Illinois Official Reports

Appellate Court

Advocate Financial Group, LLC v. 5434 North Winthrop, LLC,
2015 IL App (2d) 150144

Appellate Court Caption	ADVOCATE FINANCIAL GROUP, LLC, Plaintiff-Appellee, v. 5434 NORTH WINTHROP, LLC; JAMES CARTWRIGHT; WILLIAM CARTWRIGHT; BERNARD BOTHEROYD; WILLIAM SEVERINO; HARRY POWELL; CONNIE POWELL; MICHAEL PROKOP; THERESA McLAUGHLIN; SYNTHIA STRYZEK; MARGARET HANEY; ANN BRENSEN; and BARBARA PALMER, Defendants (Steward Apartments, LLC, Citation-Respondent-Appellant).
District & No.	Second District Docket No. 2-15-0144
Filed	November 23, 2015
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 11-L-87; the Hon. Ronald D. Sutter, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Anthony S. DiVincenzo, of DiVincenzo Schoenfield Swartzman, of Chicago, for appellant. Peter H. Jagel, of Law Offices of Peter H. Jagel, P.C., of Naperville, for appellee.
Panel	JUSTICE HUDSON delivered the judgment of the court, with opinion. Justices McLaren and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 I. INTRODUCTION

¶ 2 Plaintiff, Advocate Financial Group, LLC, obtained a judgment against 5434 North Winthrop, LLC (North Winthrop), a corporation that was dissolved afterward. North Winthrop's sole asset, a building in Chicago, had been sold to a purchaser, Winthrop Real Estate, LLC (Winthrop Real Estate), that later resold it to Steward Apartments, LLC (Steward). To satisfy its judgment against North Winthrop, plaintiff sought a turnover order against Steward (see 735 ILCS 5/2-1403 (West 2010)). After a bench trial, the trial court granted the order holding that, as the "mere continuation" of North Winthrop, Steward was responsible for its debts. Steward appealed, invoking the general rule that a corporation that purchases another corporation's assets is not liable for its debts. We reversed and remanded holding that resolving the case depended on a factual matter that the trial court did not decide: in essence, whether the transfer of assets from North Winthrop to Winthrop Real Estate and then from Winthrop Real Estate to Steward had been *bona fide* or a subterfuge. *Advocate Financial Group, LLC v. 5434 North Winthrop, LLC*, 2014 IL App (2d) 130998.

¶ 3 On remand, based on the evidence from the original hearing, the trial court found that Winthrop Real Estate had been a "straw man" and that the two sales were in reality one prearranged transfer from North Winthrop to Steward, undertaken to avoid the judgment debt to plaintiff. The court thus held Steward responsible for the debt. Steward appeals. We affirm.

¶ 4 II. BACKGROUND

¶ 5 Because this appeal centers on the trial court's application of our opinion to the facts that the court heard originally, we set out both the facts and our opinion's reasoning in detail.

¶ 6 A. Underlying Facts

¶ 7 North Winthrop was formed to develop a residential building in Chicago and sell condominium units there. Its "Operating Agreement," dated December 21, 2006, listed its members and their respective interests as James and William Cartwright, brothers, who were also managers (7.65% each); Bernard Botheroyd (15.4%); William Severino (15.4%); Harry and Connie Powell jointly (7.7%); Michael Prokop (7.7%); Theresa McLaughlin and Synthia Stryzek jointly (15.4%); Margaret Haney (15.4%); and Ann Brensen and Barbara Palmer jointly (7.7%). In 2007, National City Bank, the predecessor to PNC Bank, National Association (PNC), lent North Winthrop $1,662,000, secured by a mortgage on the property, with most of North Winthrop's members personally guaranteeing the loan. Later, North Winthrop defaulted on the loan and PNC started foreclosure proceedings.

¶ 8 On January 15, 2010, plaintiff and North Winthrop entered into a "working agreement" under which plaintiff would assist North Winthrop in obtaining financing to pay off PNC and complete the project. On December 23, 2011, North Winthrop and PNC signed a settlement under which PNC released North Winthrop from the mortgage, released the personal guarantors from most of their obligations as such, and reduced North Winthrop's debt to $750,000. In return, North Winthrop agreed to sell the property to CSM Capital, LLC

(CSM). On December 30, 2011, the sale closed for $650,000. CSM took title in the name of Winthrop Real Estate, LLC. On June 8, 2012, North Winthrop was involuntarily dissolved.

¶ 9 On March 6, 2012, Steward filed its operating agreement with the Secretary of State's office. It stated that the company had been formed "to own and operate" the Chicago property. It listed the members and their respective interests as James Cartwright (17.99%); William Cartwright (11.65%); Botheroyd (14.31%); Prokop (10.32%); Haney (30.22%, including 15.11% transferred from McLaughlin); and Brensen and Palmer jointly (15.51%). On March 19, 2012, Winthrop Real Estate and Steward closed the sale of the property for $676,008.20. Winthrop Real Estate agreed to lend Steward $400,000 to complete the project.

¶ 10 In the meantime, plaintiff had obtained an arbitration award against North Winthrop for unpaid fees under the working agreement. On September 7, 2011, plaintiff filed an amended complaint to confirm the award, naming North Winthrop and its individual members as defendants. On October 11, 2012, after North Winthrop had been dissolved, the trial court entered judgment for plaintiff and against North Winthrop, but not the individual defendants, for $50,896.23 for plaintiff's services and $36,550 in attorney fees.

¶ 11 On February 7, 2013, plaintiff moved for a turnover order against Steward, claiming that Steward was liable for North Winthrop's judgment debt because it was the "mere continuation" of North Winthrop. Plaintiff observed that North Winthrop's sole asset–the eponymous Chicago real estate–was also Steward's sole asset. Further, most of North Winthrop's members were now members of Steward, and every member of Steward had been a member of North Winthrop. Citing *Dearborn Maple Venture, LLC v. SCI Illinois Services, Inc.*, 2012 IL App (1st) 103513, and *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 111410, plaintiff contended that this case fit within an exception to the rule that a corporation that purchases another corporation's assets is not liable for the other corporation's debts.

¶ 12 In response, Steward argued as follows. North Winthrop sold the Chicago property in order to satisfy its settlement with PNC. The sale to Winthrop Real Estate, for $650,000, was an arm's-length transaction between unaffiliated entities: no member of North Winthrop had any interest in Winthrop Real Estate. On December 30, 2011, when the sale closed, the guarantors of the PNC note were required to contribute an additional $140,000 to pay off the note. Steward could not be North Winthrop's "mere continuation," because North Winthrop sold the building to Winthrop Real Estate, an independent corporation, and, sometime later, Winthrop Real Estate voluntarily sold the building to Steward. No case law held that one corporation can be the mere continuation of another where the assets of the first corporation were acquired and then resold in arm's-length transactions by an independent entity.

¶ 13 B. Trial

¶ 14 The trial court held a bench trial. The sole witness was James Cartwright, through whose testimony several exhibits were admitted. On examination by plaintiff's attorney, Cartwright testified as follows. In December 2006, North Winthrop was formed in order to purchase the Chicago property with the aim of rehabilitating it and selling condominium units. North Winthrop conducted no business other than owning and developing the property. After the tenants' leases expired, North Winthrop did not renew any of them. It obtained a construction loan from National City Bank for approximately $1.5 million. PNC bought out National City Bank and acquired the interest in the loan. In 2008, when the real-estate and financial

markets declined, PNC required an additional $300,000 in order to continue to finance the loan. The Cartwrights took out a separate loan.

¶ 15 Cartwright testified that, late in 2008, PNC stopped funding the project altogether. North Winthrop found out that CSM might be able to provide capital to get the project restarted. North Winthrop's members were concerned about completing the project, and the Cartwrights, Harry Powell, McLaughlin, Stryzek, and Haney were also concerned about "get[ting] off the guarantees" they had made to PNC. Shown the December 23, 2011, settlement with PNC, Cartwright agreed that his dealings with CSM would have begun before that date. CSM bought the building, and, as part of the settlement, several of North Winthrop's members paid PNC $140,000 to "get off the guarantees." Shown the contract between North Winthrop and CSM, Cartwright acknowledged that it stated that the parties had entered into it in May 2011, although the closing took place on December 30, 2011. After the closing, North Winthrop "stopped functioning. There was [*sic*] no assets." North Winthrop and its members "were completely finished with [CSM]."

¶ 16 Cartwright testified that he and William were the managing members of Steward. He explained the origins of Steward. Early in 2012, Winthrop Real Estate (formerly CSM) discovered that it was having difficulty obtaining permits and a water meter. Joe Capicious, a long-time acquaintance of Cartwright, asked him about whether "we" were interested in continuing to develop the property, because "we had the permits in place. We had the wherewithal with the City to get things like the water meter." Cartwright agreed with plaintiff's attorney that "the City basically let Steward jump into the place of *** North Winthrop."

¶ 17 Cartwright agreed with plaintiff's attorney that Steward was formed with one purpose: to regain ownership of the property. He also agreed that part of his motivation was to "salvage the money [he] had already put into the project." On March 19, 2012, Steward signed the contract buying the property from Winthrop Real Estate for $676,008.20. Shown a provision in the contract referencing a title commitment from a title insurer, effective January 9, 2012, Cartwright testified that he did not know anything about the commitment; he had signed the contract but had not read it first. Although the contract stated that the purchaser would pay a $210-per-day penalty if the closing occurred after March 2, 2012, he did not recall Steward paying any such penalty.

¶ 18 Cartwright testified that the deed of sale was dated March 8, 2012. He did not attend the closing and did not personally remember when it occurred. The closing statement recited that "CSM Capital" would lend Steward $400,000 to complete the construction and that the purchase was contingent on Steward obtaining financing before the closing. Steward obtained financing, repaid the loan, and in February 2013, refinanced the project through Signature Bank.

¶ 19 On examination by Steward's counsel, Cartwright testified as follows. After PNC settled with North Winthrop in the foreclosure case, North Winthrop sold the property to CSM/Winthrop Real Estate for $650,000. North Winthrop also raised $140,000 to "get off the guarantees" for the debt to PNC. North Winthrop had no ownership interest in CSM/Winthrop Real Estate; to Cartwright's knowledge, neither did any of North Winthrop's individual members. By settling the foreclosure case and selling the property, North Winthrop and the guarantors saved approximately $1.1 million. No sale proceeds were

distributed to any members of North Winthrop. After the sale, North Winthrop had no assets and conducted no further business.

¶ 20 Cartwright testified that, on March 5, 2012, he signed the contract of sale from Winthrop Real Estate to Steward. On March 6, 2012, he signed the operating agreement for Steward. Before March 2012, Capicious had approached Cartwright about a possible sale, and several former members of North Winthrop had agreed to participate. When the original sale by North Winthrop to CSM closed, there was no "agreement in place" with CSM to resell the property to any entity connected with Cartwright.

¶ 21 On reexamination by plaintiff, Cartwright stated that, when he first met with Capicious, the project was "in distress." Capicious told Cartwright that he was a member of CSM. Capicious became Cartwright's contact, and eventually CSM approved the sale from North Winthrop to CSM. Cartwright did not know whether CSM had obtained an appraisal for the property before the closing; he "would imagine [it] did." Within 45 days of buying the property, CSM/Winthrop Real Estate contacted Cartwright about a possible resale; Cartwright "jumped on that as soon as they agreed to it," in part to salvage the money he had already put into the project. Steward was formed with the Cartwrights as managers; some, but not all, of North Winthrop's former members were members of Steward. Steward's purpose in buying the property was the same as North Winthrop's had been: to rehabilitate it and convert it to condominiums, sell it, or continue to own it as an investment.

¶ 22 C. Trial Court Ruling

¶ 23 The trial court ruled in plaintiff's favor, explaining as follows. The issue was whether Steward could be held liable for the judgment against North Winthrop. The sale from North Winthrop to CSM/Winthrop Real Estate closed in late December. Within "a matter of days," a title commitment had been obtained for a sale of the property back to Steward. Cartwright had testified that one of the main purposes of the first sale was to remove his and other members' personal liability as guarantors of the PNC loan to North Winthrop. Capicious then approached Cartwright with the proposal that CSM/Winthrop Real Estate sell the property to several former members of North Winthrop. The court continued:

> "So the argument really today is that this falls under an exception to [the] general rule of successor corporate nonliability. The exception brought up here is the mere[-]continuation exception.
>
> The mere[-]continuation exception applies when the purchasing corporation is merely a continuation or reincarnation of the selling corporation. ***
>
> In other words, the purchasing corporation maintains the same or similar management and ownership but merely wears different clothes. The test used to determine whether one corporate entity is a continuation of another is whether there is a continuation of the corporate entity of the seller, not whether there is a continuation of the seller's business operation. A common identity of officers, directors, ownership and stocks *** is a key element of what constitutes a continuation. However, the continuity of shareholders necessary to a finding of mere continuation does not require complete identity between the shareholders of the former and successor corporations.

> Well, I think in this case, the evidence shows that we have all those requirements. And then the only issue in my mind *** is whether this sale to what I would call kind of the middle man of CSM, whether that somehow changes the exception to the rule and makes it nonapplicable [*sic*] under these facts. I don't think it does."

¶ 24 Steward moved to reconsider, arguing that the mere-continuation doctrine did not apply, because North Winthrop had sold its sole asset to an independent third party that was under no obligation to sell the property to Steward or anyone else. The court denied the motion. It explained:

> "[W]hile [this case] does not involve a direct transfer, there was that threat [*sic*] of continuity, and we had [North Winthrop] *** and then we have exactly the same group minus two or three or some members for [Steward] ***. We have the continuity of the property itself. *** And the cases that were cited did involve more of a direct transfer, but I don't see frankly a different outcome because there was in effect a middle man ***. *** [E]specially in light of the facts involving the title commitment and that was right there, right *** within a matter of days ***."

¶ 25 D. Initial Appeal

¶ 26 Steward appealed. We began our analysis with the general rule that a corporation that purchases the assets of another corporation is not liable for the debts or liabilities of the transferor corporation. *Advocate Financial*, 2014 IL App (2d) 130998, ¶ 23; see *Vernon v. Schuster*, 179 Ill. 2d 338, 344-45 (1997). We noted the four recognized exceptions to the rule: (1) where there is an express or implied agreement of assumption; (2) where the transaction amounts to a consolidation or merger of the purchaser or seller corporation; (3) where the purchaser is merely the continuation of the seller; and (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Advocate Financial*, 2014 IL App (2d) 130998, ¶ 23. The trial court had invoked the "mere continuation" exception and had not relied on the fraud exception, although plaintiff had raised it and the court had noted facts that might have supported a finding of fraud. *Id.* ¶ 24.

¶ 27 We recognized that Illinois courts had not addressed a case in which the transfer had been routed through a third party that, at least to all appearances, was independent of either the transferor corporation or the transferee corporation. *Id.* ¶ 29. Thus, we summarized general principles established under Illinois law, then turned to foreign authority for its persuasive value in factual situations relatively similar to that here.

¶ 28 We noted that the mere-continuation exception to the rule of successor nonliability applies when the purchasing corporation "maintains the same or similar management and ownership, but merely wears different clothes. [Citations.]" (Internal quotation marks omitted.) *Id.* ¶ 26 (quoting *Vernon*, 179 Ill. 2d at 346). "The test is not whether the seller's business operation continues in the purchaser, but whether the seller's corporate entity continues in the purchaser." *Id*. We noted that Steward's shareholders were substantially similar to North Winthrop's and that both corporations were managed by the Cartwright brothers. "Therefore, the requisite continuity existed between North Winthrop and Steward." *Id.* ¶ 27. The problem was that North Winthrop did not actually sell the building to Steward. The only transfers were from North Winthrop to CSM/Winthrop Real Estate and then from CSM/Winthrop Real Estate to Steward, and there was no identity of ownership between CSM/Winthrop Real Estate and either North Winthrop or Steward. *Id.* ¶ 28.

¶ 29 We stated that, had the trial court held that CSM/Winthrop Real Estate was a " 'straw man' " that North Winthrop used to evade its creditors, it could have applied the fraud exception. *Id.* However, despite hints of such reasoning in the court's comments, it specifically relied solely on the mere-continuation exception and did not find a fraudulent purpose behind the transactions. *Id.* We continued, "Illinois law leaves open the real issue in this case: does the mere-continuation doctrine apply when two corporations are essentially identical, the first corporation transfers its assets to an intermediate purchaser, and the intermediate purchaser then transfers the assets to the second corporation?" *Id.* ¶ 29. Therefore, we turned to foreign authority to see what light could be shed on a case in which the original corporation transferred its assets not to its alleged mere continuation but instead to a third party, which then transferred the assets to the alleged corporate clone. After noting cases holding that the use of an intermediary to transfer assets from a predecessor to its clone will not automatically defeat liability (*Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640 (5th Cir. 2002); *Ed Peters Jewelry Co. v. C&J Jewelry Co.*, 124 F.3d 252 (1st Cir. 1997); *Glynwed, Inc. v. Plastimatic, Inc.*, 869 F. Supp. 265 (D. N.J. 1994); *G.P. Publications, Inc. v. Quebecor Printing-St. Paul, Inc.*, 481 S.E.2d 674 (N.C. Ct. App. 1997)), we observed that the foregoing cases were distinguishable, in that, in each one, the sale was a mere mechanism for arranging a transfer from the original corporation to the corporate clone with the conscious participation of the intermediary from the start. *Advocate Financial*, 2014 IL App (2d) 130998, ¶¶ 38-40.

¶ 30 Here, we reasoned, the situation was not so clear-cut. This was not a case in which " 'the intermediary is under the control of or otherwise tied to the principals in both the predecessor and successor corporations.' " *Id.* ¶ 31 (quoting *Patin*, 294 F.3d at 651). Cartwright had testified that Winthrop Real Estate's resale of the assets to Steward was not prearranged, but that Winthrop Real Estate discovered after the first purchase that it could not develop the property as anticipated, and that the Cartwrights and their fellow venturers were eager to try to recoup what they had already put in the first time. *Id.* ¶¶ 10, 11. The trial court had neither rejected nor credited this explanation. Instead, as we noted, the court had declined to consider "whether the intervening sale *** was a mere mechanism for arranging a transfer from the original corporation to the corporate clone with the intermediary's conscious participation from the start." *Id.* ¶ 38. We continued, "if the intermediate transfer was not a *bona fide* transaction, authority suggests that the mere-continuation exception would apply (indeed, such facts might be a basis to invoke the fraud exception as well)." *Id.*

¶ 31 We then discussed *Comstock v. Great Lakes Distributing Co.*, 496 P.2d 1308 (Kan. 1972). There, the plaintiff recovered a judgment against Vulcan, the manufacturer of an allegedly defective automobile jack, for personal injuries. The issue on appeal was whether he could recover against the defendant (Great Lakes), on a theory that it was the mere continuation of Vulcan. After manufacturing the jack, Vulcan became insolvent and, at a foreclosure proceeding, its assets were acquired by various nonaffiliated entities. One was a corporation, Polytex, which acquired a building with a second mortgage; the second mortgagee, also unaffiliated with Vulcan, then redeemed the building. Another secured creditor redeemed the machinery and the equipment. Eventually, Great Lakes acquired some of Vulcan's equipment. *Advocate Financial*, 2014 IL App (2d) 130998, ¶ 39; see *Comstock*, 496 P.2d at 1309-11.

¶ 32 The Supreme Court of Kansas held that Great Lakes was not liable to the plaintiff, as it was not the mere continuation of Vulcan (and there had been no *de facto* merger). In part this was because there was no continuity of ownership. *Comstock*, 496 P.2d at 1312. Further, however, there were no direct transfers of assets or other direct dealings between Vulcan and Great Lakes (*id.* at 1312-13). Great Lakes had acquired "some Vulcan property," but it had done so "as a bona fide purchaser." *Id.* at 1312. Although the court noted that there was no continuity of ownership between the old and new corporations, it also cited a learned treatise for the proposition that, " 'where an individual purchases the assets of a corporation at a foreclosure sale and then resells to a new company composed largely of the members of the company whose assets were sold, and there is no fraud, the new company is not liable for the debts of the old.' " *Id.* (quoting 15 William Meade Fletcher *et al.*, Private Corporations § 7333, at 642-44 (perm. ed.)).

¶ 33 Turning to the case at hand, we noted that the trial court had not specifically ruled on the applicability of the fraud exception to the rule of successor nonliability, but it had made "some findings suggesting that the transaction from North Winthrop to CSM/Winthrop Real Estate and then from CSM/Winthrop Real Estate to Steward was, in reality, one integrated transaction arranged in advance between the owners of those companies." *Advocate Financial*, 2014 IL App (2d) 130998, ¶ 41. The court had called CSM/Winthrop Real Estate a " 'middleman.' " *Id.* Thus, because the issue of fraud (upon which the court apparently had not ruled) was "intertwined with the question of whether the transactions in this case were *bona fide*" (*id.*), we vacated the judgment and remanded with instructions that the trial court "reconsider its decision, specifically address the fraud question, and enter an appropriate judgment." *Id.* ¶ 42. We explained that, even if the conduct at issue did not meet the legal definition of fraud, the mere-continuation exception would apply if the transfers involving CSM/Winthrop Real Estate were not *bona fide*. *Id.*

¶ 34 E. Remand

¶ 35 On remand, the trial court decided in plaintiff's favor, based on the trial evidence. The judge explained:

> "I, unfortunately, referred to CSM/Winthrop Real Estate as a middleman when I should have used the term straw man.
>
> Mr. Cartwright's testimony that the transfer from North Winthrop to CSM was an arm's length transaction was not credible. Cartwright began negotiating the second transaction before the first had been completed. CSM secured the title commitment from Steward within five business days of holding the property. Mr. Cartwright's testimony that CSM sought a title commitment to sell the property to Steward because it did not realize how difficult the permitting process would be is not believable, since we are talking about a period of days at the end of 2011 surrounding the 2012 New Year's holiday.
>
> I find the transfers involving CSM were not bona fide; *i.e.*, they were not arm's length transactions. This was a way for North Winthrop to wipe out their debts and maintain ownership of the property under the newly formed entity Steward. As such, the mere[-]continuation exception does apply.

> Fraud tainted the transactions to and from CSM/Winthrop Real Estate. CSM was nothing more than a straw man, a means of transferring the property from North Winthrop back into the hands of the same–essentially the same principals renamed as Steward."

¶ 36 The trial court granted plaintiff the requested turnover order. Steward timely appealed.

¶ 37 III. ANALYSIS

¶ 38 On appeal, Steward argues that (1) our opinion in *Advocate Financial* misconstrued the nonliability doctrine and the pertinent exceptions and (2) the trial court's judgment was against the manifest weight of the evidence.

¶ 39 Steward's first argument is that "[t]he mere[-]continuation doctrine should only apply when there is a direct transfer from the original corporation to [the] alleged continuing corporation" and that our opinion improperly "extended the mere[-]continuation doctrine" to apply under the circumstances of this case, in that we "blurred the distinction between the mere[-]continuation and fraud exceptions." Steward essentially seeks a rehearing in the original appeal, which we decline to grant. Under the law-of-the-case doctrine, our decisions on questions of law in the previous appeal were binding on the trial court on remand and are also binding on this court in the present appeal. See *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8. Although we may disregard the law-of-the-case doctrine if (1) a higher reviewing court has made a contrary ruling on the same issue since we issued our decision or (2) we conclude that our prior decision was palpably erroneous (*id.* ¶ 10), neither exception applies here. Therefore, we reject Steward's first contention of error.

¶ 40 We turn to Steward's second contention: that the trial court's judgment for plaintiff was against the manifest weight of the evidence. Steward argues that the facts do not support a finding that the two transactions in which CSM/Winthrop Real Estate was the "straw man" (according to the trial court) were tainted by fraud or otherwise less than *bona fide* arm's-length sales. According to Steward, North Winthrop sold its sole asset to CSM/Winthrop Real Estate for a fair price in order to adjust its obligation to PNC; Winthrop Real Estate sold the property to Steward for a fair price for legitimate reasons of its own; and no evidence allowed the trial court to infer the existence of any prearranged scheme to escape the judgment debt to plaintiff.

¶ 41 The trial court found that the two transactions, viewed together in context, were not *bona fide* arm's-length sales, but rather one prearranged scheme for North Winthrop "to wipe out their debts and maintain ownership of the property under the newly formed entity Steward," using the "straw man" CSM/Winthrop Real Estate to accomplish this purpose. We may not disturb the trial court's factual findings unless they were against the manifest weight of the evidence. See *People ex rel. Illinois Historic Preservation Agency v. Zych*, 186 Ill. 2d 267, 278 (1999). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Prazen v. Shoop*, 2012 IL App (4th) 120048, ¶ 24. Additionally, we may not reweigh the evidence, and we must defer to the trial court's choice of reasonable inferences to draw from the evidence. See *People ex rel. Illinois Historic Preservation Agency*, 186 Ill. 2d at 278.

¶ 42 The trial court based the inference of "fraud" primarily on the sequence of events between the first and second sales. No later than May 3, 2011, Cartwright, on behalf of North

Winthrop, began negotiating the first contract of sale; according to the contract, the parties entered into it on May 3, 2011. On December 23, 2011, North Winthrop signed the settlement with PNC, pledging to sell the property to CSM/Winthrop Real Estate. On December 30, 2011, North Winthrop and CSM/Winthrop Real Estate closed on the sale. Sometime before January 9, 2012, the title commitment that facilitated the sale of the property to Steward was obtained; it actually took effect on January 9, 2012. On March 5, 2012, Cartwright signed the contract of sale between CSM/Winthrop Real Estate and Steward. On March 6, 2012, he signed Steward's operating agreement. The deed of sale was dated March 8, 2012. Sometime in March 2012–Cartwright testified that he did not remember the exact date–the parties closed on the second sale. The contract was dated March 19, 2012.

¶ 43 The trial court inferred that Cartwright (who represented both North Winthrop and, later, Steward) "began negotiating the second transaction before the first had been completed." This inference was reasonable. Obviously, there would have been a motive to forgo a direct sale from North Winthrop to Steward in favor of using CSM/Winthrop Real Estate as the "middle man": the former would have fallen within the "mere continuation" exception to the rule of successor nonliability, as Steward was North Winthrop in new clothes. The latter might enable the shareholders of the new corporation, who were by and large the shareholders of the old corporation, to reap the benefits of their original undertaking while avoiding the obligations, such as that to plaintiff.

¶ 44 Of course, the existence of a motive to engage in a prearranged scheme did not prove that North Winthrop's management actually did so. However, the court reasonably relied on evidence from which a reasonable inference was that the two transactions were really one.

¶ 45 The time between the sales was short: the first one closed on December 30, 2011, and Cartwright signed the contract for the second sale on March 5, 2012. Further, CSM/Winthrop Real Estate secured the title commitment "within five business days of holding the property." From this, the reasonable inference that the judge drew was that the second sale had been in the works even before the first sale was completed. The judge rejected Cartwright's testimony that CSM/Winthrop Real Estate sought the title commitment because it had incurred buyer's remorse within days after closing the first deal: although Cartwright testified that CSM/Winthrop Real Estate had failed to anticipate the difficulties with permits and therefore bailed out in haste, the judge noted that this alleged change of heart occurred within "a period of days" during the holiday season. Moreover, we note, at the second sale, CSM/Winthrop Real Estate received more than it had paid a few months earlier, allowing the inference that frustrated expectations did not drive its decision.

¶ 46 Steward emphasizes that the parties to both sales were independent of each other and that in neither sale was the consideration suspiciously low. But Steward overlooks that the whole can be greater than the sum of its parts. The trial court reasonably concluded that, when North Winthrop sold the property to CSM/Winthrop Real Estate, both parties had already settled on what would (and did) happen soon thereafter–a resale of the property to North Winthrop, now known as Steward, to the perceived benefit of both CSM/Winthrop Real Estate (which made money on the deal) and North Winthrop/Steward (now freed from its earlier obligations). Steward maintains that the trial court could not find fraud in the strict sense of that term, but it overlooks that our opinion in *Advocate Financial* did not require such a finding for plaintiff to recover. Also, that North Winthrop engaged in the first sale

partly in order to settle its accounts with PNC does not imply that it arranged the *combination sale and repurchase* for only that reason.

¶ 47 We hold that the trial court's findings were not against the manifest weight of the evidence. The court correctly granted plaintiff the requested turnover order.

¶ 48 IV. CONCLUSION

¶ 49 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 50 Affirmed.