2016 IL App (1st) 15-3131-U



THIRD DIVISION
August 17, 2016

No. 1-15-3131

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| MJH INTERIORS, INC., Plaintiff-Appellee, | ) | Appeal from the Circuit Court of Cook County, Illinois, Municipal Department, |
| v. | ) | First District Division. |
| ALTERNATIVE CONSTRUCTION SOLUTIONS, INC., Defendant-Appelant. | ) | No. 2015 M1 106074 |
| | ) | The Honorable Daniel J. Kubasiak, Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court properly denied the dissolved corporation's motion to quash the judgment creditor's third party citation to discover assets (735 ILCS 5/2-1402 (West 2012)), and ordered that the third party turn over the assets to the judgment creditor to meet the corporation's post-dissolution judgment obligations.

¶ 2 In this cause of action, we are asked to determine whether a judgment creditor can obtain a turnover of a judgment debtor's assets, held by a third party, when the judgment debtor is a voluntarily dissolved Illinois corporation and the judgment is obtained after the corporation is

dissolved. For the reasons that follow, we find that it can and therefore affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 The record below reveals the following undisputed facts and procedural history. The defendant, Alternative Construction Solutions, Inc., (hereinafter ACS) was an Illinois corporation engaged primarily in the business of construction. The plaintiff, MJH Interiors, Inc. (hereinafter MJH), is an interior flooring design company, which did business with ACS.

¶ 5 On March 10, 2015, ACS filed articles of dissolution with the Illinois Secretary of State to commence a voluntary dissolution pursuant to a resolution duly adopted by its shareholders.

¶ 6 On March 13, 2015, MJH filed a collection action against ACS, alleging that it had provided goods and services to ACS on several projects and was not fully paid for them. The three-count complaint alleged claims for: (1) account stated; (2) quantum meruit; and (3) unjust enrichment.

¶ 7 Three days after MJH filed its action in the circuit court, on March 16, 2015, by letter from its attorneys, ACS gave notice to all of its creditors, including MJH, of the filing of the articles of dissolution. The letter was received by MJH on March 18, 2015. According to the letter, MJH could submit any claims it had against ACS, its directors, officer employees or agents or its shareholders no later than July 6, 2015. In addition, the letter instructed that any claim should include "the name of the creditor, the amount claimed to be due, a brief description of the basis of the claim, and a copy of any invoice supporting the claim," and provided the address to which the claim should be sent. MJH did not send ACS a separate notice of its claim in response to this letter, but instead proceeded with its collection action in circuit court.

¶ 8 On July 8, 2015, ACS filed its answer to MJH's complaint asserting, *inter alia*, that it had

filed its article of dissolution and was currently operating solely for the purpose of winding up its affairs.

¶ 9 On July 22, 2015, MJH filed a motion for judgment on the pleadings. After ACS responded, on September 17, 2015, the trial court entered judgment in favor of MJH in the amount of $63,847 plus costs on count I (the account stated claim). The court denied MJH's motion as to the remaining two counts (quantum meruit and unjust enrichment), and noted that the plaintiff had waived any claim it had to prejudgment interest.

¶ 10 On September 23, 2014, pursuant to section 2-1402 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1402 (West 2014)), MJH served a third party citation to discover assets (hereinafter citation) upon Marquette Bank, where ACS kept an operating account with $52,986 in assets. Pursuant to the citation, Marquette Bank (hereinafter bank) placed a lien on ACS's bank account.

¶ 11 On October 16, 2015, ACS filed a motion to quash the third party citation or to lift the citation lien (hereinafter motion to quash). In its motion to quash, ACS argued that as a result of the lien that the bank had placed on its operating account, it was unable to pay its administrative expenses, including legal and accounting fees. ACS argued that pursuant to section 12.30(a) of the Illinois Business Corporation Act (BCA) (805 ILCS 5/12.30(a) (West 2014)) by filing the articles of dissolution, it had terminated its corporate existence, except for the purpose of winding up and liquidating its business and affairs. According to ACS, the principals of the corporation thereafter assumed a fiduciary duty to use ACS's assets to discharge all of its liabilities, including first the satisfaction of secured creditors, and then, to the extent of any remaining assets, its unsecured creditors on a *pro rata* basis. Therefore, ACS posited that the

bank account funds did not belong to ACS, but rather were funds held in equitable trust for the benefit of all of ACS's remaining creditors.

¶ 12 On October 27, 2015, the trial court ordered that the $52,986 in funds frozen at Marquette Bank be turned over to MJH. ACS's counsel immediately moved for leave to file a notice of appeal and to stay the turnover order. The court stayed enforcement of the order until November 3, 2015, to permit ACS to file its notice of appeal. In doing so, the court further noted that should ACS file its notice of appeal on or before November 3, 2015, the stay would remain in place until November 9, 2015, to determine the amount of bond ACS would be required to post for its appeal.

¶ 13 On October 27, 2015, ACS filed its notice of appeal and a motion to stay enforcement of judgment. Therein, ACS contended that it had no ability to post an appeal bond or to provide any other form of security because all of its assets were frozen at the bank and subject to the turnover order. On November 9, 2015, the trial court determined that pursuant to Illinois Supreme Court Rule 305 (eff. July 1, 2004) the $52,968 in frozen assets were a sufficient bond, and required that the bank deposit those funds with the clerk of the circuit court pending appeal. The trial court also stayed enforcement of the turnover order pending this appeal.

¶ 14 II. ANALYSIS

¶ 15 On appeal, ACS argues that the trial court erred when it denied ACS's motion to quash the citation to discover assets and granted the turnover of funds to MJH as a judgment debtor. ACS initially argues that because a corporation's existence terminates upon the fling of the articles of dissolution, and the corporation exists only for the purpose of winding up its affairs, disposing of its assets, and giving notice to creditors for the purpose of, *inter alia*, discharging liabilities and paying debts, creditors should not be permitted to file law suits to collect unpaid debts, but rather

should be required to file claims with the dissolved corporation pursuant to the steps articulated in section 12.75 of the Business Corporation Act (BCA) (805 ILCS 5/12.75 (West 2014)). ACS argues that if creditors are permitted to file law suits instead of claims, the result will be a chase to the courthouse by every unsecured creditor attempting to secure a judgment and seeking to impose a lien on the corporation's assets, resulting in only the luckiest (*i.e.*, the first to the courthouse) receiving nay distribution of the dissolved corporation's assets. According to ACS, this contravenes the spirit of the voluntary dissolution provisions of the BCA. Instead, by analogizing the BCA with Illinois law regarding the assignment for the benefit of creditors, ACS contends that under the BCA, upon a voluntary dissolution, the corporation's assets are held in an equitable trust that bars a judgment creditor from obtaining a turnover of the assets prior to any other creditors. For the reasons that follow, we disagree.

¶ 16 At the outset we note that contrary to ACS's position, the filing of a voluntary dissolution of a corporation does not prevent parties from filing suits against the corporation in its corporate name. See 805 ILCS 5/12.30 (c) (West 2014). While ACS is correct that the effect of filing the articles of dissolution is to terminate the corporation's corporate existence, and permits the corporation to carry on only that business necessary to wind up and liquidate its business assets and affairs (805 ILCS 5/12.30 (West 2014)), nothing in the BCA prevents creditors from pursuing law suits against the corporation to settle unpaid debts. In fact, section 12.30(c) explicitly provides that, the dissolution of a corporation "does not *** transfer title of the corporations assets," nor "prevent[s] suit by or against the corporation in its corporate name." 805 ILCS 5/12.30 (West 2014).

¶ 17 What is more, the BCA explicitly contains a survival statute permitting claims to continue

against the corporation in its corporate name. See 805 ILCS 5/12.80 (West 2014). As section 12.80 states:

> "The dissolution of a corporation *** shall not take away nor impair any civil remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution." 805 ILCS 5/12.80 (West 2014)).

¶ 18 Our courts have repeatedly held that the language of this corporate survival statue is clear and unambiguous and " 'extend[s] the life of a corporation' after its dissolution so that suits, which normally would have abated may be brought *** against the corporation." *Michigan Indian Condominium Association v. Michigan Place, L.L.C.*, 2014 IL App (1st) 123764, ¶ 12-13. Accordingly, contrary to ACS's position, the BCA explicitly permits the corporation, upon dissolution, to hold property for the benefit of its creditors and the creditors to maintain a cause of action to obtain that property. See *Michigan Indian Condominium Association*, 2014 IL App (1st) 123764, ¶ 13; see also *In re Segno Communications, Inc*., 264 B. R. 501 (2001) ("During the wind-up period, the corporation continues to have title to its assets [citation], has the power to give title to its assets [citation], and *the ability to sue or be sued*." (Emphasis added.). As such, nothing in the BCA prohibited MJH from filing its collection claim against ACS after ACS had been dissolved.

¶ 19 ACS nonetheless asserts that MJH should not have been permitted to use a section 2-1402 citation to reach the assets in the operating account it held at Marquette Bank. We disagree.

¶ 20 Our courts have repeatedly held that a section 2-1402 citation to discover assets, also known

as a supplementary proceeding, is the predominant procedure for enforcing judgments. *Wells Fargo Bank Minnesota, NA v. Envirobusiness, Inc.*, 2014 IL App (1st) 133575, ¶ 13 (citing Robert G. Markoff, Jeffrey A. Albert, Steven A. Markoff & Christopher J. McGeehan, *Citations to Discover Assets*, in Creditors' Rights in Illinois § 2.42 (Ill. Inst. for Cont. Legal Educ. 2014) (citing 735 ILCS 5/2–1402(c) (West 2014)). Section 2-1402 explicitly provides judgment creditors with a mechanism to initiate supplementary proceedings against a judgment debtor or third party in order to discover the judgment debtor's assets and apply them to satisfy the underlying judgment. *Wells Fargo Bank*, 2014 IL App (1st) 133575, ¶ 13 (citing *Eclipse Manufacturing Co. v. United States Compliance Co.*, 381 Ill. App. 3d 127, 133 (2007)). In that respect, the statute provides the circuit court with broad powers to compel parties to satisfy a judgment with discovered assets. *Wells Fargo Bank*, 2014 IL App (1st) 133575, ¶ 13 (citing *Stonecrafters, Inc. v. Wholesale Life Insurance Brokerage, Inc.*, 393 Ill.App.3d 951, 958 (2009)). In addition, under the statutory procedure, "[t]he debtor bears the burden of demonstrating that property is exempt from being applied to satisfy a judgment." *Wells Fargo Bank*, 2014 IL App (1st) 133575, ¶ 13; see also *In re Marriage of Takata*, 383 Ill. App. 3d 782, 788 (2008).

¶ 21 In the present case, ACS failed in its burden to demonstrate that the assets in its operating bank account are exempt from being applied to satisfy the judgment. ACS does not even attempt to argue that the assets in the account are somehow exempt. Nor could it competently do so, since, as already noted above, the BCA explicitly provides that corporate dissolution does not transfer title of the corporate assets. See 805 ILCS 5/12.30(c)(1) (West 2014) ("Dissolution of a corporation does not *** transfer title to the corporation's assets"); see also *In re Segno Communications, Inc.*, 264 B. R. 501 (2001) ("During the wind-up period, the corporation continues to have title to its assets [citation], has the power to give title to its assets

[citation], and *the ability to sue or be sued*." (Emphasis added.)). Where, as here, ACS concedes that it held an operating account at the bank, it cannot be heard to argue that the assets in that account are not corporate assets.

¶ 22 Instead, in order to avoid the BCA's provisions, ACS argues that upon the voluntary dissolution, an equitable trust was created over the assets in its operating account, barring any judgment creditor, including MJH, from obtaining a turnover of those assets by way of a section 2-1402 citation. In support of this position, ACS cites to *Mid-American Elevator v. Norcon, Inc.*, 287 Ill. App. 3d 582, 590 (1996). We, however, find that case inapposite.

¶ 23 In *Mid-American Elevator*, the court held that a majority stockholder of a corporation, who, after dissolution, converted property and assets to his own use, became an equitable trustee of that property for the benefit of the corporate creditors. *Mid-American Elevator*, 287 Ill. App. 3d at 589-90. The court held that the corporate assets should have been set aside and held for the benefit of the corporation's creditors, and that the shareholder could not treat the corporate assets as his own, prior to completion of the winding up process. *Mid-American Elevator*, 287 Ill. App. 3d at 589-90. Contrary to ACS's position, however, *Mid-American Elevator* nowhere held that the assets of the corporation ceased to be assets upon dissolution or that a voluntarily dissolved corporation's assets were somehow exempt from a section 2-1402 citation to discover assets. Nor did the case establish that an equitable trust is formed upon the voluntary dissolution of a corporation so as to ensure that all creditors receive a *pro rata* share of the remaining corporate assets. By holding that the majority shareholder becomes an equitable trustee, *Mid-American Elevator* merely reinforced the principle that a corporation's shareholders owe a duty to creditors upon dissolution and may not manipulate corporate assets to the detriment of the corporation's creditors. *Mid-American Elevator*, 287 Ill. App. 3d at 589. Nothing in *Mid-American Elevator*

remotely suggests that such an equitable trust extinguishes the legal remedies available to a judgment creditor. In fact, the court in *Mid-American Elevator* explicitly held that during the winding up process corporate creditors and legal claims by third persons are entitled to corporate funds, prior to any distribution to the shareholders. See *Mid-American Elevator*, 287 Ill. App. 3d at 589 ("Dissolution effects neither a transfer of title to corporate assets [citations] nor an abetment of pending civil claims against the corporation [citations.] A corporation must adhere to all corporate formalities during the winding up process; shareholders are entitled to the residue of corporate funds only after providing for the rights of corporate creditors and the legal claims of third persons. [Citations.]").

¶ 24 In the present case, MJH placed a lien on a third party bank (which held the corporation's assets), thereby forcing the bank to place a third party legal claim on ACS. As such, the claim must be recognized.

¶ 25 We similarly reject ACS's attempt to support its "equitable trust" argument by analogizing the present case to an assignment for the benefit of creditors. Contrary to what ACS would have us believe, an assignment for the benefit of creditors is a voluntary transfer by a debtor of his property to an assignee in trust for the purpose of applying the property or proceeds thereof to the payment of his debts. *Illinois Bell Tel. Co. v. Wolf Furniture House, Inc.*, 157 Ill. App. 3d 190, 194 (1987). This type of assignment "passes [both] the legal and equitable titles to the property absolutely, beyond the control of the assignor." *Illinois Bell Tel.*, 157 Ill. App. 3d at 195. As already articulate above, unlike an assignment for the benefit of creditors, under the BCA when a corporation voluntarily dissolves, title to the corporate assets does not change. See 805 ILCS 5/12.30(c)(1) (West 2014) ("Dissolution of a corporation does not *** transfer title to the corporation's assets"); see also *In re Segno Communications, Inc.*, 264 B. R. 501 (2001)

("During the wind-up period, the corporation continues to have title to its assets [citation], has the power to give title to its assets [citation].") The assets remain property of the dissolved corporation and in control of the corporate officers. As such, nothing bars a judgment creditor from obtaining corporate assets by way of a section 2-1402 citation proceeding (735 ILCS 5/2-1402 (West 2014)).

¶ 26 III. CONCLUSION

¶ 27 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 28 Affirmed.