

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

**RESOURCE TITLE NATIONAL
AGENCY, INC.,**

Appellant,

CASE NO. 13CVF-09-10149

-vs-

JUDGE SHEWARD

**DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES,**

Appellee.

**DECISION AND ENTRY
AFFIRMING THE UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION'S DECISION OF AUGUST 21, 2013**

SHEWARD, JUDGE

The above-styled case is before this Court on an appeal of the Decision issued by the Unemployment Compensation Review Commission (hereinafter referred to as Commission) that held that the Appellant is/was a successor in interest. The Commission's Decision was dated August 21, 2013. In this appeal, the Appellant named the Ohio Department of Job and Family Services. (Appellee)

Appellant filed its Brief on November 14, 2013 and its Reply on November 25, 2013. The Appellee filed its Brief on November 21, 2013.

After a review of the pleadings, briefings, and certified record, this Court **AFFIRMS** the decision dated August 21, 2013.

I. STATEMENT OF THE CASE

This appeal arises as a result of the Commission's Decision that held that the Appellant was the successor in interest to Resource Title Agency, Inc. (Resource Title) Appellant contested that holding and the corresponding change in its contribution rates.

II. STATEMENT OF THE FACTS

Resource Title was engaged in the business of real estate title services, with a business location of 7100 E. Pleasant Valley Road in Independence Ohio. It was formed in 1984 by Richard J. Rennell, Sr. as the sole shareholder. Appellant was formed on August 10, 2010 with Leslie C. Rennell being its sole shareholder.

On April 19, 2011 the Appellant and Resource Title entered into an Asset Purchase Agreement. The effective date of the contract was December 31, 2010. Appellant was contractually obligated to purchase the furniture and fixtures, automobile, and the security deposits for the Florida, Chicago, and Cincinnati office. Furthermore, the Appellant purchased from the Resource Title its goodwill, employees loan receivable, accounts receivable and escrow advances. Pursuant to the contract the Appellant also purchased a portion but not all of the work-in-progress.

After its purchase, the Appellant continued to operate from the Pleasant Valley location and it retained 61 out of 69 employees of Resource Title. Two former key employees in Resource Title remained with the Appellant – one as its owner and one as the chief operating officer. Apparently the purchase and/or reorganization was to be able to show the Federal government that Appellant was a business owned by a woman.

There was an initial problem with the Appellant's appeal of the decision. Appellant did not timely appeal the first determination to set the higher contribution rate. However, after briefing and a hearing, the Appellant was given the opportunity to be heard.

On June 18, 2013 a telephone hearing was conducted to address the issue of whether or not the Appellant was a successor in interest to Resource Title. At the hearing it was clear that the Appellee had access to the purchase agreement. Furthermore, the Appellee had information to show that the sole shareholder in the Appellant was a former officer in

Resource Title. (Hr. Tr. page 8, lines 1 – 13) The testimony also established the fact that 61 out of 69 workers from Resource Title remained employees of the Appellant. (Hr. Tr. page 9, lines 1 – 12) The evidence established that the principal place of business remained the same. (Hr. Tr. page 9, lines 13 – 14)

Mr. Rennell testified at the hearing and confirmed that he was on the Board of Resource Title (Hr. Tr. page 18, lines 1 – 8) and that he was its Executive Vice President. (Hr. Tr. page 20, lines 15 – 17) Mr. Rennell confirmed that the last day of business of Resource Title was December 31, 2010 and the first day of business for the Appellant was January 1, 2011. (Hr. Tr. page 20, lines 4 – 8) Mr. Rennell also confirmed that a number of Appellant’s current officers were officers of Resource Title. (Hr. Tr. page 26, lines 6 – 9) Mr. Rennell testified that it was the idea of Appellant to take the “existing blueprint for processes and workflow” of Resource Title and apply “it to what was identified as new emerging markets”. (Hr. Tr. page 27, lines 20 – 22)

Mr. Rennell also testified that some of the former employees of Resource Title continued with the Appellant so that they could continue to service the old accounts. (Hr. Tr. page 29, lines 6 – 18) Ms. Rennell testified that she had served on the board of Resource Title and held the position of President prior to her creating the Appellant. (Hr. Tr. page 41, lines 14 – 16) Ms. Rennell admitted that due to the economic downturn in the real estate business, it was her intention to create the Appellant as a woman owned business to get a shot at the government work available. (Hr. Tr. page 41, lines 23 – 26, page 42, lines 1 - 5)

There was a lack of any evidence showing that Resource Title continued on in any capacity. The evidence at the hearing supported an understanding that most, if not all employees of Resource Title became employees of the Appellant.

Appellant timely appealed the Commission’s Decision to this Court and the matter

has now been briefed. This case is ready for review.

III. STANDARD OF REVIEW

R.C. 4141.26(D) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission relevant to the issues now before this Court. R.C. 4141.26(D) provides, in part, the following:

After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases. The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. An appeal may be taken from the decision of the court of common pleas of Franklin county.

The level of evidence has been defined as follows:

(1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value. *Our Place, Inc. v. Ohio Liquor Comm.* (1992), 63 Ohio St. 3d 570, 571.

This Court will follow that standard during its analysis of the case.

IV. ANALYSIS:

The following statute and administrative code section provides guidance to determine if the Commission made the proper decision when it held that the Appellant was the successor in interest to Resource Title.

Please note the following from the language of R.C. §4141.24(F):

(F) If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of

such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, shall be the successor in interest. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

The statute has been amplified by the Ohio Administrative Code 4141-17-04. Please note the following language:

4141-17-04. Automatic successorship

(A) The transferee shall become a successor in interest by operation of law where:

(1) There is a transfer of all of the transferor's trade or business located in the state of Ohio; and

(2) At the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code.

(B) The transferee, as successor in interest, shall assume all of the resources and liabilities of the transferor's account. The director shall revise the contribution rates of the transferee to reflect the result of the successorship.

(C) The director shall not approve a transfer of experience or contribution rates of the transferee or transferor for any contribution period with respect to which the director has determined contribution rates for the transferee or transferor pursuant to division (G) of section 4141.24 or section 4141.48 of the Revised Code.

The Commission had more than sufficient evidence that the sale of the business between Appellant and Resource Title was in fact a transaction that met the code and the statute's definition of a successor in interest.

Appellant tried to show that the new course of the business was going to be different from Resource Title. However, the work that Appellant was to perform was in the same industry, just not the same business lines.

Appellant also believed that the fact that it did not purchase the liabilities of Resource Title was significant. However liabilities are not a focus in the determination of a successor in interest for contribution rates.

Appellant also stated on a number of occasions during the administrative process and this appeal, that Leslie C. Rennell was not related to Richard J. Rennell Sr. However, during the hearing it was established that Leslie C. Rennell had been married to Mr. Richard J. Rennell Sr. A reasonable inference to draw would be to assume that the other ‘Rennells’ involved in the transaction – including Mr. Richard J. Rennell Jr. – had some form of familial relationship with the sole shareholder of Resource Title.

Finally, the Appellant tried to argue that there was not a complete purchase of the assets of Resource Title by the Appellant. Appellant claimed that Pulte Homes of Ohio was an asset that was not transferred. In regard to this contention, the Court has reviewed the Asset Purchase Agreement. The only mention of Pulte Homes in the Agreement was in section 9.5. That section reads as follows:

Servicing Agent for Pulte Homes of Ohio, LLC. As a condition precedent to Purchaser’s obligations to consummate the transactions contemplated hereunder, Purchaser and Richard J. Rennell shall enter in a servicing agreement for closing services with respect to Pulte Homes of Ohio, LLC, upon terms and conditions as is presently in effect as of the Effective Date.

Pulte is not noted to be an ‘asset’ of Resource Title. Pulte appeared to be a separate business entity.

The Agreement also has an integration clause in section 10.4. Hence, the Agreement contained the complete understanding between the parties. There was no indication that any meaningful or significant assets were excluded.

Reliable probative and substantive evidence supported the Commission’s Decision of August 21, 2013 and the decision was within the law. It will be affirmed.

V. DECISION:

This Court **AFFIRMS** the Appellee decision dated August 21, 2013.

THIS IS A FINAL APPEALABLE ORDER

JUDGE RICHARD SHEWARD

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Franklin County Court of Common Pleas

Date: 12-17-2013
Case Title: RESOURCE TITLE NATIONAL AGENCY INC -VS- OHIO STATE
DEPARTMENT JOB & FAMILY SERVI
Case Number: 13CV010149
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard S. Sheward". The signature is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom. The signature is written in a cursive style.

Judge Richard S. Sheward

Court Disposition

Case Number: 13CV010149

Case Style: RESOURCE TITLE NATIONAL AGENCY INC -VS-
OHIO STATE DEPARTMENT JOB & FAMILY SERVI

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes