

IN THE COURT OF APPEALS OF IOWA

No. 8-454 / 07-1599
Filed October 29, 2008

K & K LEASING, INC.,
Plaintiff-Appellant,

vs.

TECH LOGISTICS CORPORATION
d/b/a SYSTEMS LOGISTICS SERVICES;
LUNDVAL FAMILY TRUST, INC.;
RICH STALEY; and BRAD JOHANSSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

A company appeals the dismissal of its claims against certain defendants,
contending that these defendants took actions exposing them to liability during a
collapse of the primary defendant's corporate charter. **AFFIRMED.**

Robert Malloy and Ben Cook, Goldfield, for appellant.

Jeremy Feitelson, West Des Moines, and John Kiehlmeier, Corona Del
Mar, California, for appellee.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

A company appeals the dismissal of its claims against certain defendants. The company contends that these defendants took actions exposing them to liability during a lapse of the primary defendant's corporate charter.

I. Background Facts and Proceedings

Tech Logistics was a trucking company incorporated in Texas. For approximately seventeen months, the company forfeited its corporate charter.

K&K Leasing, Inc. leased truck tractors to Tech Logistics. When Tech Logistics fell behind on its lease payments, K&K notified the company that it was obligated to pay the appropriate installments or return the trucks to K&K. Tech Logistics did not return several of the leased trucks.

K&K sued Tech Logistics and three affiliated defendants: Lundval Family Trust, Inc., Rich Staley, and Brad Johansson. Lundval was the general partner of an entity that owned Tech Logistics, Staley was a former president of Tech Logistics, and Johansson was managing agent of the company after Staley's resignation as president. Following a bench trial, the district court entered judgment against Tech Logistics but dismissed the claims against the remaining defendants.

K&K moved for enlarged findings and conclusions. Citing Texas law, it urged that Johansson and Lundval should be held liable on the breach of contract claim for actions purportedly taken on behalf of the corporation when the

corporate charter was forfeited and after the expiration of the leases.¹ The district court summarily denied the motion. This appeal followed.

II. Applicability of Texas Law

K&K raises the same argument it raised in its motion for enlarged findings and conclusions. As noted, that argument is premised on Texas law, which K&K maintains is controlling. The problem is that K&K neither pled nor proved Texas law in the district court. See *Pennsylvania Life Ins. Co. v. Simoni*, 641 N.W.2d 807, 810 (Iowa 2002) (“A party relying on foreign law may ask the court to take judicial notice of foreign statutory law and may introduce into evidence statutes or cases to prove the foreign law.”) Therefore, that law is not applicable.

We recognize the defendants did not raise this issue. However, it is established that the appellate courts may address error preservation issues on their own motion. *Top of Iowa Coop. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000).

In reaching the conclusion that Texas law was not pled or proven, we have considered the fact that Texas law was cited in one of the post-trial briefs. That fact does not alter our conclusion, as “[c]itation to foreign opinions in a party’s brief is not adequate ‘because it is not the introduction of evidence.’” *Simoni*, 641 N.W.2d at 811 (quoting *In re Estate of Allen*, 239 N.W.2d 163, 169 (Iowa 1976)). Equally important, in our view, is the record made by the district court on the submission of post-trial briefs. The court stated, “If I get [the ruling] done before I get your briefs, too bad. If I get your briefs before I’m done, fine. But I’m not going to slow down and wait for any post-trial briefs.” In response to

¹Staley does not appear to be the focus of this appeal.

the court's admonishment, K&K stated, "Understood, Your Honor." K&K served its post-trial brief on the day the court issued its ruling. The brief did not cite Texas law. While Tech Logistics' brief did cite Texas law, that brief also was not served until the day the court issued its ruling. Therefore, the post-trial briefs do not assist K&K.

We have also considered K&K's post-trial motion for enlarged findings and conclusions, a motion that cited Texas law. See Iowa R. Civ. P. 1.904(2). A motion to enlarge is a proper mechanism to preserve error on issues presented to the district court, but not decided by it. *Meier v. Senecaut*, 641 N.W.2d 532, 538–39 (Iowa 2002). As noted in *Meier*, a rule 1.904(2) motion may be used to preserve error only on issues presented to the district court prior to its ruling. *Id.* Here, the issue of whether liability could be imposed on Johansson and Lundval under Texas law was not properly before the court prior to its ruling. Additionally, citation to Texas law in the motion to enlarge is akin to citation of foreign law in a brief, which is not an adequate means of introducing foreign law. See *Simoni*, 641 N.W.2d at 811. Therefore, K&K cannot now maintain the argument that Texas law would impose liability.

Because Texas law was not pled or proven, we turn to K&K's arguments under Iowa law. *Id.*

III. Iowa Law

K&K concedes that "under Iowa law corporate officers would not be held individually liable for actions taken on behalf of the corporation during the period in which the corporate charter was forfeited if the charter is effectively reinstated at a later date." This should end our inquiry. However, K&K later cites Iowa case

law and asserts “Johansson and Lundval should be held liable for all damages incurred by Plaintiff after the forfeiture of the corporation’s charter.”

The Iowa opinions cited by K&K are inapposite. See *Adam v. Mt. Pleasant Bank & Trust Co.*, 355 N.W.2d 868, 874 (Iowa 1984) (holding “limited liability for . . . officers, agents, and shareholders does not exist for matters occurring during suspension of the corporate charter”); *Kessler Distrib. Co. v. Neill*, 317 N.W.2d 519, 522 (Iowa Ct. App. 1982) (agreeing with district court that one who acts as president of the corporation that previously forfeited its charter becomes personally liable for transactions). Both opinions were decided under a previous statute that was silent on this question. As K&K correctly notes, the current statute provides continuing protection for officers and directors of corporations that have been administratively dissolved under section 490.1422. See Iowa Code § 490.1422(3) (2007) (“When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.”). Therefore, assuming without deciding that this statutory provision applies to a corporation that was not administratively dissolved under Iowa law, the provision defeats K&K’s argument.

IV. Disposition

We affirm the dismissal of K&K’s claim against Lundval Family Trust and Johansson.

K&K summarily asserts that the district court should have pierced the corporate veil to reach these defendants. Given the summary nature of this argument, we decline to consider it. See Iowa R. App. P. 6.14(1)(c).

We also decline to consider Tech Logistics' argument that Lundval Family Trust "was never a shareholder of or director of defendant Tech Logistics," as this argument was not presented to the district court prior to its final ruling. *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002).

AFFIRMED.