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DISTRICT II

August 16, 2023

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You are hereby notified that the Court has entered the following opinion and order:

2022AP1359

OM Enterprises, Inc. v. Hardeep Arora, Parmeet Kaur Arora and
Arora Investments, LLC. (L.C. #2021CV604)

Before Neubauer, Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

OM Enterprises, Inc. (“OME”) appeals an order granting summary judgment to Hardeep Arora, Parmeet Kaur Arora, and Arora Investments, LLC (collectively “the Aroras”). Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ Because we conclude that

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

the circuit court erroneously converted the Aroras' motion to dismiss into a motion for summary judgment based on a legal error and without providing OME an opportunity to submit all material pertinent to such a motion, we reverse and remand.

OME filed suit against the Aroras attempting to recover a \$42,577.35 judgment it obtained in a prior case against Arora Oil Corporation. OME's complaint alleged that Hardeep and Parmeet Arora, husband and wife, were the only shareholders of Arora Oil Corporation. It further alleged that, during the pendency of the prior case, they transferred all of Arora Oil's assets to Arora Investments without following the requirements set forth in WIS. STAT. ch. 180. According to the complaint, the assets that were transferred were not exempt and should have been available to satisfy the claims of Arora Oil's creditors, including OME. Finally, the complaint alleges that the Aroras have failed to abide by organizational formalities that are required for legal separation between themselves and their business entities.

The Aroras filed a motion to dismiss OME's complaint, arguing that it did not specify any legal theories,² did not set forth facts that would support a claim, and was barred by both issue and claim preclusion. In support of their motion, the Aroras stated that "The Plaintiff obtained a judgment against Hardeep Arora in the amount of \$2,042.70, *which has been fully satisfied.*" They mentioned and cited (without filing) a supplemental deposition of Hardeep taken after judgment had been entered in the previous case, asserting that OME had had "ample time to discover facts that could be helpful to satisfy" the necessary pleading standard. In

² Although we do not reach the merits for the reasons discussed below, we note that in Wisconsin, "[a] plaintiff is not required to put labels on the allegations in the complaint in order to state a valid claim." *Strid v. Converse*, 111 Wis. 2d 418, 422, 331 N.W.2d 350 (1983).

discussing issue and claim preclusion, they again stated that “a small judgment in the amount of \$2,042.70 was obtained by the Plaintiff against Defendant Hardeep Arora in that action and the judgment was paid!” and argued that “the Plaintiff is asking for a second kick at the same cat for a greater judgment—which is obviously prohibited.”

In response, OME argued that it had properly stated claims under the Wisconsin Uniform Fraudulent Transfers Act (WIS. STAT. § 242.04(1)(a) and (1)(b)), the law of successor liability (WIS. STAT. § 180.1408(2)), and common law fraudulent transfer. It requested that the circuit court “simply ignore” the arguments made by the Aroras that were “not found within the confines of the complaint.” OME stated that if the court wished to consider matters beyond the complaint, the motion to dismiss must be treated as a motion for summary judgment under WIS. STAT. § 802.08 and that OME requested “the opportunity to submit material pertinent to a motion in response to a summary judgment motion.” OME explained that it was filing the deposition of Hardeep Arora with its response to show that he transferred the assets of Arora Oil for no consideration during the pendency of the prior case, and requested that the court consider it “[t]o the extent that the court wishe[d] to have this [matter] considered for summary judgment purposes,” again requesting that the court “afford [OME] the opportunity to submit additional documentation in opposition to summary judgment.”

In their reply brief, the Aroras repeatedly asserted that the circuit court “must treat the motion to dismiss as a motion for summary judgment” because OME filed an affidavit. They submitted several affidavits and exhibits, and argued for the first time that the statute of limitations applied to bar some of OME’s claims. In one of these affidavits, Hardeep swore that “a judgment in the amount of \$2,042.70 was entered against [him in the prior case] and [he] paid said judgment in full.” Professing to “finally [be] aware” of OME’s causes of action, they

argued that the claims should be dismissed based on the statute of limitations and the doctrines of issue and claim preclusion.

The circuit court conducted a hearing on the Aroras' motion five days after their reply brief was filed. The court stated that the "defense is right that when ... affidavits are submitted the law says [the court is] supposed to look at it as a motion for summary judgment." It further determined that OME had set forth

facts that could have/should have been argued in [the prior case], and which were resolved in that case. In fact, they were judgments issued on the same set of facts, same type of arguments in that case, dismissing one, finding nothing on one of the defendants, and a small judgment on the other one, which has been paid.

Ultimately, the circuit court determined that summary judgment was appropriate in favor of the Aroras because "with respect to the two individuals pled in this case, it's issue preclusion" and "with respect to the corporate entity ... we're past the extension of limitations."

OME appeals, arguing that the circuit court erroneously converted the Aroras' motion to dismiss to one for summary judgment and that its rulings on issue preclusion and the statute of limitations were wrong on the merits. It further seeks attorneys' fees because the Aroras "demonstrably proffered perjured testimony to the circuit court" in representing that OME had already obtained a small judgment against Hardeep which had been paid and which stemmed from the same facts as those alleged in the present case. In fact, the judgment of \$2,042.70 against Hardeep Arora in the prior case was in favor of Hardeep's counsel for unpaid legal fees—not OME—a fact the Aroras now admit. The Aroras assert that the circuit court made no error and characterize their admittedly incorrect allegation about the nature of the previous

judgment against Hardeep as a “minor” and “innocent, understandable, and immaterial mistake” of fact.³

WISCONSIN STAT. § 802.06(2)(b) provides:

If on a motion ... to dismiss for failure of the pleading to state a claim upon which relief can be granted, ... matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in s. 802.08, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by s. 802.08.

Thus, “[c]onversion of a motion to dismiss into a motion for summary judgment is not required under WIS. STAT. § 802.06(2)(b).” *CTI of Ne. Wis., LLC v. Herrell*, 2003 WI App 19, ¶6, 259 Wis. 2d 756, 656 N.W.2d 794. In other words, “conversion is left to the [circuit] court’s discretion.” *Id.*, ¶8. We uphold discretionary decisions on review if “the court ‘examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted).

Here, it is clear that the circuit court did not apply the correct legal standard. It stated on the record its understanding (advanced by the Aroras) that it was “supposed to” treat the motion to dismiss as one for summary judgment when affidavits are submitted. The court apparently failed to appreciate that conversion is not required when parties put forth facts beyond those in the pleadings; the court is free to exclude those facts and decide the motion to dismiss on the

³ Because the issue of perjury and accompanying attorneys’ fees were raised for the first time on appeal to this court, following general appellate practice, we will not address them in this appeal. See *Rizzuto v. Cincinnati Ins. Co.*, 2003 WI App 59, ¶15, 261 Wis. 2d 581, 659 N.W.2d 476.

pleadings. *CTI of Ne. Wis.*, 259 Wis. 2d 756, ¶¶6-8. Thus, the circuit court erroneously exercised its discretion by converting the Aroras' motion to dismiss to a motion for summary judgment based on an error of law.

Moreover, when a circuit court does exercise its discretion to convert a motion to dismiss, it must notify the parties that the motion is being converted and give them a reasonable opportunity to present additional, countervailing evidence. *Id.*; see also WIS. STAT. § 802.06(2)(b). That did not happen in this case. The Aroras are incorrect in asserting that OME had proper notice of the circuit court's intention to treat their motion as one for summary judgment; the court first communicated that intention during the hearing on Arora's motion to dismiss,⁴ and OME had requested "the opportunity to submit additional documentation in opposition to summary judgment" in its briefing. The citation to *Envirologix Corp. v. City of Waukesha*, 192 Wis. 2d 277, 286-87, 531 N.W.2d 357 (Ct. App. 1995), and argument that OME "triggered" conversion of the motion by filing a deposition transcript are likewise unpersuasive. The Aroras clearly relied on facts and arguments outside of the complaint in support of their motion to dismiss, including the small judgment against Hardeep that they alleged stemmed from the same set of facts and that had already been paid, and theirs is the side that first referenced the later-filed deposition of Hardeep. *Cf. id.* (determining that the party opposing the motion could not claim error when it had already asserted its right to respond by offering evidence outside of the pleadings, apparently without requesting further opportunity). And there is no credible

⁴ The Aroras assert that the hearing had been "scheduled as a 'Summary Judgment' hearing from the outset." This hearing had apparently been scheduled before the Aroras had filed any motion, and when they filed their motion to dismiss, they did not reference the previously-reserved summary judgment hearing date but requested a new date. Their argument is further undermined by their own assertion that it was OME's response brief that "triggered" the conversion.

argument that OME had an opportunity to respond to the Aroras' statute of limitations defense, which was raised for the first time in the brief the Aroras filed five days before the hearing.

Because we conclude that the circuit court erroneously exercised its discretion to convert the Aroras' motion to dismiss into one for summary judgment due to its incorrect interpretation of the law, we need not reach the merits and determine whether OME's complaint was legally sufficient or whether OME's claims are barred by the doctrines of issue preclusion or claim preclusion or by the statute of limitations. This court declines to address whether counsel for the Aroras committed perjury before the circuit court by mischaracterizing the judgment against Hardeep Arora for his trial counsel's unpaid legal fees and whether attorneys' fees to OME are, therefore, appropriate, because it has not yet been raised before the circuit court.

IT IS ORDERED that the order of the circuit court is summarily reversed and remanded with no attorneys' fees awarded. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals