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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001979-MR

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM TODD CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 08-CI-00039

RONCO ACQUISITION
CORPORATION — APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, VANMETER, AND WINE, JUDGES.

VANMETER, JUDGE: Kentucky Farm Bureau Mutual Insurance Company ("Farm Bureau") appeals from an order of the Todd Circuit Court granting summary judgment to Ronco Acquisition Corporation ("Ronco"). For the

following reasons, we vacate the order and remand this case for further proceedings consistent with this opinion.

In December 2005, James Bishop purchased a Ronco rotisserie oven which was designed, manufactured, marketed, and distributed by Ronco Corporation. In June 2007, Ronco Corporation filed a petition for bankruptcy and thereafter negotiated an Asset Purchase Agreement ("Agreement") with Ronco, which the bankruptcy court approved in August 2007. By virtue of the Agreement, Ronco assumed certain liabilities of Ronco Corporation.

A fire destroyed the Bishop residence in Todd County in December 2007. Farm Bureau reimbursed the Bishops for their loss pursuant to their insurance policy and, after an investigator retained by Farm Bureau opined the oven was the cause of the fire, Farm Bureau brought this action against Ronco alleging negligence, strict liability, and breach of warranty.[1] Ronco moved for summary judgment, which the trial court granted. This appeal followed.

Summary judgment shall be granted only if "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR[2] 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be

[1] Farm Bureau also asserted claims against Ronco Corporation and Ronco Marketing Corporation but voluntarily dismissed them.

[2] Kentucky Rules of Civil Procedure.

resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.,* 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). Further, "a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482 (citations omitted).

On appeal from a granting of summary judgment, our standard of review is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Lewis B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (citations omitted). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

Farm Bureau claims the trial court erred by holding Ronco not liable under the terms of the Agreement for the allegedly defective oven. We agree.

We review the Agreement *de novo* since contract interpretation is a question of law. *Baker v. Coombs*, 219 S.W.3d 204, 207 (Ky.App. 2007) (citation omitted). In interpreting a contract, the parties' intentions are to be discerned from the four corners of the document itself. *Id.* If the contract is not ambiguous, extrinsic evidence should not be considered. *Id.* (citation omitted).

The general rule in Kentucky with respect to successor liability is that "a corporation which purchases another corporation does not assume the payment

of any debts or liabilities of the corporation which it has purchased." *Pearson v. Nat'l Feeding Sys., Inc.*, 90 S.W.3d 46, 49 (Ky. 2002) (citing *Am. Railway Express Co. v. Commonwealth*, 190 Ky. 636, 228 S.W. 433 (Ky. 1920)). Further, "when the sale of a corporation is a bona fide transaction, and the selling corporation . . . receives money to pay its debts or property that may be subjected to the payment of its debts and liabilities, the purchasing corporation will not, in the absence of a contract obligation or fraud, be held responsible for the debts or liabilities of the selling corporation." *Pearson*, 90 S.W.3d at 49 (citing *Am. Railway Express Co.*, 228 S.W. at 437).

In this case, Ronco assumed certain liabilities of Ronco Corporation per the terms of the Agreement. Section 2.3(a) provides that Ronco shall assume "all Liabilities relating to the Business acquired hereunder that arise from events, facts or circumstances that occur after the Closing[.]" "Business" is defined by the Agreement as the business of Ronco Corporation and its subsidiaries "relating to the design, manufacture, marketing, distribution and sale of various household and consumer products[.]" Thus, section 2.3(a) more accurately reads that Ronco shall assume "all Liabilities 'relating to the design, manufacture, marketing, distribution and sale of various household and consumer products' acquired hereunder that arise from events, facts or circumstances that occur after the Closing[.]"

Farm Bureau argues the December 2007 fire was an event, fact or circumstance which occurred after the August 2007 closing for which Ronco expressly assumed liability under a plain reading of section 2.3(a). Farm Bureau

emphasizes that its claims relate to the "business" of Ronco Corporation; that is, the design, manufacture, marketing, distribution and sale of the oven which took place prior to the closing.

The trial court found the "arise from" language of section 2.3(a) to be ambiguous; the court found the event, fact or circumstance could also mean the design, manufacture, marketing and distribution of the oven, which occurred prior to the closing. In interpreting the Agreement as a whole, the court determined the general language of "all" successor liability under section 2.3(a) must give way to the more specific language of section 2.3(d), which provides that Ronco shall assume "Liabilities (whether known or unknown) arising from the sale of Products or Inventory after the Petition Date pursuant to product warranties (provided that the only liability assumed under such warranties is the obligation to replace defective product), product returns and rebates[.]" *See City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986) (any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible); *FS Investments, Inc. v. Asset Guar. Ins. Co.*, 196 F.Supp.2d 491, 497 (E.D.Ky. 2002) (when interpreting contracts, the definite and precise prevails over the indefinite) (citing *Int'l Union of Operating Engineers v. J.A. Jones Constr. Co.*, 240 S.W.2d 49 (Ky. 1951)).

The trial court held "[b]ecause (Ronco's) successor liability in this case cannot be based on section 2.3(d), because it did not [sell] products after the petition date, and because to find successor liability based on section 2.3(a) in this

case would render section 2.3(d) meaningless, the Court finds (Ronco) did not assume liability for the negligence alleged in this case." Accordingly, the court concluded Ronco did not expressly assume liability under the Agreement for the allegedly defective oven.

Our review of the Agreement reveals that section 2.3(d) only concerns Farm Bureau's warranty claims and does not preclude its claims of strict liability and negligence. *See Williams v. Fulmer*, 695 S.W.2d 411 (Ky. 1985) (whether a product is defective has different elements under negligence, strict liability in tort and breach of warranty, and liability as defined under each is different and each carries different implications). Further, in interpreting the Agreement as a whole, we find sections 2.3(a) and (d) to be consistent and compatible with each other. Section 2.3(d) provides that Ronco shall assume liabilities for claims sounding in product warranty and arising from the sale of products or inventory after the petition date, while section 2.3(a) provides for the assumption of liabilities "relating to the design, manufacture, marketing, distribution and sale of various household and consumer products" that "arise from events, facts or circumstances that occur after the Closing[.]" Since Farm Bureau's claims of negligence and strict liability relate to the design, manufacture, marketing, distribution and sale of the oven, and allegedly arise from the fire, which occurred after the closing, section 2.3(a) does not bar Farm Bureau's present action.

The order of the Todd Circuit Court is vacated and this case is hereby remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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