1975). However, both parties also acknowledge exceptions to this general rule, one of which is relevant to the case *sub judice.* This exception, known as the product line exception, was first recognized in Pennsylvania by the Superior Court in *Dawejko v. Jorgensen Steel Co.,* 290 Pa.Super. 15, 434 A.2d 106 (1981). The Court adopted the product line exception, defined by the New Jersey Supreme Court in *Ramirez v. Amsted Industries, Inc.,* 86 N.J. 332, 431 A.2d 811 (1981), as follows:

> [W]here one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor.

Id. at 358, 431 A.2d at 825.

However, the Pennsylvania Superior Court cautioned against construing this exception too narrowly and said that many factual inquiries must be made before the exception will be applied. *Dawejko,* 290 Pa.Super. at 26, 434 A.2d at 111. For example, the court must consider whether the successor corporation held itself out to the public as a continuation of the predecessor corporation; whether the successor corporation retained the prior corporation's products, name employees, or customers; and whether the successor corporation purchased the goodwill of the prior corporation. *Id.* Further, the Superior Court held that while it would not adopt the three-part test set forth by the California Supreme Court in *Ray v. Alad Corporation,* 19 Cal.3d 22, 136 Cal. Rptr. 574, 560 P.2d 3 (1977), it did say that the test would be useful in determining whether the exception should apply. The *Ray* test dictates that successor liability can be maintained against a corporation first, if the succession of the business virtually

destroyed the plaintiff's remedies; second, if the successor corporation can assume the original manufacturer's "risk-spreading rule"; and, third, if fairness dictates that liability may be placed upon the successor corporation because it enjoyed the goodwill that had been attached to the prior company's product. *Id.* Therefore, while there are certainly guidelines to follow when determining whether successor liability should attach, no "bright-line rule" exists. As a result, each case is fact specific.

In the present case, defendant Monarch argues that the product line exception does not apply. In support of its motion, Monarch states that it did not make any purchases directly from L&S; that its purchase of assets did not destroy plaintiffs' claims against L&S; that it did not purchase the Numeriturn product line' that it did not continue the operations of L&S; that it hired only four L&S employees; it did not purchase L&S goodwill; and that the sale of lathes only comprises a small portion of its business. In opposition to the motion, the plaintiffs, as well as defendants Rudel and Shipley, maintain that defendant Monarch acquired substantially all of the L&S turning products line and that Monarch continued essentially the same manufacturing operation as L&S.

There can be no doubt that defendant monarch purchased L&S assets for the continued manufacture of turning products, namely lathes. This is apparent from the Secured Party Sale Agreement between defendant Monarch and Reprise, dated July 29, 1992. Specifically, paragraph 1.01 of the agreement states the following:

> *Purchase of Assets.* At the closing described in Paragraph 2.01, the Buyer will purchase from the Secured Party Seller, as secured party, and the Secured Party Seller, as secured party, will sell to the Buyer, all of L&S's rights in or to the assets listed on Exhibit 1.01 (the "Acquired Assets") relating to L&S's Turning Products line of business (the "Turning Product Line").

As stated earlier, the primary question is whether or not defendant Monarch acquired "all or substantially all" of L&S's lathe manufacturing operation. Since it merely refers to a list of assets, the sales agreement is unclear about what portion of the L&S

Turning Product Line was purchased by defendant Monarch. In support of its motion, defendant Monarch has provided the Court with a list of assets purchased and a list of some assets that were not purchased because they were subject to third-party security interests. Additionally, Monarch states that it was only interested in certain L&S products, not including the Numeriturn lathe. As a result, it is Monarch's position that its sales agreement with L&S did not amount to a purchase of the entire line or even a substantial portion thereof. In opposition to the motion, the plaintiffs and defendants Rudel and Shipley maintain that regardless of what Monarch was interested in, it still purchased the entire Turning Products Line which included assets related to Numeriturn lathes.

Obviously, the parties are in factual disagreement over the significance of what, in fact, was purchased. Since one of the two crucial issues to be determined is whether defendant Monarch purchased "all or substantially all" of L&S's assets related to the manufacture of its Turning Product Line, it must be shown that Monarch merely acquired a portion of L&S's lathe manufacturing assets, i.e. less than substantially all of the manufacturing assets. We find the defendant Monarch has failed to do this. there are no facts of record to show what portion of L&S's lathe manufacturing assets were acquired by defendant Monarch. We also note that we are given no guidance by the record concerning the relative importance of the acquired assets to a lathe manufacturing operation. Quantity of assets may not be determinative where only a limited amount of specialized equipment is needed to comprise a working lathe manufacturing plant. Until the record is more fully developed to include not only what assets were purchased but the significance of those assets to the operation, summary judgment would be improper on this basis alone.

Additionally, defendant Monarch argues that the Numeriturn line was a separate product line that was not included in the Turning Product Line that was purchased. The plaintiff's and defendants Rudel and Shipley argue that the Numeriturn is a lathe and, as such, was included in the Turning Product Line. There is absolutely no factual support for defendant Monarch's contention on the record. In fact, the testimony of Robert J. Siewert,

President of Monarch Machine Tool Company, directly contradicts the company's position taken in its motion for summary judgment. Mr. Siewert testified that the assets defendant Monarch purchased related to the manufacture of all L&S lathes and not just the two it was interested in namely Manuflex and AVS. We can find nothing on the record to indicate that, although the Manuflex and AVS lathes were admittedly included in the Turning Product Line, the Numeriturn lathe comprised a separate and distinct product line. Therefore, defendant Monarch has not met its burden of showing that there is no dispute of fact concerning the exclusion of the Numeriturn lathe from L&S's Turning Product Line.

Although not determinative of the issue of the applicability of the product line exception, another relevant inquiry concerns the plaintiffs' remedy against L&S. See *Keselyak v. Reach All, Inc.*, 433 Pa.Super. 71, 660 A.2d 1350 (1995). While all parties agree that prior to the sale of assets L&S was practically out of business, plaintiffs and defendants Rudel and Shipley argue that plaintiffs' remedy against L&S completely expired as a result of the asset sale. Defendant Monarch denies that their purchase of L&S assets did anything to cause, or even hasten, L&S's demise. We note that there is nothing on the record concerning the financial health of L&S either prior to or after the sale of assets. On the surface it would seem that L&S would have gone out of business anyway. However, before summary judgment could be entered in defendant Monarch's favor, this Court would have to be satisfied that it was not the sale of assets that precluded the plaintiffs' recovery from L&S. Without specific information on the record, we are unable to discern whether there may have been a connection between defendant Monarch's purchase and the extinguishing of the plaintiffs' remedies. Therefore, it will be for the finder of the facts to determine the existence of a causal connection based upon what they determine the facts to be.

For the foregoing reasons, we find that there are obvious and material factual disputes which exist. The record is insufficiently developed to make a ruling on whether or not defendant Monarch may be held liable as a successor corporation to L&S. Accordingly, it would be improper for this Court to grant defendant Monarch's motion for summary judgment. Unless the

record can be more fully developed to completely address the issues disputed by the parties, it will be for the finder of fact to determine whether or not the product line exception applies in the instant case. Accordingly, defendant Monarch's motion will be denied.

ORDER OF COURT

NOW, February 5, 1997, the motion for summary judgment filed by defendant Monarch Machine Tool Company is DENIED.