NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5427-10T2

WARSHAUER ELECTRIC
SUPPLY COMPANY,

Plaintiff-Appellant,

v.

MUNROE ELECTRIC; CHESTER DINKEL
T/A MUNROE ELECTRIC; and JA DIN CORP.,

Defendants-Respondents.

Submitted March 20, 2012 - Decided January 10, 2013

Before Judges Baxter and Nugent.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-204-10.

Nord & DeMaio, attorneys for appellant (Michael Nord, of counsel; Michael J. Stafford, on the brief).

Cosner Youngelson, attorneys for respondent Chester Dinkel (Marc D. Youngelson, on the brief).

PER CURIAM

Plaintiff Warshauer Electric Supply Company appeals from a Law Division order that entered judgment for plaintiff against defendant Ja Din Corp., an electrical contractor, on a book account, but also entered judgment against plaintiff in favor of

defendant Chester Dinkel ("Dinkel"). Plaintiff contends that because Ja Din Corp. transacted business under a trade name registered to Dinkel, and because Ja Din Corp. did not include "Corp." in its name on its business documents, Ja Din Corp.'s principal shareholder, Dinkel, is personally liable for the balance due on the book account, and the trial court erred by finding to the contrary. After considering plaintiff's arguments in light of the record, we affirm.

I.

Plaintiff and Dinkel each produced one witness at the non-jury trial: James Warshauer, plaintiff's president and owner since 1982; and Dinkel's wife of fifty-two years, Irene. Dinkel had been disabled by a stroke in 1984. The parties also introduced documentary evidence. The proofs established the following background facts about Dinkel and Ja Din Corp.

In 1962, Dinkel, an electrician, started an electrical contracting business as a sole proprietor. Because he was "in Monroe Township," Dinkel and a man named Dawson registered the trade name "Monroe Electric Co." in 1966 and Dinkel traded under that name. In June 1971, Dinkel incorporated his business as Ja Din Corp.[1] He changed the name on his trucks from "Monroe

[1] The testimonial and documentary evidence about the number of shares issued to Dinkel, and subsequently issued to two others, (continued)

Electric" to "Munroe Electric." Dinkel also registered the corporation with the State Board of Examiners of Electrical Contractors as Ja Din Corporation t/a Munroe Electric.

According to a corporate resolution dated July 26, 1971, Ja Din Corp. "erroneously opened" a checking account in the name of Munroe Electric. The resolution authorized the bank to change the name on the checking account to "Ja Din Corp., trading as Munroe Electric[.]" On January 26, 1972, Dinkel registered the trade name "Munroe Electric."

According to Mrs. Dinkel, everyone knew Munroe Electric was a trade name for Ja Din Corp. She told customers herself when asked about the name change from M-O-N to M-U-N. She acknowledged that neither she nor her husband knew James Warshauer or, to her knowledge, personally ever did any business with him.

Mrs. Dinkel was questioned about why the documentary evidence did not identify Ja Din as "Ja Din Corp. t/a Munroe Electric." She explained that the company's supervisors prepared purchase orders. As an example, Tim Divins made his own business card which identified the company as Munroe

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(continued)
are inconsistent. It appears that Ja Din Corp. had one shareholder in addition to Dinkel when it incurred the debt Warshauer attempted to recover in the lawsuit.

Electric, Inc. Mrs. Dinkel acknowledged certifying interrogatory answers on behalf of Ja Din that stated "Munroe Electric has always been a corporation and never operated in any other form."

James Warshauer testified plaintiff had sold electrical materials since at least 1982 when he became its president and owner. He confirmed the parties' stipulation that the amount due plaintiff was $94,834.16. According to Warshauer, he never knew that Munroe Electric was actually a corporation named Ja Din Corp. trading as Munroe Electric. Although Warshauer "believe[d]" that his invoices "said Munroe Electrical Contractors," he produced no invoices to corroborate his belief. He testified that he had received various documents over the years from Munroe Electric, including stationery, letterhead, and business cards, but none led him to believe that Munroe Electric was a corporation. No one told him that the corporate name was Ja Din Corp trading as Munroe Electric. In short, he did not know with whom he was dealing.

During cross-examination, Warshauer was shown numerous purchase orders and checks identifying the purchasing and paying entity as "Ja-Din TA Munroe Electric." The exception was one purchase order dated November 30, 2009, which bore only the name of "Munroe Electric Inc[.]" He was also confronted with a check

drawn on the account of Ja Din Corp t/a Munroe Electric, Inc., dated October 29, 2009, which plaintiff cashed as payment for materials purchased by Ja Din Corp. in May and June 2009. Warshauer eventually conceded that purchase orders submitted to plaintiff between 2003 and 2009 were submitted by "Ja Din" trading as either Munroe Electric or Munroe Electric, Inc. Warshauer acknowledged that he knew there was a "Ja Din" in the picture as early as 2003 or 2004, but "didn't know what it represented." He also acknowledged that "Mr. Div[i]ns was the guy who was running the business." Finally, he acknowledged that "t/a" or "TA" meant "trading as."

Warshauer never asked Divins for a personal guarantee. When plaintiff started doing business with Ja Din Corp. trading as Munroe Electric, it was not "commonplace" to ask for personal guarantees from customers. Divins eventually left Ja Din Corp. and started his own company, taking with him some of Ja Din Corp.'s work. When Divins formed his own company and filled out a credit application with plaintiff, plaintiff required a personal guarantee.

Warshauer never spoke to Dinkel, nor knew of him until after plaintiff commenced the lawsuit. He admitted that no one "tricked" him or deceived him in the transactions with Ja Din trading as Munroe Electric. When asked who decided to sue

Dinkel, Warshauer responded, "I guess my attorneys and I said it sounds like a plan."

After considering the evidence, the trial court entered judgment in favor of plaintiff against Ja Din Corp., and also entered judgment in favor of Dinkel. The court determined that there was "nothing in the record to suggest that Mr. Dinkel was carrying on a business independent of Ja Din." The court noted that although plaintiff dealt for the most part with Divins, plaintiff had not asserted that Divins was personally responsible for the open account. As to Divins' relationship with Dinkel, the court found "nothing in the record to support, or even suggest, that Mr. Divins is the agent of Mr. Dinkel personally."

Rejecting plaintiff's argument that Dinkel was personally liable because Ja Din Corp. had not complied with the statute pertaining to corporate alternate names, the court found "nothing deceptive about [Ja Din Corp.'s] use of the name Ja Din t/a Munroe Electric without the 'Corp.' attached." The court explained, at worst, the corporation's use of that title did not identify the corporate structure of Ja Din Corp. The court also found that plaintiff "was given all the information it needed to know that Munroe Electric was a trade name of Ja Din, and where Ja Din was located[.]"

The court concluded, implicitly, that Ja Din Corp. had not violated the statute, but the court also concluded that even if Ja Din Corp. had violated the statute, the violation would not "be an independent basis to impose liability on Dinkel." Citing African Bio-Botanica Inc. v. Leiner, 264 N.J. Super. 359 (App. Div.), certif. denied, 134 N.J. 480 (1993), the court declined to impose personal liability on Dinkel solely due to Ja Din Corp.'s violation of the statute concerning a corporation's use of alternate names. The court noted than in African Bio-Botanica Inc., liability was imposed based upon an agency theory. The court distinguished the facts in African Bio-Botanica Inc. from those involving Dinkel, explaining that "Dinkel is neither the agent in these transactions, nor a principal." The court determined that despite Dinkel's ownership in 1972 of the Munroe Electric trade name, "there is nothing in the record to suggest that he ever operated separately and apart from Ja Din Corp., which clearly held itself out as itself t/a Munroe Electric, or used the trade name outside the corporate structure that was created in 1971."

II.

Plaintiff advances the following points for our consideration in this appeal:

I. DINKEL IS LIABLE FOR THE DEBT TO WARSHAUER INCURRED USING HIS TRADE NAME, "MUNROE ELECTRIC."

A. DINKEL'S STATE REGISTRATION OF THE TRADE NAME, "MUNROE ELECTRIC" TO HIMSELF ALONE AS "OWNER" IS LEGALLY CONTROLLING IN THIS CASE.

B. JA DIN CORP.'S FAILURE TO COMPLY WITH N.J.S.A. 14A:2-2.1(1) CONCEALED ITS CORPORATE IDENTITY FROM WARSHAUER.

C. DINKEL'S REGISTERED OWNERSHIP OF "MUNROE ELECTRIC," COMBINED WITH JA DIN CORP.'S STATUTORY NON-COMPLIANCE, RENDERS DINKEL PERSONALLY LIABLE FOR THE DEBT.

Our scope of appellate review of a judgment entered in a non-jury case is limited. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). The findings of fact on which the judgment is based "should not be disturbed unless [] they are so wholly [u]nsupportable as to result in a denial of justice[.]" Id. at 483-84 (internal quotation marks omitted). "Thus, '[w]e do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (alteration in original) (quoting State v. Barone, 147 N.J. 599, 615 (1997)). "Because a trial court hears the case, sees and observes the witnesses, [and] hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses."

Pascale v. Pascale, 113 N.J. 20, 33 (1988) (alteration in original) (internal quotation marks omitted).

"While we will defer to the trial court's factual findings . . ., our review of the trial court's legal conclusions is de novo." 30 River Court E. Urban Renewal Co. v. Capograsso, 383 N.J. Super. 470, 476 (App. Div. 2006) (citing Rova Farms, supra, 65 N.J. at 483-84; Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Plaintiff first argues the trial court erred by failing to recognize the "legal significance of Dinkel's registration of 'Munroe Electric' with the State as a trade name business to himself alone, individually." Plaintiff contends that Dinkel began his electrical contracting business in the 1960's as a sole proprietorship trading as "Monroe Electric," and the trial court "failed to . . . recognize that that company's name was later changed to "Munroe Electric."

Plaintiff's argument is factually flawed. Dinkel did not change the trade name of his sole proprietorship from Monroe Electric to Munroe Electric. Instead, after incorporating Ja Din Corp., Dinkel registered a new trade name, Munroe Electric. There is no evidence in the record that Dinkel continued to operate an electrical business as a sole proprietorship after Ja Din Corp. was incorporated.

Plaintiff asserts that Dinkel's wife, Irene, "acknowledged that Dinkel's 'Monroe Electric' sole proprietorship was later changed to 'Munroe Electric.'" That is simply not so. She testified explicitly that when Dinkel started his electrical contracting business in 1962, it was not a corporation and he subsequently registered the trade name "Monroe Electric." She further testified that in 1971, Dinkel decided to "create a corporation for the business" and went to see an attorney who incorporated the company, came up with the name Ja Din Corp., and told the Dinkels they would also have to change "Monroe Electric" to "Munroe Electric."

Plaintiff also argues that because Dinkel was the owner of the trade name that Ja Din Corp. used, Dinkel is personally liable for Ja Din Corp.'s debt. Trade names are assignable. N.J.S.A. 56:3-13.6(a). However, assignments must be by "instruments in writing duly executed and shall be recorded with the Secretary of State[.]" Ibid. Indisputably, neither Dinkel nor Ja Din Corp. complied with the statutory requirements when Ja Din Corp. began to use the trade name, Munroe Electric. However, plaintiff presented no evidence that it relied in any way upon Ja Din Corp.'s use of a trade name when it sold goods to Ja Din Corp. To the contrary, Warshauer testified that he knew that "t/a" or "TA" meant "trading as." He also testified,

explicitly and repeatedly, that he had not been tricked or misled by Ja Din Corp.'s use of the trade name.

Plaintiff has cited no authority for the proposition that a corporate shareholder, who permits a corporation to use the trade name owned by the shareholder, without complying with statutory registration requirements, is strictly liable for corporate debt. We decline to so hold under the facts of this case, where the plaintiff creditor did not rely upon, and was not deceived or tricked by, the debtor corporation's use of a trade name that had not been properly assigned to the corporation.

Plaintiff next contends that Ja Din Corp.'s failure to comply with N.J.S.A. 14A:2-2.1(1) concealed its corporate identity from Warshauer, and therefore Ja Din Corp.'s principal, Dinkel, is liable for its debt. The statute provides in pertinent part:

> 14A:2-2.1. Corporate alternate names
>
> (1) No domestic corporation, or foreign corporation which transacts business in this State within the meaning of section 14A:13-3, shall transact any business in this State using a name other than its actual name unless
>
> (a) It also uses its actual name in the transaction of any such business in such a manner as not to be deceptive as to its actual identity; or

> (b) It has been authorized to transact business in this State, using an assumed name as provided in subsection 14A:2-2(3); or
>
> (c) It has first registered the alternate name as provided in this section.

Plaintiff argues that Ja Din Corp. did not comply with subsections (b) and (c) of the statute; and did not comply with subsection (a), because when it used "Ja Din" on its invoices, it did not include "Corp." Because Ja Din Corp. did not use "Corp." on its purchase orders, plaintiff argues the trial court erred when it determined that Ja Din Corp. complied with subsection (a) of the statute.

Ja Din Corp. violated the statute. It did not use its actual and complete name, "Ja Din Corp.," on its purchase orders; and, did not comply with either subsection (b) or subsection (c). Nevertheless, a corporation's failure to comply with the statute "does not itself permit the draconian remedy of subjecting the corporation's stockholder and president to personal liability." African-Bio Botanica, supra, 264 N.J. Super. at 363.

Lastly, plaintiff argues that Dinkel's registration of "Munroe Electric" to himself, combined with Ja Din Corp.'s failure to disclose its corporate status, renders Dinkel personally liable for the debt. We are unpersuaded by

plaintiff's argument, when, as we have explained, the violation of either statute, in and of itself, does not subject a shareholder to personal liability for corporate debt. That is not to say that Dinkel was necessarily immune from liability. "Unless the parties agree otherwise, an agent who enters into a contract for an undisclosed or for a partially disclosed principal is personally liable on the contract; an agent who contracts on behalf of a fully disclosed principal is not personally liable on the contract." Id. at 363-64. If the creditor "has notice that the agent is or may be acting for a principal but has no notice of the principal's identity, the principal for whom the agent is acting is a partially disclosed principal." Id. at 364 (quoting Restatement (Second) of Agency, § 4 (1958)). The creditor has "notice" if the creditor "knows the fact, has reason to know it, should know it, or has been given notification of it." Ibid.

Here, plaintiff never developed any proofs to support a claim against Dinkel based on an undisclosed or partially disclosed agency theory. As we explained in African Bio-Botanica:

> If an agent conducts business candidly as an agent for a disclosed principal, he should be readily able to prove that he disclosed his agency. The allocation of the burdens of proof between the purported agent

and the third party with whom he deals reflects this reality:

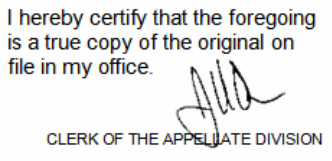
> One bringing an action upon a contract has the burden of showing that the other is a party to it. This initial burden is satisfied if the plaintiff proves that the defendant has made a promise, the form of which does not indicate that it was given as an agent. The defendant then has the burden of going forward if he wishes to show that his promise was made only as an agent and that this should have been so understood. Restatement (Second) of Agency, supra, § 320 Comment b (emphasis added).

[African Bio-Botanica, supra, 264 N.J. Super. at 365.]

Plaintiff never established that Dinkel made a promise. In fact, the evidence suggested that Dinkel was incapacitated when plaintiff began transacting business with Ja Din Corp. Warshauer never knew Dinkel. All of his dealings were with Divins.

Plaintiff offered no proofs as to who ordered the materials that constituted the book account, or when they were ordered, particularly in relation to the check plaintiff received bearing the full name of Ja Din Corp. Because plaintiff developed no proofs to support a liability claim against Dinkel based upon undisclosed or partially disclosed agency, the trial court did not err when it dismissed the claim against Dinkel.

Affirmed.


I hereby certify that the foregoing
is a true copy of the original on
file in my office.
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