

STATE OF SOUTH CAROLINA)
)
 COUNTY OF EDGEFIELD)
)
 Barry Lanham and Obvia Gamble-Lanham,)
)
 Plaintiff,)
)
 vs.)
)
 Wumag Texroll GmbH & Co. KG f/k/a)
 Kelzenberg + Co: GmbH & Co. KG, et al.,)
)
 Defendant.)

IN THE COURT OF COMMON
 PLEAS
 ELEVENTH JUDICIAL CIRCUIT

2021-CP-19-00005

**ORDER GRANTING
 DEFENDANT’S MOTION FOR
 SUMMARY JUDGMENT**

RECEIVED
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 SC Court of Appeals

This matter came before the Court upon motions for summary judgment filed by Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG (hereinafter “Kelzenberg-Wumag”). On June 13, 2025, Kelzenberg-Wumag filed a motion for summary judgment, arguing Kelzenberg-Wumag, as a successor corporation, did not assume or otherwise contract for the liabilities of Wumag. On July 2, 2025, Plaintiffs Barry Lanham and Obvia Gamble-Lanham (hereinafter “Lanham”) filed a memorandum in opposition arguing that South Carolina should adopt the continuity of enterprise recognized under German law.

This Court declines to adopt the law proposed by Plaintiff that has yet been adopted in South Carolina and agrees Defendant Kelzenberg-Wumag is not liable to Plaintiff Lanham under current South Carolina law. Having considered the arguments presented by both sides, as discussed in more detail herein, Defendant Kelzenberg-Wumag’s motion for summary judgment is GRANTED.

On January 22, 2018, Plaintiff Barry Lanham was injured while operating a laminating calendar machine (hereinafter “Machine”) at his workplace in Trenton, South Carolina. The

Machine that Plaintiff alleges was defectively produced or otherwise caused the injury was designed, manufactured, sold, delivered and installed by Wumag Texroll GmbH & Co. KG (hereinafter “Wumag”). On September 1, 2019, Wumag, a German manufacturer, filed insolvency proceedings in Krefeld, Germany. On September 18, 2019, Kelzenberg + Co: GmbH & Co. KG purchased the assets of Wumag, forming the company “Kelzenberg-Wumag.” Defendant Kelzenberg-Wumag states that this agreement was expressly not a purchase of liabilities. Since the purchase, Wumag has no assets.

Defendant Kelzenberg-Wumag previously moved for dismissal on the same or similar basis and jurisdictional issues as to Kelzenberg-Wumag. This motion was denied to allow discovery as to jurisdictional issues.

Summary judgment is proper if, when viewing the evidence and inferences to be drawn therefrom in the light most favorable to the nonmoving party, there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. SCRCPP, Rule 56(c); *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459 (2023).

Courts may exercise personal jurisdiction over a foreign corporation when (1) such jurisdiction is authorized by the South Carolina long-arm statute; and (2) the nonresident has minimum contacts with the state in order to satisfy due process requirements. *Krell v. Carolina Bank*, 283 S.C. 5, 7 (1984). Under South Carolina contract law, South Carolina courts apply the substantive law of the place where the contract at issue was formed unless a valid choice-of-law clause exists that does not violate public policy. *Howell v. Covalent Chemical, LLC*, 435 S.C. 345, 351.

Under South Carolina successor law, the liabilities and debts of the corporation are not imputed to the successor corporation until (1) there was an express agreement to assume the debts, (2) there is a consolidation or merger of the two corporations, (3) the successor corporation was a mere continuation of the predecessor corporation, or (4) the transaction was entered into fraudulently with the purpose of defeating creditor's claims. *Simmons v. Mark Life Indus., Inc.*, 366 S.C. 308 (2005). The continuity of enterprise theory that a successor may inherit liability from a predecessor due to the continuity of business operations, management, or ownership has been rejected and distinguished from the mere continuation exception that South Carolina courts follow. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263 (2018). Under the mere continuation exception, continuity of ownership is shown through commonality of officers, directors, and shareholders. *Id.*

Under German law, a commercial business acquired under the previous business name shall be liable for the obligations of the predecessor business. *Handelsgesetzbuch [HGB] [Commercial Code], § 25.*¹

In Defendant Kelzenberg-Wumag's motion, it asserts that it has no connections with the state of South Carolina for service purposes. It asserts that it has no liability in this claim as it is a separate corporation not in existence at the time of the injury with no transfer of liability. The Court finds that the ultimate determination is whether Kelzenberg-Wumag, by law or contract,

¹ Counsel referenced to an opinion from the German courts based upon its research notations due to translation issues.

now stands in the shoes of Wumag such that it is the successor in interest for Wumag's potential liability.²

If Kelzenberg-Wumag is the successor of Wumag's potential liability, then there is no jurisdictional or statute of limitation issue as it is clear Wumag conducted business within South Carolina. Furthermore, there would be evidence to survive the summary judgment request as a genuine issue of fact exists regarding liability of the manufacturer. The Court finds that this is not the case.

The Court agrees that Kelzenberg-Wumag's purchase of Wumag's assets does not meet any of the exceptions under South Carolina successor liability. There is no evidence of an express agreement for Kelzenberg-Wumag to assume all debts and liabilities of Wumag. The purchase of Wumag was not a consolidation or merger of the two corporations, but a purchase of the assets. Kelzenberg-Wumag does not share officers, directors, and shareholders. There is no evidence that the transaction was entered into fraudulently. Therefore, the Court finds no exception is met and Kelzenberg-Wumag is not responsible for Wumag's potential liability.

Plaintiff relies upon Section 25 of the German Commercial Code to argue continuity of enterprise pursuant to German law by arguing that Kelzenberg-Wumag continued ownership by operating business under the same name as Wumag.³

² Defendant Kelzenberg-Wumag argues partially that the case should be dismissed because Plaintiff's claims are barred by the statute of limitations due to insufficient service and lack of personal jurisdiction

³ It appears the German court ruled that Section 25 does not apply for continuity of enterprise theory. As the German court has ruled that the insolvency proceedings do not apply continuity of enterprise and our courts have not recognized the doctrine, this Court rejects to apply the theory in this case.

IT IS SO ORDERED.

The Hon. Martha M. Rivers
Presiding Judge

September____, 2025

[Electronic signature to follow]



Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg
fka Kelzenberg + Co. GmbH & Co K , defendant, et al
Case Number: 2021CP1900005
Type: Order/Summary Judgment

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)