[Cite as *Stone Technology, Inc. v. UAW-Chrysler Natl. Training Ctr.*, 2013-Ohio-4416.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Stone Technology, Inc.	Court of Appeals No. L-12-1361
Appellant	Trial Court No. CI0201003326
v.	
UAW-Chrysler National Training Center, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: September 27, 2013

* * * * *

Christopher F. Jones, for appellant.

James H. O'Doherty and Rebecca E. Shope, for appellees.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that granted summary judgment in favor of appellees UAW-Chrysler National Training Center, et al. ("NTC"). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} In order to establish the factual and procedural basis for this appeal, it is necessary to look back to 2001, when NTC was involved in a program called Employee Connect. Employee Connect was designed to encourage union members to purchase computers, which could then be used for on-line training and work-related tasks as well as for members' personal computing needs. NTC, funded through contributions from Chrysler's union workers, paid for projects such as Employee Connect which the center administered on behalf of the workers. To that end, NTC contracted with a company called Union Friendly Services, Inc. ("Union Friendly") to provide approximately 10,000 computers for the program. Union Friendly, in turn, contracted with various other companies which would supply the computers.

{¶ 3} By mid-2001, however, Union Friendly began experiencing financial problems. At that time, a company by the name of Premier Autoworkers, Inc. ("Premier"), owned by Frank Scaramuzzino, took over Union Friendly's obligations under the contract with NTC and began ordering computers for the project from various vendors, including Stone Computer, a Michigan company run by an individual named Bing Li. Stone Computer purchased the computers from appellant Stone Technology, Inc., an Ohio corporation, which was also run by Bing Li.

{¶ 4} In late 2001 or early 2002, Premier/Union Friendly ("Premier") ordered an additional 5,560 computers and 5,700 monitors from Stone Computer for the project. Those computers are the subject of this lawsuit. In early 2002, Stone Computer sought assurances from Premier and Scaramuzzino regarding payment and drafted documents

that included a payment schedule. Scaramuzzino executed a personal guarantee for the payments owed and Stone Computer shipped the last of the computers on January 24, 2002, thereby ending Stone Computer's involvement in the project.

{¶ 5} NTC paid Premier in full for the computers pursuant to the terms of its agreements with Premier and Union Friendly. However, Premier did not immediately pay Stone Computer the full amount owed for the computers due to a dispute regarding warranties and other issues. As a result, Stone Computer sued Premier, Scaramuzzino and others in Michigan in February 2002. Premier made sporadic payments to Stone Computer and the case was fully settled in 2003 in exchange for Premier's agreement to pay Stone Computer $2,200,000, which amount was ultimately paid in full. That settlement resulted in a full release of all claims of any kind that Stone Computer had against Scaramuzzino and Premier.

{¶ 6} Despite having settled its claims related to payment for the computers, Stone Computer sued NTC in Michigan in 2006, bringing claims of conversion and unjust enrichment and seeking payment for the same computers. *Stone Computer, Inc. v. UAW-Chrysler Natl. Training Ctr.*, Oakland County, Mich., Circuit Court No. 06-072349-CZ. Stone Computer essentially argued that NTC conspired with Scaramuzzino to take over Premier and make up for lost funding for the Employee Connect program by purchasing computers from Stone Computer with the knowledge that Premier would be unable to pay for them. Stone Computer asked the jury to find that NTC had converted Stone Computer's hardware to its own use or was otherwise unjustly enriched. Following a full

trial, the jury returned a verdict and the court entered judgment in NTC's favor on July 9, 2008, dismissing Stone Computer's claims in their entirety. This judgment was affirmed on appeal. *Stone Computer, Inc. v. UAW-Chrysler National Training Center*, Mich.App. No. 286864 (May 11, 2010).

{¶ 7} The instant lawsuit was filed in the Lucas County Court of Common Pleas on April 14, 2010, with Bing Li bringing the action against NTC in the name of Stone Technology, Inc., Li's Ohio corporation. NTC filed a motion for partial summary judgment on Stone Technology's claims on July 13, 2012. Stone Technology filed a memorandum in opposition with exhibits in support and NTC then filed a reply brief in support of its motion. On November 20, 2012, the trial court found that there were no genuine issues of material fact and that NTC was entitled to judgment as a matter of law "for the reasons set forth in their motion filings." Stone Technology's complaint was dismissed with prejudice.

{¶ 8} Appellant now sets forth the following as its sole assignment of error:

> The trial court erred in granting summary judgment for defendants on plaintiff's tortious interference with contract claim against them. 11-26-12 Judgment Entry (Appendix 1), Docket #167.

{¶ 9} Appellate review of summary judgment determinations is conducted on a de novo basis, applying the same standard utilized by the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment shall

be granted when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 10} Stone Technology argues on appeal that NTC and Scaramuzzino failed to satisfy their initial burden under Civ.R. 56 of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the elements of Stone Technology's claim of tortious interference with a contract. The record reflects that the arguments set forth by NTC and Scaramuzzino in their motion for summary judgment, and asserted on appeal in support of the trial court's judgment, are as follows: res judicata; the affirmative defenses of statute of limitations, payment of the debt owed, and release; lack of personal jurisdiction with regard to Scaramuzzino, and Stone Technology's failure to offer any evidence in support of its claim of tortious interference with a contract.

{¶ 11} Stone Technology asserts that NTC's claim that this action is barred by res judicata is without merit. We disagree. Stone Technology argues that, contrary to NTC's assertion, there has been no prior finding that Stone Technology and Stone Computer are alter egos, which would support a res judicata defense. In support of its res judicata argument, NTC cites *Machinski v. Stone Computer, Inc*., Lucas C.P. No. G-4801-CI-2008-03894-00 (Dec. 23, 2009). In that case, plaintiff Dwayne Machinski filed suit against Stone Technology, Inc., in an attempt to collect on a March 2006 arbitration award against Stone Computer in the amount of $45,000. Machinski alleged that Stone

Technology was the alter ego of Stone Computer, which had ceased doing business in 2006 before Machinski's arbitration award could be satisfied. The *Machinski* court found that Stone Computer, Inc., and Stone Technology, Inc. were both owned by Bing Li and that evidence showed a free exchange of inventory and employees between the two companies as well as consolidated tax returns. The court further noted that in 2003, before Stone Computer ceased doing business, Li had purchased the company's assets. Evidence in the *Machinski* case further showed that all payments to Stone Computer on the 2002 settlement were deposited with Stone Technology, Inc. in Toledo, Ohio, and that at various times both Stone Computer and Stone Technology used the trade name of Stone Computer. Based on the foregoing, the *Machinski* court held that it could properly pierce the corporate veil and hold Stone Technology liable for Stone Computer's debt to Dwayne Machinski because Stone Technology was the alter ego of Stone Computer.

{¶ 12} We agree that the history of both companies as set forth in *Machinski* supports that court's finding and its decision to pierce the corporate veil in order to enter judgment for Machinski against Stone Technology, despite the arbitration award having been ordered against Stone Computer. Having determined that Stone Technology was the alter ego of Stone Computer, we find that the 2006 lawsuit, brought by Stone Computer, and the instant lawsuit, brought by Stone Technology, were brought by the same entity. We further find that the instant lawsuit arose out of the same transaction or occurrence that was the subject matter of the 2006 action—an attempt by Bing Li to

recover payment for the same computers that were the subject of the 2006 case brought by Stone Computer as a result of the original transaction with NTC.

{¶ 13} Res judicata, which encompasses the concept of claim preclusion, "prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action" *O'Nesti v. DeBartolo Realty Corp*., 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803, ¶ 6. Here, we have an action brought against NTC by Stone Technology, a corporation that was found to be the alter ego of Stone Computer. The instant action arises out of a claim by Stone Technology brought in an attempt to receive payment for the same computers that were the subject of the 2006 case brought by Stone Computer. With regard to the claim preclusion branch of res judicata, the Supreme Court of Ohio has stated: "A final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction * * * is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them." *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67 (1943), paragraph one of the syllabus. Accordingly, based on the foregoing, we find that the trial court did not err by granting summary judgment in favor of appellees.

{¶ 14} On consideration whereof, we affirm the judgment of the Lucas County Court of Common Pleas. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE