2011 IL App (2d) 110093-U
No. 2-11-0093
Order filed September 30, 2011
Order modified upon denial of petition for rehearing filed January 30, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MILAN THOMAS and CRYSTAL FLETCHER,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 09-L-602
	)	
EAGLE SALES AND SERVICE, INC. and EAGLE MACHINE DESIGN, INC.,	)	Honorable Robert Spence,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: Trial court properly dismissed, based on an affirmative matter, plaintiffs' products liability complaint against the corporation that manufactured the product and a corporation subsequently formed by the same owners. The manufacturing corporation could not be held liable for the injury because the injury occurred after it dissolved. The second corporation, which formed months after the dissolution of the first corporation, could not be held liable under the continuation exception to corporate successor nonliabilty where there was no transfer of assets from the first corporation to the second corporation. For the same reason, the second corporation could not be held liable under the fraudulent transfer exception to successor liability.

¶ 1 On January 6, 2011, the trial court dismissed the products liability case filed by plaintiffs

Milan Thomas and Crystal Fletcher (his wife) against defendants Eagle Sales & Service, Inc. (Eagle Sales) and Eagle Machine Design, Inc. (Eagle Design). 735 ILCS 5/2-619 (West 2010). For the following reasons, we affirm the dismissal.

¶ 2 I. BACKGROUND

¶ 3 Eagle Sales, a Florida Corporation, designed and manufactured machinery used in "rebonding" carpet underlay. The rebonding process recycles foam rubber into carpet underlay. Eagle Sales dissolved on November 30, 2007.

¶ 4 On September 25, 2008, plaintiff Thomas was seriously injured by a carpet shredding machine that had been manufactured by Eagle Sales. Thomas, then age 33, was working as a laborer at Legget & Platt, Inc., in Aurora, Illinois, when the shredding machine became jammed. Thomas was instructed to remove the debris that had been obstructing the machine. A co-worker hit the "stop" button on the machine. It appeared that the shredder had stopped operating and that its component parts had stopped moving. After removing the access door, Thomas reached his hand into the machine. Thomas's dominant, right hand came into contact with shredding rotors that had *not* stopped moving. As a result, Thomas lost all of his fingers.

¶ 5 On September 28, 2009, plaintiffs filed a three-count complaint against Eagle Sales, alleging strict liability (count I), negligence (count II), and loss of consortium (as to Fletcher) (count III). As to counts I and II, plaintiffs alleged that the shredder was in a defective condition because it failed to include: (1) a breaking mechanism linked to the "stop" button; (2) an electric interlock that would trigger a breaking mechanism for the rotors once the access door was opened; (3) a locking mechanism whereby the access door could not be opened until the shredding rotors had completely stopped; and/or (4) a warning that the shredding rotors continued to move after the stop button was engaged. Plaintiffs alleged that Thomas experienced pain and suffering, incurred medical expenses, lost wages, and will continue to experience each of these deficits. Plaintiffs sought a sum in excess of $50,000, plus the costs of the lawsuit.

¶ 6 After filing the complaint, plaintiffs learned that Eagle Sales had dissolved on November 30, 2007, approximately 10 months *before* Thomas's accident. On March 31, 2010, plaintiffs filed the amended complaint at issue in this appeal, joining Eagle Design, which was incorporated four months after Eagle Sales dissolved but still five-plus months before Thomas' accident. Plaintiffs again alleged strict liability, negligence, and loss of consortium. In connecting Eagle Design to the lawsuit, plaintiffs' amended complaint set forth the single statement: "Defendant Eagle [Sales] is now doing business as Eagle [Design]." Plaintiffs filed a jury demand.

¶ 7 On June 22, 2010, defendants filed a section 2-619 motion to dismiss (735 ILCS 5/2-619) (West 2010). The motion simply stated that: (1) "Eagle [Sales] dissolved on November 30, 2007 [10 months prior to the injury at issue]"; (2) "Eagle [Design] became a Florida corporation on April 3, 2008;" (3) "Eagle [Sales] is not doing business as Eagle [Design];" and (4) "Eagle [Design] did not design, manufacture or distribute the carpet shredder [at issue]." Defendants attached an affidavit by Eagle Design's vice president, Cameron Barnhill, stating the same.

¶ 8 On December 6, 2010, plaintiffs filed a response to the motion to dismiss. Plaintiffs, citing *Vernon v. Schuster*, 179 Ill. 2d 338, 344-45 (1997), argued that both the continuation exception and the fraudulent transfer exception to the general rule against corporate successor liability applied, and that, therefore, Eagle Design is responsible for the liabilities of Eagle Sales. Plaintiffs attached four exhibits, each of which were acquired after the filing of defendants' motion to dismiss: (1) an affidavit by Thomas (dated December 2, 2010); (2) a photograph of Thomas's injured hand; (3) the transcript of vice president Cameron's deposition (taken October 15, 2010); and (4) Eagle Design's answers (by Cameron) to interrogatories (dated August 18, 2010).

¶ 9 In his affidavit, Thomas stated that he was 33 years old on the date of the accident. He could not see the rotating blades that caused his injury. He injured his dominant hand. He has graduated from high school but has no additional education. He is currently unemployed.

¶ 10 In their deposition and answer to interrogatories, defendants set forth that Eagle Sales was incorporated in 1992. It had 1,000 shares of stock, with 600 shares owned by Ed Barnhill and 400 shares owned by his son, Cameron Barnhill.[1] Between 2000 and 2007, Eagle Sales had approximately 30 to 35 employees, and it manufactured its own products. However, Eagle Sales subsequently became insolvent, and, according to Cameron's deposition testimony, it had "no work on the horizon." The company debts involved tax and vendor liability. On November 30, 2007, Eagle Sales dissolved. It sold its tangible assets, including all manufacturing equipment. The proceeds of the sales went to creditors, including the IRS.

¶ 11 Four months later, in March 2008, Ed and Cameron discussed starting up a new company, Eagle Design. On April 3, 2008, Ed and Cameron incorporated Eagle Design. Eagle Design had 100 shares of stock, with 60 shares owned by Ed and 40 shares owned by Cameron.

¶ 12 Eagle Design is located .8 miles from Eagle Sales' old location. Eagle Sales designed *and*

[1] As stated in the deposition. The interrogatory states that the division was 60 to 40.

manufactured machines, and Eagle Design only designed them. Eagle Design does not have the capacity to manufacture in-house any machinery. It contracts out all of the manufacturing (or fabrication) of its designs. As such, the Eagle Sales building was approximately 20,000 square feet and housed a machine shop on site (which was liquidated in the dissolution process to pay creditors), whereas the Eagle Design building was approximately 2,000 square feet. After Eagle Design designed the machines, it would contract with other companies to manufacture (or fabricate) them before providing the machines to customers.

¶ 13 Eagle Sales and Eagle Design has four customers in common for specialty parts, one of which was Legget & Platt (where plaintiff Thomas worked). However, Eagle Design has zero common customers for full service machines. Eagle Sales' customer contact information and records were kept on an old Eagle Sales computer, which Cameron stated he and Ed, as owners, were required to keep pursuant to dissolution law. Cameron stated that the computer was "moth-balled up in a corner" of the new office and that it was not used. Eagle Sales did not issue a written publication about dissolution. Its old customers were in contact with Ed via Ed's cell phone. Eagle Design has not collected any invoices owed to Eagle Sales. Ed and Cameron hired three of Eagle Sales' employees to work at Eagle Design, all of whom were family members. These family members had worked in many businesses together.

¶ 14 Defendants acknowledged that Eagle Design supplies its customers with replacement parts for machines that Eagle Sales manufactured. However, while some machine parts remain the same (throughout the industry, regardless of manufacturer), the design has evolved, and the entire industry of recycling/creating carpet material has advanced. For example, a replacement screen designed by

Eagle Design will no longer fit with an older machine manufactured by Eagle Sales.

¶ 15 On December 30, 2010, defendants filed a reply (to plaintiffs' response to the motion to dismiss), referencing the information contained in plaintiffs' exhibits. In it, defendants conceded that the owners of Eagle Design are the same as the owners of Eagle Sales. Defendants maintain, however, that the businesses are distinct. Defendants note that Eagle Sales dissolved in November 2007, 10 months *before* Thomas's injury. Eagle Sales followed proper dissolution procedures and paid its creditors what it could following the wind-down of the business. Defendants set forth that the main tangible asset of Eagle Sales retained by Ed was not acquired by any evasion of Eagle Sales' obligations (*i.e.*, Ed kept Eagle Sales' computer due to legal obligations imposed on the dissolved business). More critically, Eagle Design did *not* purchase the assets of Eagle Sales, transfer its stock, or otherwise take any property from Eagle Sales when it dissolved (as tangible assets went to creditors). Defendants reasoned that Eagle Design cannot be held liable for claims against Eagle Sales because both the continuation exception and the fraudulent transfer exception to the general rule against corporate successor liability require a purchase or transfer of assets from the predecessor corporation to the alleged successor corporation, which did not occur here.

¶ 16 On January 6, 2011, following argument, the trial court dismissed the amended complaint. The record does not contain the transcripts from the hearing, and the trial court did not explain its ruling in the written order. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, plaintiffs argue that the trial court erred in dismissing their complaint. This court previously had some difficulty in characterizing the dismissal (as to whether it was in substance a section 2-615 or a section 2-619, regardless of title), and we address this matter again in response to plaintiffs' petition for rehearing. The parties do not raise the procedural question, but its resolution is necessary to proceed to the merits of the successor liability issue.

¶ 19 Plaintiffs' amended complaint contained the single allegation, "Defendant Eagle [Sales] is now doing business as Eagle [Design]." Defendants filed a section 2-619 motion to dismiss, essentially arguing that Eagle Sales dissolved and, therefore, "Eagle Sales is not doing business as Eagle Design." Plaintiffs responded by gathering evidence (deposition testimony and interrogatories), which they argue creates a question of fact as to whether there is successor liability on the part of Eagle Design, a finding that would obviate defendants' assertion that Eagle Sales ceased to exist prior to the accrual of the cause of action.

¶ 20 The trial court dismissed this case based on certain defects or defenses (*i.e.*, section 2-619). 735 ILCS 5/2-619 (West 2010). The trial court may grant an involuntary dismissal based on certain defects or defenses when the claim asserted against defendant is barred by some other affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9). If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of the defect, the court may hear and determine the same and may grant or deny the motion. 735 ILCS 5/2-619(c) (West 2010). If a material and genuine disputed question of fact is raised, the court may decide the motions upon the affidavits and evidence offered by the parties, or, if a jury demand has been made (as in our case), the court may deny the dismissal without prejudice. *Id*.

¶ 21 The term affirmative matter as used in section 2-619(a)(9) is defined as a type of defense that either negates the alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact unsupported by allegations of specific fact contained in or inferred from the complaint. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999); see also Ruth E. Kochard, *et al.*, 16 Ill. Law and Prac. Dismissal and Nonsuit § 16 (updated November 2011) (quotes omitted). The purpose of a section 2-619(a)(9) dismissal is to afford a means of obtaining a summary disposition of issues of law or easily proved issues of fact, which, if established by the record, enable a court to determine with reasonable certainty that the alleged defense exists. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). If evidentiary facts asserted in affidavits in support of a motion to dismiss are not refuted by a counter-affidavit, those facts will be deemed admitted. *Lang v. Silva*, 306 Ill. App. 3d 960, 969 (1999). We review *de novo* the trial court's section 2-619 dismissal. *Apple II Condominium Association v. Worth Bank and Trust Co.*, 277 Ill. App. 3d 345, 348 (1995).

¶ 22 Throughout our analysis, it is important to remember that Thomas was injured by Eagle Sales' equipment *after* Eagle Sales dissolved. No cause of action that *accrues after dissolution* may be brought against a dissolved corporation. *Blankenship v. Demmler Manufacturing Co.*, 89 Ill. App. 3d 569, 572-73 (1980) (refusing to extend the requirement that adequate provision be made by dissolving corporation for possible adverse judgment that could result from pending litigation or any claim existing *prior* to dissolution). A corporation's obligation to pay and discharge, or make adequate provision for, all debts, liabilities, and obligations before it is allowed to dissolve does *not* mean that a corporation must prospectively provide for a foreseeable products liability claim. *Id.* at 571. In *Blankenship*, the plaintiff brought a strict liability action against the defendant corporation after she was injured on equipment manufactured and designed by defendant corporation, which had dissolved approximately eight years prior to the accident. *Id*. at 570-71. The court ruled that the corporation could not be held liable for a cause of action accruing after dissolution, and it was not required to make provisions for prospective lawsuits in its dissolution process. *Id*. at 572-73.

¶ 23 That Eagle Sales dissolved *before* the cause of action accrued is the affirmative matter set forth by defendants defeating plaintiffs' unsupported conclusion that Eagle Sales is now doing business as Eagle Design. 735 ILCS 5/2-619(a)(9) (West 2010). In response, plaintiffs attempt to establish, through section 2-619(c) evidence, that a question of fact remains as to whether Eagle Design is effectively the same company as Eagle Sales. Plaintiffs set forth alternative, though not mutually exclusive, theories: (1) Eagle Design, despite having formed after Eagle Sales went through dissolution proceedings, is a "mere continuation" of Eagle Sales; or (2) Eagle Sales, despite having gone through dissolution proceedings, fraudulently transferred its assets to Eagle Design. For the reasons that follow, we reject both arguments.

¶ 24 A. Continuation Exception

¶ 25 The rule of successor corporate nonliability states that a corporation that purchases the assets of another corporation is not liable for the debts or liabilities of the selling corporation. *Vernon*, 179 Ill. 2d. at 344-45. The traditional rule of corporate successor nonliability developed as a response to the need to protect *bona fide* purchasers from unassumed liability and was designed to maximize the fluidity of corporate assets. *Id*. at 345 (quoting *Upholsters' International Union Pension Fund v. Artistic Furniture*, 920 F. 2d 1323, 1325 (7th Cir. 1990) and *Tucker v. Paxson Machine Co.*, 645 F. 2d 620, 623 (8th Cir. 1981)). To offset the potentially harsh impact of the rule, exceptions exist to protect the rights of corporate creditors. *Id*. There are four exceptions to the general rule of successor corporate nonliability: (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 a continuation of the seller; or (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Id*.

¶ 26 Under the continuation exception, the liabilities of the seller corporation are transferred to the buyer corporation. *Kennedy v. Four Boys Labor Service, Inc.*, 279 Ill. App. 3d 361, 368 (1996). The continuation exception applies when the purchasing corporation is merely a continuation or reincarnation of the selling corporation. *Vernon*, 179 Ill. 2d at 346. The purchasing corporation has the same or similar management and ownership, but merely " ' wears different clothes'." *Id*., quoting *Bud Ante, Inc. v. Eastern Foods, Inc.*, 758 F. 2d 1451, 1458 (11th Cir. 1985). This exception prevents a situation whereby the specific purpose of "purchasing" the first corporation is to place its assets out of reach of its creditors; that way, a corporation may not escape liability by changing form without a significant change in substance. *Id*.

¶ 27 We find helpful an Illinois Practice Series article addressing the exception. Charles W. Murdoch, *Mere Continuation*, 8 Ill. Prac., Business Organizations § 17:22 (2010). Though critical of Illinois courts' application of the continuation exception (calling it overly restrictive), the article provides sound history and discussion of the exception. Historically, the continuation exception required successor corporations to be liable for the obligations of the predecessor corporation if the following conditions were met: (1) transfer of corporate assets; (2) for less than adequate consideration; (3) to another corporation that continued a business operation of the transferor; (4)

when both corporations had at least one common officer or director; and (5) the transfer rendered the transferor incapable of paying its creditors' claims. *Id*. Later, the test was narrowed to stress two main elements: (1) the absence of adequate consideration in an assets transfer; and (2) commonality of ownership. *Id*.

¶ 28 Since *Vernon*, however, the supreme court has held that the continuation exception cannot apply without commonality of ownership, regardless of what other factors might apply. *Id*.; but see *Vernon*, 179 Ill. 2d at 350-51 (Justices Bilandic, Miller, and McMorrow, dissenting) (stating that the majority's continuity test is too restrictive and that a lack of common ownership should not allow the successor corporation to escape liability where the totality of circumstances demonstrate that it is a mere continuation of its predecessor). *Vernon* did not address the weight that should be given to the other factors in the *presence* of commonality of ownership. For the reasons that follow, we do not believe *Vernon* erradicated the relevance of the other factors (in this case, the nature of the alleged asset transfer). To hold otherwise would prevent an owner from ever starting a new, distinct business in the same industry as he had previously owned.

¶ 29 Here, neither party disputes that Eagle Sales and Eagle Design share a commonality of ownership, the key factor in a continuity analysis. Eagle Sales was owned by Ed (600 shares) and Cameron (400 shares), and Eagle Design likewise was owned by Ed (60 shares) and Cameron (40 shares). However, plaintiffs fail at an earlier stage of the analysis necessary to establish successor liability—plaintiffs do not create a question of fact as to whether Eagle Sales transferred its assets to Eagle Design.[2]

¶ 30 Although the continuation exception looks primarily to commonality in ownership, it assumes that a transfer in assets from the first corporation to the second corporation took place. We

---

[2] The parties dispute at length in their briefs whether the transfer of assets must result from a purchase. For example, Eagle Design argues that, even if it can be said that it acquired any of Eagle Sales' assets, the fact that it did not purchase the assets precludes a finding that Eagle Design is a continuation of Eagle Sales and is, therefore, responsible for its liabilities. Eagle Design points to *Vernon*, which happens to use the words "purchasing" and "selling" in stating the rule. *Vernon*, 179 Ill. 2d at 346 ("the continuation exception *** applies when the purchasing corporation is merely a continuation of the selling corporation").

We find Eagle Design's argument to be one of semantics, and we reject it. A lack of consideration for the acquired assets has long been considered a factor that weighs *in favor* of finding that the continuation exception should apply. See, *e.g.*, Murdoch, 8 Ill. Prac. § 17:22. Moreover, this court has earlier addressed *Vernon*'s use of the words, "purchasing" and "selling," as opposed to "transferor" and "transferee," and noted that, by using these words, "the giving of consideration is presumed and of itself no bar to successor liability." *Pielet v. Pielet*, 407 Ill. App. 3d 474, 506 (2010). In other words, the presence of consideration indicates a legitimate transfer but is not dispositive, and the absence of consideration (particularly amongst insiders) indicates an illegitimate transfer. Either a transfer or a purchase will suffice where the weight of the evidence is in favor of successor liability.

know it assumes a transfer of assets because the question at the center of the test is whether the transfer was: (1) a legitimate purchase by a new entity (with insufficient commonality of ownership to trigger the exception); or (2) an inside deal (between two corporations of common ownership), the purpose of which was to place the assets out of reach of the first corporation's creditors. *Vernon*, 179 Ill. 2d at 346; see also Murdoch, 8 Ill. Prac. § 17:22 (discussing the history of the continuation exception). Either way, a transfer of assets from the first corporation to the second corporation, by purchase or otherwise, is necessary for Eagle Design to even be considered a successor corporation. See, *e.g.*, *Vernon*, 179 Ill. 2d at 344-45 (implicitly stating that, to be a successor corporation, the corporation must acquire the assets of the predecessor corporation: "The [] general rule is that a corporation that purchases the assets of another corporation is not liable for the debts and liabilities of the transferor corporation.") Indeed, within successor liability jurisprudence, the predecessor corporation is often called the *transferor* corporation.

¶ 31 Here, there was no transfer of assets from the first corporation *to the second corporation*. That Ed and Cameron each held stock in each respective company does not, as plaintiffs suggest, establish that a *transfer* of stock took place between the companies. To make such an inference would be purely speculative. As plaintiffs note, the two corporations have certain intangible assets in common: personal knowledge of the business, business contacts, and the re-hiring of 3 family employees (of as many as 35 original non-family employees). However, these intangible assets were not acquired from Eagle Sales for the purpose of placing them out of reach of Eagle Sales' creditors. Eagle Sales dissolved, disposed of their tangible assets (using proceeds to pay creditors), and *its owners retained* certain intangible assets before starting Eagle Design. The owners would have taken these intangible assets to any newly formed business in the field, and these intangible assets were not of a nature to be sold off to creditors in the dissolution process.[3]

¶ 32 Plaintiffs argue that the purpose of the continuation exception is to ensure "that liability is appropriately imposed on culpable *owners* (owners who created the liability) and not on innocent *owners* (owners who did not create the liability)." (Emphases added.) Plaintiffs' argument misses the point that the continuation exception applies to *businesses* that (allegedly) created the liability, not owners. The question under the continuation exception is whether the business that created the liability seeks to avoid that liability by transferring its assets (presumably for less than adequate consideration) to a new corporate entity that merely "wears different clothes" while keeping the same ownership and management. *Vernon*, 179 Ill. 2d at 346. Even if the exception applies due to commonality of ownership, it is not the owners who are (personally) liable, but the businesses, which

---

[3] On this point, we distinguish *Beals v. Superior Welding Co.*, 273 Ill. App. 3d 655 (1995), a case that neither party cites but that on *first glance* appears to be inconsistent with our holding. In *Beals*, the court held that a question of fact remained as to whether the welding company named in the complaint was the same company that had manufactured a reactor tank that had fatally injured a man. *Id*. at 660. The court noted that, although the company that manufactured the tank had dissolved (like our case), the evidence contained gaps, inconsistencies, and uncertainties as to whether there had been a transfer of assets from the manufacturing company to the successor corporation (unlike our case, where there is no question that Eagle Sales dissolved in the traditional sense, liquidating assets to pay creditors rather than siphoning assets to the next corporation). *Id*.

are deemed one and the same.[4]

¶ 33 We understand the concern stated in *Warne v. Higgins*, 219 Ariz. 186, 192-93 (2006), that business owners who repeatedly reorganize new corporations should not escape liability by arguing that only intangible assets were transferred. In *Warne*, the transfer of intangible assets (services, employees, customers, and goodwill) without consideration was of particular concern because the corporations at issue were both *service* corporations that designed web pages—in other words, nearly all the assets were intangible because, as service corporations, they did not generate revenue from tangible assets. *Id.* at 192. Moreover, in *Warne*, suit was filed against the first corporation *before* it reorganized. *Id.*

¶ 34 We do not believe the concern set forth in *Warne* is a concern here. Plaintiffs have not pleaded facts to show that the owners of defendant corporations have "repeatedly" reorganized to escape liability. The owners reorganized only once, and, per Cameron's unrefuted deposition testimony, Eagle Sales faced, through dissolution procedures, the liabilities of which it was aware. For example, it sold its fabrication equipment to pay taxes owed to the IRS. Eagle Sales, unlike the corporation in *Warne*, had tangible assets of which to dispose (*i.e.*, its manufacturing equipment). Moreover, unlike *Warne*, suit was filed against Eagle Sales *after* it dissolved.

¶ 35 In sum, plaintiffs did not create a question of fact as to whether Eagle Sales transferred its

---

[4] To attach liability to the owners, plaintiffs would have had to raise an argument that the corporate veil should be pierced, which they did not. See, *e.g.*, *Fontana v. TLD Builders*, 362 Ill. App. 3d 491, 500 (2005).

assets to Eagle Design to place its assets out of reach of creditors, because Eagle Sales dissolved and liquidated its tangible assets to *pay* creditors *before* Eagle Design incorporated. To hold otherwise would go against the spirit of the continuation exception, which attaches liability to successor corporations where owners of the first business attempt to protect assets (not, as here, liquidate assets and pay creditors) and then place the assets out of reach of creditors by transferring the assets to another company. See, *e.g.*, *Vernon*, 179 Ill. 2d at 346 (the continuation exception is aimed to prevent a situation whereby the specific purpose of the second corporation's acquisition of assets is to place the assets out of reach of the first corporation's creditors). Nothing of the sort happened in the instant case.

¶ 36 B. Fraudulent Transfer Exception

¶ 37 Next, plaintiffs argue that the fraudulent transfer exception applies. A purchasing corporation is liable for the debts of the selling corporation when the purpose of the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Steel Co. v. Morgan Marshall Industries, Inc.*, 278 Ill. App. 3d 241, 250 (1996). Here, the fraudulent transfer exception cannot apply for the same reason the continuation exception could not apply: there was no transfer of assets from the first corporation to the second corporation (and if there was no transfer, there cannot be a fraudulent transfer).

¶ 38 Even if there had been a transfer of assets, plaintiffs' argument would fail because none of the section 2-619(c) evidence indicates that a *fraudulent* transfer took place. Plaintiffs' argument does not persuade us to change our ruling. Plaintiffs argue that, because the fraudulent transfer exception does not require a showing that defendants intended to escape *their* claim in particular, plaintiffs need only allege that Eagle Sales dissolved and then reformed as Eagle Design to escape tax and vendor liability to avoid dismissal. Based on its section 2-619(c) evidence, plaintiffs did not even create a question that Eagle Sales dissolved and then reformed as Eagle Design to *escape* tax and vendor liability. Rather, Cameron's unrefuted deposition testimony established that the company dissolved and liquidated assets so that it could pay what it owed to the IRS, not so that it could avoid payment. Plaintiffs set forth no facts to indicate that Eagle Sales did not openly face and account for its debts.

¶ 39 III. CONCLUSION

¶ 40 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 41 Affirmed.