

**IN THE COURT OF APPEALS OF IOWA**

No. 3-904 / 13-0058  
Filed November 6, 2013

**WELLS FARGO FINANCIAL LEASING, INC.,**  
Plaintiff-Appellee,

**vs.**

**BEST REPROGRAPHICS, INC.,**  
Defendant,

**and**

**MS DALLAS REPROGRAPHICS, INC.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson,  
Judge.

MS Dallas Reprographics appeals the judgment of \$84,079.31 plus attorney's fees entered by the district court holding it liable for defaulting on a lease Best Reprographics had with Wells Fargo. **AFFIRMED.**

David A. Morse of Rosenberg & Morse, Des Moines, for appellant.

Stacie M. Codr and Jeffrey A. Craig of Finley, Alt, Smith, Scharnberg,  
Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

MS Dallas Reprographics appeals the judgment of \$84,079.31 plus attorney's fees entered by the district court holding it liable for defaulting on an equipment lease agreement between Best Reprographics and Wells Fargo. On appeal, MS argues it is not responsible for the lease because no written agreement existed between it and Wells Fargo stating that MS would make payments under the lease. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Robert and Daphne Best were married in 1990. At that time, Robert owned and operated Best Reprographics (Best), a company in Dallas Texas, which reproduced documents including plans used by architects and engineers. Daphne worked as a salesperson for the company until 1994. In 1995, Daphne opened MS Dallas Reprographics using \$100,000 of her and Robert's personal funds. MS performed the same services as Best and was also located in Dallas, Texas. Best retained a twenty-nine percent ownership stake in MS.

In March 2006, Best entered into an equipment lease agreement with Wells Fargo. MS was not included on the lease agreement. The lease required sixty monthly payments of \$2940.00. After making three payments under the lease, Best experienced financial difficulties and closed for business in May.

After Best closed, Daphne and Robert discussed an "asset purchase agreement" where MS would take responsibility for Best's remaining leases, agreements, and debts owed relative to the equipment. While this agreement was never reduced to writing, MS took possession of Best's assets and collected

on all outstanding receivable accounts still owed to Best. MS immediately began making payments to Wells Fargo for the leased equipment and used the equipment in its daily operations. Additionally, MS extended offers to all of Best's employees to continue performing the same work for MS. Seven employees accepted offers and began working for MS.

MS made its first payment to Wells Fargo for the leased equipment starting in July 2006. MS made twenty-four payments to Wells Fargo for the equipment until it ceased making payments in March 2009. As a result, Best was then in default under the equipment lease agreement, and Wells Fargo accelerated the remaining balance. MS retained possession of the leased equipment.

In November 2009, Wells Fargo filed a petition at law seeking a judgment against MS for the remaining amount under the lease plus attorney's fees. MS argues that no written agreement existed between Best and MS showing that it would assume lease payments to Wells Fargo under the lease agreement. Wells Fargo argues that MS was obligated to satisfy Best's obligation under the lease agreement based on the theory of successor liability.

The district court agreed with Wells Fargo and found MS responsible for Best's obligations under the lease agreement. The court analyzed the four grounds<sup>1</sup> on which a successor entity can be held responsible for the debts and

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<sup>1</sup> Under Iowa case law, a successor corporation is held liable for the debts and obligations of its predecessor corporation when: (1) there is an express agreement to assume liability; (2) there is a consolidation or a merger; (3) the purchase corporation is a "mere continuation" of the selling corporation; or (4) the transaction is fraudulent. *C. Mac Chambers Co. v. Iowa Tae Kwon Do Academy*, 412 N.W.2d 593, 597 (Iowa 1987).

obligations of its predecessor. The court found the third ground, “mere continuation,” fit the circumstances and reasoned:

In the instant case MS Dallas had similar officers, directors, and stockholders. From 1992 to 1994, Daphne Best worked as a salesperson for Best Reprographics, a company owned and operated by her husband, Robert Best. On May 1, 1995, Daphne Best opened MS Dallas, listing herself as the owner and operator. At that time, Best Reprographics had a 29% ownership stake in MS Dallas because MS Dallas used \$100,000 of Robert and Daphne Best’s personal funds as start-up money for the company. This remained the division of ownership until Robert and Daphne Best’s divorce became final in 2009 at which time, as part of the divorce settlement, Daphne Best obtained Best Reprographics’s 29% interest in MS Dallas.

Additionally, as previously noted, it is undisputed that seven of the employees from Best Reprographics became employees of MS Dallas, and the type of work performed by MS Dallas and the clients served by MS Dallas were almost completely identical to that of Best Reprographics.

## **II. DISPOSITION.**

Upon our review of the record, we find the district court identified and thoroughly considered the issue raised on appeal. We agree with the well-reasoned findings of the district court and conclude that a full opinion by this court would not augment or clarify existing case law. We therefore affirm without further opinion pursuant to Iowa Court Rule 21.26(1)(d) and (e).

**AFFIRMED.**

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One of these four rules must apply for Wells Fargo to hold MS liable as a successor entity.