

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 3, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 97-0361-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MEISTERS & RENNEBERG LOG & LUMBER, INC.,**

**PLAINTIFF-RESPONDENT,**

**V.**

**EAGLE PALLET CORP.,**

**DEFENDANT,**

**COUNTRY WOOD PRODUCTS, INC.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Marquette County:  
RICHARD O. WRIGHT, Judge. *Affirmed.*

EICH, C.J.<sup>1</sup> Country Wood Products, Inc., appeals from a small-claims judgment entered in favor of Meisters & Renneberg Log & Lumber, Inc.,

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

on its corporate successor liability claim.<sup>2</sup> Country Wood argues that its compliance with the bulk transfer provisions set forth in chapter 406, STATS., shields it from liability for claims of Eagle Pallet Corporation's creditors.

The basic facts are not in dispute. Eagle Pallet was a corporation that manufactured and repaired pallets. It was owned by Richard Smith, who acted as its president, and his wife, Mary, who acted as its vice-president and treasurer. In December 1995, Meisters & Renneberg supplied Eagle Pallet with approximately \$4000 worth of lumber. Soon after, Eagle Pallet began experiencing financial difficulties, and in February 1996, Richard Smith created and incorporated Country Wood Products to operate a pallet repair business. The Smiths acted in the same capacity as Country Wood's president, vice-president, and treasurer and were the sole directors, officers and shareholders of both corporations.

In March 1996, Eagle Pallet notified its creditors, including Meisters & Renneberg, that it intended to transfer its assets to Country Wood in exchange for the new corporation's assumption of its primary obligation to its bank, but that Country Wood was not assuming any other debts. Meisters & Renneberg also received a list of the assets to be transferred. Pursuant to the transfer, Country Wood assumed Eagle Pallet's debt to the bank, which became the only secured creditor of the transferred assets. On April 1, 1996, Eagle Pallet ceased doing business and Country Wood began, operating from the same location as Eagle Pallet, retaining the same phone number and bank, much of the same equipment, and several of the same employees.

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<sup>2</sup> This is an expedited appeal under RULE 809.17, STATS.

Meisters & Renneberg sued to recover its unpaid bill, and the trial court entered judgment in its favor, finding that Country Wood could not avoid corporate successor liability for Eagle Pallet's debts because it was a "mere continuation" of the business under a new name. Country Wood appeals.

Country Wood's sole argument on appeal is that its compliance with the bulk transfer provisions set forth in chapter 406, STATS.,<sup>3</sup> shields it from the claims of Eagle Pallet's creditors. Meisters & Renneberg argues that Eagle Pallet waived this argument by not raising it in the trial court. In its reply brief, Country Wood states, "The fact that the Bulk Transfer Notices were given to the creditors ... appears throughout the record." While the record contains references to Meisters & Renneberg's receipt of the bulk transfer notice, Country Wood's argument in the trial court does not raise compliance with the statutory provisions as a defense to Meisters & Renneberg's successor liability claim. As a general rule, we do not consider issues not raised in the trial court but raised for the first time on appeal. *First Bank v. H.K.A. Enterprises, Inc.*, 183 Wis.2d 418, 426 n.10, 515 N.W.2d 343, 347 (Ct. App. 1994).

We have said that waiver is "a rule of judicial administration," which we may, in the proper exercise of our discretion, choose not to apply in a given case. *Department of Revenue v. Mark*, 168 Wis.2d 288, 293 n.3, 483 N.W.2d 302, 304 (Ct. App. 1992). We see no reason to do so in this case, however, because the primary case on which Country Wood relies, *In re*

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<sup>3</sup> Section 406.104, STATS., provides in part that a bulk transfer is ineffective against any creditor of the transferor unless: (a) the transferee requires the transferor to furnish a list of its existing creditors; (b) the parties prepare a schedule of the transferred property sufficient for identification; and (c) the transferee takes steps to make the list and schedule available for creditor inspection.

*American Spring Bed Manufacturing Co.*, 153 B.R. 365 (Bankr. D. Mass. 1993), is a federal district court case, which is not binding on Wisconsin courts. *Thompson v. Village of Hales Corners*, 115 Wis.2d 289, 307, 340 N.W.2d 704, 713 (1983).

Even considering Country Wood's argument on the merits, *American Spring Bed* does not support Country Wood's proposition that compliance with the bulk transfer law protects it against successor liability.<sup>4</sup> As Meisters & Renneberg points out, Country Wood's position on appeal runs contrary to the general rule that "compliance with [the bulk transfer provisions] does not determine whether the successor is liable.... [it] is determined by general principles of corporation law, so that there may liability on the part of the transferee even though the transfer to it was not a violation of the bulk transfer article." 7A RONALD A. ANDERSON, ANDERSON ON THE UCC, § 6-101:41 (1995).

As indicated, the trial court determined that Country Wood merely continued Eagle Pallet's business under a new corporate name, and as a result, it was liable—as a corporate successor—for Eagle Pallet's debt to Meisters & Renneberg. See *Fish v. Amsted Indus., Inc.*, 126 Wis.2d 293, 298, 376 N.W.2d 820, 823 (1985). Country Wood does not argue the merits of successor liability on appeal and concedes that absent notice of the bulk sale, "there may be transferee

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<sup>4</sup> *In re American Spring Bed Manufacturing Co.*, 153 B.R. 365 (Bankr. D. Mass. 1993), sets forth the general rule that if the transferor complied with the bulk transfer statute, the transfer is effective against the transferor's creditors. The bankruptcy trustee argued against application of the general rule on grounds that the new business "merely continued" the old business, but the bankruptcy court rejected his argument, stating that there were no genuine issues of fact that would support application of an exception to the rule, and that the trustee had not challenged the transferor's compliance with the bulk transfer provisions, nor had he addressed how such compliance affected his successor liability claim. *Id.* at 377, 388.

liability” as the trial court found. Country Wood has not persuaded us that the trial court erred in holding it liable for Eagle Pallet’s debt.

*By the Court.*—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

