2018 IL App (1st) 170609-U
Nos. 1-17-0609 & 1-17-1855 (Cons.)
October 29, 2018

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RENAISSANCE ELECTRIC & TECHNOLOGIES, INC. Plaintiff-Counter-Defendant-Appellee, v. CCS CONTRACTOR EQUIPMENT & SUPPLY, INC., d/b/a SUREBUILT MANUFACTURING COMPANY, Defendant-Counter-Plaintiff-Appellant.	)	Appeal from the Circuit Court Of Cook County. No. 16 M3 005194 The Honorable Alexander White, Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: A contract signed by corporations using their assumed names, registered with the Illinois Secretary of State, binds the corporations.

¶ 2 CCS Contractor Equipment & Supply, Inc. (CCS), argues that a document that looks like a contract has no legal effect because the corporate parties used assumed business names, not their formal corporate names, on the document. We hold that when corporations sign a

contract using registered assumed names, the corporations bind themselves to the terms of the contract.

¶ 3 BACKGROUND

¶ 4 CCS contends on appeal that the assumed names used on the document at issue fail to refer to any legal entities. We present the background facts to include indications of every use of an assumed name, acknowledging CCS claims that each such use failed to refer to any legal entity.

¶ 5 On December 16, 2014, Mike Shares (Shares) sent to Dick Schiewe (Schiewe) a proposal for a lighting upgrade at a facility operated under the name "SureBuilt Manufacturing." The proposal provides, "Disputes, if any, regarding the interpretation or performance of this agreement shall be resolved by binding arbitration." Shares sent the proposal on the letterhead of "Renaissance Electric and Technologies, Inc." Michael Smith (Smith) signed the proposal to indicate acceptance of its terms. Under his signature, he wrote "SUREBUILT, MFG." Renaissance Communication Systems, Inc., registered with the Illinois Secretary of State the assumed name "Renaissance Electric and Technologies, Inc." for use in its business; CCS similarly registered "SureBuilt Manufacturing Co." as an assumed name for use in its business.

¶ 6 On March 6, 2015, Shares, again purporting to act as an agent of "Renaissance Electric and Technologies," sent Smith a proposed amendment to the contract. Smith signed the amendment, again purporting to act as an agent for "SureBuilt Manufacturing."

¶ 7 A dispute arose. "Renaissance Electric and Technologies" filed an arbitration claim, naming as respondent "CCS Contractor Equipment & Supply, Inc. d/b/a SureBuilt

Manufacturing." The arbitrator considered the parties' exhibits and the testimony of Shares and Smith. On June 30, 2016, the arbitrator entered an award against CCS for $59,644.04.

¶ 8 CCS refused to pay the award. On August 25, 2016, "Renaissance Electric and Technologies" filed a petition to confirm the arbitration award. "Renaissance Electric and Technologies" appended a copy of the arbitrator's award to the petition. The matter was assigned to Judge Thomas Allen (Judge Allen) in the Chancery Division. CCS filed an answer and counterclaim. "Renaissance Electric and Technologies" filed a motion for summary judgment on October 31, 2016. It attached, as exhibits, the arbitration claim, the contract and amendment, CCS's answer to the arbitration claim, and "Renaissance Electric and Technologies's" arbitration brief and its affidavit for attorney fees.

¶ 9 CCS filed a motion to dismiss the petition to confirm the arbitration award. CCS argued the contract and amendment did not bind CCS because neither the contract nor the amendment named CCS as a party. CCS also filed a motion to strike "Renaissance Electric and Technologies's" motion for summary judgment, arguing that the motion violated court rules because it did not include, as attachments, all of the pleadings in the case, and because it included factual assertions supported only by an exhibit, not an affidavit. The summary judgment motion relied on the arbitrator's award, and not any affidavit, for its factual assertions that the arbitrator conducted an evidentiary hearing on the merits of the dispute, and that CCS was a party to the contract and amendment.

¶ 10 By order dated January 5, 2017, Judge Allen granted "Renaissance Electric and Technologies's" motion for summary judgment and denied CCS's counterclaim. The court added costs and interest to the arbitration award.

¶ 11 "Renaissance Electric and Technologies" filed a citation to discover assets, addressed to CCS's registered agent. Judge Moshe Jacobius (Judge Jacobius), the Presiding Judge of the Chancery Division, transferred the case to the Law Division for enforcement of the judgment, but ordered that Judge Allen would retain jurisdiction "for purposes of any further motions to vacate or reconsider the judgment of Jan. 5, 2017."

¶ 12 On January 30, 2017, CCS filed a motion to vacate the judgment entered on January 5. CCS relied again on its argument that it never signed the contract and amendment, its assertion that "Plaintiffs legal burden was to submit to the Court full copies of the Defendant's pleadings," and its claim that the motion for summary judgment needed affidavits in support of its factual assertions.

¶ 13 A few days later, CCS filed in the Law Division, an emergency motion to quash the citations to discover assets. The judge in the Law Division, Judge Alexander White (Judge White), entered and continued the motion to February 8, 2017, effectively staying proceedings on the citations.

¶ 14 Judge Allen denied the motion to vacate the judgment on February 7, 2017. That same day, "Renaissance Electric and Technologies" filed a motion to lift the stay and permit further proceedings on the citation to discover assets. Despite Judge Allen’s denial of the motion to vacate the judgment, Judge White set a briefing schedule for the motion to quash the citations to discover assets, and continued the stay of enforcement pending the court’s ruling on the motion to quash.

¶ 15 On February 15, 2017, "Renaissance Electric and Technologies" filed a motion to clarify the ruling Judge Allen entered on February 7, 2017. Counsel for "Renaissance Electric and

Technologies" asserted that CCS persuaded Judge White to set the briefing schedule by falsely representing to Judge White that Judge Allen had not ruled on the merits of the arguments CCS raised in its motion to vacate the judgment of January 5, 2017.

¶ 16 On March 2, 2017, CCS filed a notice of appeal, listing Judge Allen's orders of January 5 and February 7 as the orders appealed. Judge Allen entered an order dated March 8, 2017, clarifying that in the court's order dated February 7, it denied CCS's motion to vacate after full consideration of all the arguments raised in the motion to vacate. The court specified that it considered and rejected the argument that CCS had no liability for the acts of Smith and "SureBuilt Manufacturing." Judge Allen also specifically held that the arbitrator had jurisdiction over CCS. The order of March 8 did not establish any date other than March 8 as its effective date. CCS filed a second notice of appeal, naming the March 8 order as the order appealed.

¶ 17 "Renaissance Electric and Technologies" filed a motion to have Judge James P. Flannery (Judge Flannery), Presiding Judge of the Law Division, transfer the case back to Judge Allen "for purposes of efficiency and ruling on all remaining issues." Also on May 16, CCS filed another motion to vacate the judgment entered on January 5, 2017. CCS attached to its motion a page from the Illinois Secretary of State's website showing that Renaissance Communications Systems had registered "Renaissance Electric and Technologies" as an assumed name for use in its business. CCS asserted that because "Renaissance Electric and Technologies" is an assumed name, it did not name any legal entity, and the arbitration award and all subsequent proceedings that referred to "Renaissance Electric and Technologies" had no legal validity. Judge Allen again denied the motion to vacate and entered an order

directing a bank where CCS had an account to turn over to "Renaissance Electric and Technologies" sufficient funds to pay the judgment.

¶ 18 By order dated May 31, 2017 and entered on June 1, 2017, Judge White, who set the briefing schedule on the motion to quash the citations to discover assets, found the May 16, 2017 transfer order left him without jurisdiction to hear the motion to quash. CCS filed in the Law Division a motion to reconsider the order entered on June 1, asserting that Judge Flannery "was without any legal authority to transfer the case from" the Law Division to the Chancery Division. Judge White denied the motion to reconsider. CCS filed a third notice of appeal, identifying the orders of June 1 and "all *** rulings related thereto" as the orders appealed. This court consolidated the appeals.

¶ 19 ANALYSIS

¶ 20 CCS argues the assumed names "Renaissance Electric and Technologies" and "SureBuilt Manufacturing" do not name any legal entities. Because Shares signed the contract and amendment as an agent of "Renaissance Electric and Technologies," and Smith signed as an agent of "SureBuilt Manufacturing," CCS contends that neither the contract nor the amendment ever took effect. CCS argues no arbitration clause took effect, the arbitrator had no jurisdiction over CCS, and the circuit court had no jurisdiction to hear the petition to confirm the award. CCS also argues that "Renaissance Electric and Technologies" did not comply with the requirements for a summary judgment motion, the circuit court improperly entered an order *nunc pro tunc*, and the circuit court lacked authority to transfer the case from the Law Division to the Chancery Division for hearing on CCS's motion to quash the citations to discover assets.

¶ 21 Assumed Names

¶ 22 The Business Corporations Act provides:

> "(a) A domestic corporation *** admitted to transact business *** may elect to adopt an assumed corporate name ***.
>
> ***
>
> (c) Before transacting any business in this State under an assumed corporate name or names, the corporation shall *** file *** an application [stating]
>
> (3) That it intends to transact business under an assumed corporate name [and]
>
> (4) The assumed corporate name which it proposes to use.
>
> (d) The right to use an assumed corporate name shall be effective from the date of filing by the Secretary of State." 805 ILCS 5/4.15 (West 2014).

¶ 23 Courts have long since established the relevant principles concerning use of assumed names for business transactions and court pleadings. "It is well settled that a person or corporation may assume or be known by different names, and contract accordingly, and that contracts so entered into will be valid and binding if unaffected by fraud." *General Motors Acceptance Corp. v. Haley*, 109 N.E.2d 143, 147 (Mass. 1952). "[A] corporation [is] permitted to enter into a contract using its assumed name without affecting the validity of the contract." *Bill Walker & Associates, Inc. v. Parrish*, 770 S.W.2d 764, 769 (Tenn. App. 1989). "A corporation conducting business in a trade name may sue or be sued in the trade name." *John L. Hutcheson Memorial Tri-County Hospital v. Oliver*, 171 S.E.2d 649, 650 (Ga. App. 1969). "Any *** private corporation[] or individual doing business under an assumed name

may sue or be sued in its *** assumed *** name for the purpose of enforcing for or against it a substantive right." *Sixth RMA Partners, L.P. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003). "[A] person may sue or be sued under a trade name. *** [T]he court was warranted in drawing the inference that [the plaintiff] was simply doing business under [an assumed] name ***, and that the one was identical with the other." *Thune v. Hokah Cheese Co.*, 149 N.W.2d 176, 178 (Iowa 1967).

¶ 24 Illinois courts have gone one step further. In *Grody v. Scalone*, 408 Ill. 61 (1950), our supreme court held that even a legal entity that has not registered its assumed name may sue or be sued in pleadings that use only the unregistered assumed name. "A party operating under an assumed name without registering the name under the Assumed Name Act may sue and be sued." *Thompson v. Cadillac*, 187 Ill. App. 3d 104, 108 (1989).

¶ 25 CCS registered "SureBuilt Manufacturing" as its assumed name, and therefore it has authority to use that name in its business dealings. Contracts and court pleadings in the name "SureBuilt Manufacturing" bind CCS. See *Precision Components, Inc. v. Kapco Communications*, 131 Ill. App. 3d 555, 560 (1985). Renaissance Communication Systems has authority to use the name "Renaissance Electric and Technologies" in its business dealings, and contracts and court pleadings in the name "Renaissance Electric and Technologies" bind Renaissance Communication Systems. Thus, CCS and Renaissance Communication Systems entered into a valid, binding contract with an arbitration clause, and they later validly amended the contract. See *Haley*, 109 N.E.2d at 147; *Grody*, 408 Ill. at 63-67. The arbitration clause in the valid contract and the arbitration demand gave the arbitrator jurisdiction to consider the claims of CCS and Renaissance Communication Systems. See

Board of Managers of Courtyards at Woodlands Condominium Ass'n v. IKO Chicago, Inc., 183 Ill. 2d 66, 73–74 (1998). The arbitrator issued a valid award against CCS, and the circuit court had jurisdiction over CCS and Renaissance Communication Systems for hearing the petition to confirm the arbitrator's award. 710 ILCS 5/11 (West 2016).

¶ 26 Motion for Summary Judgment

¶ 27 Next, CCS argues "Renaissance Electric and Technologies" presented an improper motion for summary judgment. "Renaissance Electric and Technologies" did not attach to its motion all of the pleadings in the case, and it did not attach an affidavit. "Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Travelers Personal Insurance Co. v. Edwards*, 2016 IL App (1st) 141595, ¶ 20. Thus, the judge should consider all the pleadings on file, but the judge may look to the court file to find the pleadings. The moving party need not attach all pleadings to the motion. The judge also should consider the affidavits, if the parties present any. See *Mt. Hawley Insurance Co. v. Certain Underwriters at Lloyd's, London*, 2014 IL App (1st) 133931, ¶ 28. No rule requires the use of affidavits. The exhibits incorporated into the pleadings, including the arbitration award, adequately support the factual assertions in the motion for summary judgment.

¶ 28 Clarifying Order

¶ 29 CCS contends the order dated March 8, 2017, by which the court clarified its order dated February 7, 2017, did not meet the standards for a *nunc pro tunc* order. See *In re Marriage*

of Breslow, 306 Ill. App. 3d 41, 50 (1999). Judge Allen did not purport to enter the clarifying order *nunc pro tunc*, and nothing in the order indicates that the court intended to make the order of March 8 effective as of February 7. Instead, the order of March 8 clarified the prior order. See *Breslow*, 306 Ill. App. 3d at 54-55 (explaining the difference between orders *nunc pro tunc* and orders clarifying prior orders). Circuit court judges have "the inherent power *** to review, modify, or vacate interlocutory orders while the court retains jurisdiction over the entire controversy." *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 28. Thus, Judge Allen had authority to enter the order of March 8 clarifying the February 7 order. See *People ex rel. Hughes v. Walker*, 278 Ill. App. 3d 116, 118 (1996).

¶ 30 Transfer

¶ 31 Finally, CCS asserts that Presiding Judge Flannery committed reversible error when he transferred the case back to the Chancery Division for a decision on CCS's motion to quash the citations to discover assets and all remaining issues. "The transfer of cases to specialized divisions within a judicial circuit is a matter committed to the administrative authority of the chief judge of the circuit." *Fulton–Carroll Center, Inc. v. Industrial Council of Northwest Chicago, Inc.*, 256 Ill. App. 3d 821, 823 (1993). The assignment of a case to a division within the circuit court is "merely an administrative matter committed to the circuit court itself." *Fulton–Carroll*, 256 Ill. App. 3d at 824. When the circuit court determines that a case belongs in a different division of the court, the court should transfer the case to the appropriate division. *In re Estate of Olsen*, 120 Ill. App. 3d 744, 747 (1983).

¶ 32 Here, the Chancery Division transferred this case to the Law Division for collection proceedings, and in the transfer order specified that Judge Allen should hear any challenges

to the final judgment. In accord with that order, when CCS challenged the final judgment in the Law Division, effectively asking Judge White to reconsider the final judgment, Presiding Judge Flannery returned the case to the Chancery Division for reassignment to Judge Allen for a decision on CCS's motion. We find that the Presiding Judges appropriately exercised inherent authority to control the docket and prevent undue delays in the disposition of the case. See *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007).

¶ 33 CONCLUSION

¶ 34 CCS, using its registered assumed name of "SunBuilt Manufacturing," signed a binding contract with Renaissance Communication Systems, who used its registered assumed name of "Renaissance Electric and Technologies." The arbitrator had jurisdiction over the parties and entered a valid award in favor of "Renaissance Electric and Technologies." "Renaissance Electric and Technologies's" motion for summary judgment complied with all statutory requirements. Judge Allen correctly entered summary judgment in favor of "Renaissance Electric and Technologies" on its petition to confirm the arbitration award. Judge Allen entered a proper order dated March 8, 2017, clarifying the order dated February 7, 2017. When CCS filed a motion to quash the citations to discover assets on grounds that challenged the final judgment that Judge Allen entered, Presiding Judge Flannery properly transferred the case back to Presiding Judge Jacobius for reassignment to Judge Allen for further proceedings. Accordingly, we affirm the circuit court's judgment.

¶ 35 Affirmed.