



A. D. No. L88-08050-RO1-2003  
Employer No. 1028986

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

PIONEER CABINETRY, INC,  
Appellant,

Court of Appeals No 145657

v

Lower Court No 91-1129-AE

MICHIGAN EMPLOYMENT  
SECURITY COMMISSION,  
Appellee.

UNPUBLISHED

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DECISION AND OPINION

SEP 7 1994

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4-AD 2/1996

STATE OF MICHIGAN  
COURT OF APPEALS

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PIONEER CABINETRY, INC.,

Plaintiff-Appellant,

v

MICHIGAN EMPLOYMENT SECURITY  
COMMISSION,

Defendant-Appellee.

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UNPUBLISHED  
September 27, 1994

No. 145657  
LC No. 91-1129-AE

Before: Jansen, P.J., and Holbrook, Jr. and E.C. Penzien,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the October 1, 1991 Genesee Circuit Court order affirming the Michigan Employment Security Commission (MESC) Board of Review decision that plaintiff was a successor employer to Flint Floors, Inc. under the Michigan employment security act, MCL 421.1 et seq.; MSA 17.501 et seq. We affirm.

Plaintiff manufactures and sells kitchen cabinets. In January 1986, plaintiff purchased assets from Flint Floors, Inc. (FFI), Paradise Industries, Inc., and Flint Floor Finishers for \$144,900 under a single purchase agreement. On August 25, 1986, defendant determined that plaintiff had acquired more than 75 percent of FFI's total assets and was therefore considered a successor employer under MCL 421.41(2)(a); MSA 17.543(2)(a). Consequently, defendant transferred the negative balance in FFI's experience account to plaintiff, and set plaintiff's contribution rate at ten percent.

At the hearing before the MESC referee, plaintiff's president, Jack Dixon, testified that 12 percent of the assets acquired in the sale came from FFI, 52 percent came from Paradise, and the remaining 36 percent was not attributable to either of the two companies. Dixon further testified that FFI was selling all of its business assets to plaintiff except the physical plant which was owned by Flint Floor Finishers. Defendant's field audit advisor, Arthur Ontiveros, testified that FFI transferred \$39,129 of its \$45,000 in inventory and assets to plaintiff. Ontiveros concluded that FFI transferred almost 87 percent of its assets to plaintiff. Ontiveros noted that \$64,000 of assets that were sold could not be identified with the sale of one company.

The MESC referee found that plaintiff had purchased more than 75 percent of FFI's assets, and the MESC Board of Review affirmed. The trial court affirmed the decision of the Board of Review. On appeal to this Court, plaintiff argues that the MESC Board of Review erred in failing to include the value of cash retained by FFI after the sale in establishing the total value of FFI. We disagree.

Although cash should in some instances be treated as an asset, only those assets in a business' possession at the time of transfer are to be included in computing a business' total assets. Here, plaintiff contends that FFI had \$47,000 in cash approximately three weeks before the transfer. However, plaintiff produced no evidence to support this assertion. The only evidence concerning cash was the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

testimony of FFI's owner, Ken Micinski, who stated that they did not sell the vehicles and "there would have been accounts receivable and cash." Micinski did not know the value of the cash or accounts receivable. Because no evidence was presented that FFI had \$47,000 in cash at the time of transfer, we find that it was properly excluded from the computation of FFI's total assets.

Plaintiff also claims that defendant erred in failing to account for \$64,000 in unidentified assets. Plaintiff argues that the \$64,000 in assets would reduce the percentage of assets transferred if they were attributed to FFI. However, the \$64,000 in assets was listed as sold, indicating they were transferred to plaintiff. Consequently, if any part of those assets were attributed to FFI, they would only increase the percentage of FFI assets transferred to plaintiff.

We conclude that defendant's computation of FFI's total assets is supported by competent, material, and substantial evidence on the whole record, and is not contrary to law. MCL 421.38(1); MSA 17.450(1).

Affirmed.

/s/ Kathleen Jansen  
/s/ Donald E. Holbrook, Jr.  
/s/ Eugene C. Penzien