

RENDERED: SEPTEMBER 29, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000196-MR

DEAN W. FORLEO; JOHN O. TANDY, JR.; APPELLANTS  
QUALITY MANAGEMENT SERVICES, INC.;  
AND SIGNATURE HARDWOOD FLOORS, INC.

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NO. 03-CI-009815

AMERICAN PRODUCTS OF KENTUCKY, INC. APPELLEES  
AND LANHAM HARDWOOD FLOORING COMPANY, INC.

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Appellants, Dean Forleo and John Tandy, appeal the order of the Jefferson Circuit Court granting summary judgment in favor of appellees, Lanham Hardwood Flooring Company, Inc. (Lanham) and American Products of Kentucky, Inc. (AMPRO). Forleo and Tandy argue that the trial court improperly applied KRS 271B.14-220, which addresses the reinstatement of a

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

corporation that has been administratively dissolved. We affirm.

Forleo and Tandy incorporated Quality Management Services, Inc. (QMS) in 1992 to operate their primary business of hardwood floor installation and refinishing. Forleo and Tandy were the sole shareholders, officers, and directors of QMS. On November 1, 2000, the Kentucky Secretary of State administratively dissolved QMS for failure to file its annual report as required by KRS 271B.14-200. Despite the dissolution, Forleo and Tandy continued doing business as QMS and, from October 2001 to June 2002, they purchased hardwood flooring supplies from Lanham and AMPRO. Forleo and Tandy repeatedly refused to make payment for the materials.

Lanham and AMPRO filed suit in Jefferson Circuit Court seeking to recover the amounts due from Forleo and Tandy. The trial court found that Forleo and Tandy were personally liable for the debts and granted summary judgment in favor of Lanham and AMPRO. On July 1, 2004, the Secretary of State reinstated the corporate existence of QMS. Forleo and Tandy then filed a motion to alter or amend the judgment arguing that, upon reinstatement, the corporate veil is retroactively applied back to the date of dissolution pursuant to KRS 271B.14-220(3). The trial court denied the motion and this appeal follows.

Forleo and Tandy argue that KRS 271B.14-220(3) mandates that the reinstatement of a corporation which had been administratively dissolved relates back to the date of dissolution. Although Forleo and Tandy admit doing business as QMS after dissolution, they argue that the relation back of the reinstatement operates as if dissolution had never occurred.

KRS 271B-14.220(3) states:

When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.

In Kentucky, the general rule is that shareholders and officers are personally liable for debts made in the name of the corporation after dissolution. Steele v. Stanley, 237 Ky. 517, 35 S.W.2d 867, 868 (1931). KRS 271B.14-210(3) states that a corporation may not continue any business after dissolution except that which is necessary to wind up and liquidate its business and affairs. A majority of other jurisdictions considering this issue have found that reinstatement of the corporation does not shield the officers from personal liability for debts incurred after dissolution. Cardem, Inc., v. Marketron International, 749 N.E.2d 477 (Ill.App. 2001); Worldcom v. Sandoval, 701 N.Y.S.2d 834 (1999).

We find that KRS 271B.14-220(3) does not affect the personal liability of stockholders or officers for debts incurred in the name of the corporation after dissolution. First, the provision is silent as to the issue of personal liability. Secondly, KRS 271B.14-210(3) specifically prohibits a corporation from carrying on any business except winding up after dissolution. In this case, it is undisputed that Forleo and Tandy continued to conduct everyday business in the name of the corporation after it had been dissolved. Finally, the relation back provision of KRS 271B.14-220(3) states that after reinstatement the corporation "shall resume carrying on its business as if the administrative dissolution... had never occurred." The "shall resume" language necessarily implies that that the corporation ceased doing business after dissolution as required by KRS 271B.14-210(3). Therefore, the trial court properly held them to be personally liable for the debts incurred after dissolution.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ABRAMSON, JUDGE, CONCURS.

VANMETER, JUDGE, DISSENTS.

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