

Good Deal or Bad? Complex Commercial Litigation Even When You've Done Everything Right



Devin Bates
dbates@mwlaw.com
(501) 688.8864

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A business swoops in and buys substantially all of the assets of a competitor in distress, but first does its due diligence and discovers the skeletons in the closet. The purchaser expressly does not assume the competitor's liabilities or obligations. The purchaser does everything by-the-book, and ends up with what appears to be a good deal. Under these facts, the Eighth Circuit Court of Appeals recently parsed through the web of commercial interests when an unsecured creditor brought claims against the purchaser for successor liability, breach of future contracts, unfair trade practices, conversion, and unjust enrichment.

In an opinion that captured the economic realities of the business world, the Eighth Circuit described the purchaser's actions as "conduct to be expected of a party seeking to acquire a going concern." The Court identified the general rule that "[w]here one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor." There are many exceptions to the general rule that can prove to be traps for an unplanned business transaction. But the Court dispensed of those here, upholding the commercially reasonable transaction and correctly finding no liability for the purchaser.

Lessons for Business:

Calculation of Risk. Even an apparently seamless business deal can foster problems that result in complex commercial litigation. This is especially true where, as here, an entity is left with nothing post-transaction and a creditor decides to follow the assets. This case illustrates the importance of including some calculation of risk in all transactions.

An Opponent Who Escalates Potential Exposure. Although litigation ultimately proved successful for the purchaser who did its homework and planned accordingly, the victory came after a substantial fight. The purchaser sued for a declaratory judgment that it was not responsible for the business debts, and the unsecured creditor counterclaimed. The unsecured creditor made the dispute into an even bigger brawl by asserting third-party claims against the purchaser's officer for tortious interference and civil conspiracy, and by bringing counterclaims for unfair trade practices and tortious interference, among others, increasing the potential exposure for the purchaser.

Know When to Settle, and When to Fight. Sometimes a mutually agreeable settlement can be reached which decreases uncertainty and controls legal fees. However, in a complex commercial dispute such as this where one party has the law on their side, it can be more advantageous to secure victory on the merits of the dispute. The purchaser could have settled or folded at any point and probably saved some attorney fees. This might have been advisable if the law was unclear, or if the lawyers involved were not up to the demands of this case. But having structured a good deal the purchaser trudged on, not only

securing their rights but also protecting against potentially astronomical exposure when their opponent decided to escalate things. Not backing down or compromising was a strategy that paid off in this case.

Case Reference: *Ronnoco Coffee, LLC, et al. v. Westfeldt Brothers, Inc.*, No. 18-1498 (8th Cir. Sept. 19, 2019).