

Civil Conspiracy-Institutional and Intracorporate Liability

Burton v. Hardwood Pallets, Inc.

The case at bar, involves a dispute between the sellers of a business and the bank that financed a portion of the purchase price. The plaintiffs entered into an agreement with the defendants to sell the plaintiff's pallet manufacturing business. Additional consideration for the sale included, Hardwood Pallets pledging its assets as collateral. As a condition to the making of the loan, the bank required the plaintiffs to execute a subordination agreement. When Hardwood Pallets defaulted on the bank loan, the bank sold the collateral at a private sale.

The plaintiff's allege breach of contract and civil conspiracy. In order to be liable under a claim for civil conspiracy, each conspirator must have the intent to accomplish this common purpose, and each must know of the other's intent. The court held that the stated facts do not establish, directly or inferentially, that the bank had intent to defraud the Burtons or that it knew of any fraudulent intent on the part of the other defendants.

Nelson v. Metric Realty

In the case at bar, Samuel H. Hardige hired Kenneth E. Nelson to oversee one of his businesses. Nelson was fired a short time later. After much convoluted litigation, the parties find themselves here. The case at bar presents an

interesting question of “intracorporate” civil conspiracy. Courts in other jurisdictions - - both federal and state - - that have addressed issues involving civil intracorporate conspiracy allegations have adopted the ‘intracorporate conspiracy immunity doctrine’ to hold that wholly intracorporate conduct does not satisfy the plurality requirement necessary to establish an actionable conspiracy claim. This single entity view of intracorporate conduct derives from traditional principles of agency law. A basic principle of agency is that a corporation can act only through the authorized acts of its corporate directors, officers, and other employees and agents. Thus, the acts of the corporation's agents are attributed to the corporation itself. ‘The two are not one and another. So merged are their identities, when the agent is acting for the corporation (the only way it can act at all), that the one may not be an accessory of the other. Because the law requires two or more persons or entities to have a conspiracy, a civil conspiracy is not legally possible where a corporation and its alleged co- conspirators are not separate entities, but instead stand in a principal-agent relationship.

Monastra v. Konica Business Machines

Plaintiff appeals from a summary judgment entered against him and in favor of the eight named defendants in his action to set aside fraudulent transfers and establish a constructive trust, and for damages for fraud and conspiracy. One issue that the court examines in this case is whether or not the California Bulk Sales Act insulates a bulk sale from attack under the Fraudulent Transfer Act,

even if the transfer is one of those fraudulent or constructively fraudulent transfers proscribed in Civil Code section 3440.

The court lists the elements of a conspiracy, as being the formation and operation of the conspiracy and damage resulting to the plaintiff. However, the court notes that "standing alone, a conspiracy does no harm and engenders no liability; it must be activated by the commission of an actual civil wrong."

Korea Data Systems, Inc. v. Cheng

Monastra was the owner and operator of City Copier Services, Inc., and Gorden was the president and major shareholder of Master Technology. Both companies were in the business of selling, renting and servicing copying machines, and both were authorized dealers of Konica products. In 1985, Monastra's company merged with Master Technology. However, within a year of the merger, Monastra was forced out of the new company. Monastra subsequently sued for breach of contract and was awarded over \$600,000 in damages.

Prior to the commencement of Monastra's lawsuit, Gorden and Master Technology entered into an agreement with Konica to transfer all of the assets of Master Technology, including its trade name, "Copymasters," and its good will, to Digitec, which was to be a new corporation formed as a wholly owned subsidiary of Konica. As statutorily prescribed, a notice of transfer was published in a newspaper of general circulation. By all accounts, the operation of Digitec didn't

vary much from the operations before the transfer. The change was so unnoticeable that Digitec's own employees were generally unaware that any change had occurred at all.

In September of 1992, after Monastra obtained a judgment against Gorden and Master Technology, he finally was informed of the transfer of assets. He also learned at this time that several parcels of real property belonging to Gorden personally had been transferred to Gorden's mother and father-in-law and to Gorden's children.

This case is an action to enforce a prior judgment. The unpublished case of *Korea Data Systems v. Cheng*, illustrates the subtlety of conveyances that may or may not be fraudulent in nature. The civil wrong alleged in this case is the fraudulent transfer of Master Technology assets, leaving Master Technology unable to satisfy Monastra's judgment. Monastra claims that Konica and Digitech, knowing of Monastra's claim against master Technology, assisted Gorden in making the transfers and in concealing them from Monastra for as long as possible. The court found that, a trier of fact could find Konica and Digitec participated in a conspiracy to hinder and delay Monastra in his claims against Master Technology, and were thus jointly liable with Gorden for Monastra's damages. The court concludes that absent a transfer by a judgment debtor, there can be no claim of fraudulent conveyance.

Solar Precision Products v. Cubic Technologies

Comerica Bank California perfected a blanket lien on the tangible and intangible assets of Helisys. Cruttenden guaranteed a line of credit extended to Helisys by Comerica. Helisys then defaulted on its obligations to Comerica. Cruttenden satisfied the debt by paying \$240,000. Cruttenden then assumed Comerica's position as the senior secured creditor of Helisys and foreclosed on the assets. Attorneys handled the foreclosure. Cruttenden made a written demand for payment, and for Helisys to transfer the assets.

In the case at bar, a judgment debtor corporation's assets were transferred to a corporate insider who continued the business using a new corporate entity. Solar Precision Products, Inc. appeals from a summary judgment entered in favor of Cubic Technologies, Inc. The complaint alleged that Solar obtained a judgment from Helisys, Inc., which had never been paid and that Helisys transferred its assets to Cubic without adequate consideration, in an effort to hinder or delay the collection of Solar's judgment. The court found that there was no claim for civil conspiracy, as the commission of an actual civil wrong must initiate the conspiracy. The court finds there was no actual civil wrong. And since most courts are unwilling to apply the doctrine of civil conspiracy without an underlying tortious act, the civil conspiracy claim in this case fails.

