

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Griffith Inc., dba Wrico Stamping Co. of North Carolina,)	CASE NO. 794167
)	
Plaintiff,)	JUDGE PAMELA A. BARKER
)	
v.)	<u>OPINION AND JOURNAL ENTRY</u>
)	
Talent Tool & Die, Inc.)	
)	
Defendant)	
)	

This matter is before the Court on Defendant Talent Tool & Die, Inc.'s Motion To Dismiss Pursuant To Civ.R. 12(B)(6) filed on February 5, 2013 ("Defendant's Motion"), Plaintiff's Brief In Opposition To Defendant's Motion To Dismiss filed on February 27, 2012 ("Plaintiff's Brief"), and Defendant's Response To Plaintiff's Brief In Opposition To Defendant's Motion To Dismiss filed on March 18, 2013 ("Defendant's Response").

In Defendant's Motion, Defendant argues that the corporation originally named as the plaintiff in this case, Wrico Stamping Co. of North Carolina, had its certificate to conduct business in North Carolina revoked by the North Carolina Secretary of State on April 16, 2012, was not licensed to transact business in the State of Ohio as required by R.C. 1703.03 when it commenced this action, and therefore, does not have legal capacity or standing to sue pursuant to R.C. 1703.29(A).

Subsequent to the filing of Defendant's Motion, and specifically on February 27, 2013 Plaintiff's First Amended Complaint was timely filed and named "Griffith Inc., dba Wrico Stamping Co. of North Carolina" as the Plaintiff and alleged in relevant part that: Plaintiff is a

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Minnesota corporation conducting interstate commerce in the State of Ohio, making it exempt from R.C. 1703.03 *et seq.*; Plaintiff is a manufacturer of goods; Defendant submitted a credit application and a blanket purchase order pursuant to an estimated annual usage contractor for all goods needed in a 12 month period; in reliance on the purchase order Plaintiff produced products, parts and other materials for the Defendant; and Defendant has failed to pay the amount due for the products supplied.

Attached as Exhibit "A" to Plaintiff's First Amended Complaint is a copy of the Credit Application signed by the "Owner" of Defendant on 2-11-10 and signed by a representative of Plaintiff on 2/13/10. Attached as Exhibit "B1" to Plaintiff's First Amended Complaint is a copy of a Purchase Order, #16800PC rev., directed to Wrico Stamping of NC and dated 2/18/10. Attached as Exhibits "B2" through "B19" to Plaintiff's First Amended Complaint are copies of invoices associated with products or materials that Wrico Stamping Co. of North Carolina, "a GRIFFITHS COMPANY", sold to Defendant pursuant to its Purchase Order No. 16800PC. The invoice numbers, dates and amounts included thereon correspond with those listed on Plaintiff's Exhibit "B". Each of the invoices indicate that the amount due is to be remitted to "Wrico Stamping Co. of North Carolina, a Griffiths Company, 2717 Niagara Lane N., Minneapolis, MN 65447-4844." Plaintiff seeks recovery from Defendant on the amounts due on the account (Count One) and on the basis of quantum meruit or unjust enrichment (Count Two), specifically a money judgment in the amount of \$48,013.35, plus interest.

In Plaintiff's Brief, Plaintiff acknowledges that it is not licensed by the Ohio Secretary of State to conduct business in Ohio as required by R.C. 1703.03 and 1703.29(A) but argues that because it is a corporation in good standing in the State of Minnesota and is operating in

interstate commerce, pursuant to R.C. 1703.02 it is exempt from compliance with R.C. 1703.03 and 1703.29(A). In support of its argument that Griffith Corporation qualifies as a corporation engaged in this state solely in interstate commerce, Plaintiff asserts that it does not have offices located in the State of Ohio and it does not have salespeople in the State of Ohio; it merely sells goods to firms within Ohio that it manufactures outside of Ohio.

In Defendant's Response, Defendant does not dispute that Griffith Corporation qualifies as a corporation in good standing in Minnesota or that it is engaged in this state solely in interstate commerce so that pursuant to R.C. 1703.02 it is exempt from the requirements of R.C. 1703.03 and 1703.29(A). Instead, Defendant asserts that Wrico Stamping Co. of North Carolina was suspended from activity in 2010 (the actual date of the letter from the North Carolina Secretary of State to Wrico, attached as Exhibit "C" to Defendant's Response, is March 10, 2010) and it was dissolved on April 16, 2012. Defendant then argues that pursuant to the Ohio Supreme Court's decision in *In Re All Cases Against Sager Corp.*, 132 Ohio St.3d 5 (2012), it is North Carolina law that applies to evaluate Plaintiff's legal capacity or standing to sue and under North Carolina law, specifically N.C. Gen. Stat. 105-230(b) and *South Mecklenburg Painting Contractors, Inc. v. Cunnane Group, Inc.*, 134 N.C. App. 307, 517 S.E.2d 167 interpreting that provision, Plaintiff does not have the legal capacity or standing to sue.

The problem with Defendant's argument is that in *South Mecklenburg* the North Carolina court found that N.C. Gen. Stat. 105-230 and 105-231 applied to preclude the plaintiff from bringing suit on a contract because the plaintiff had entered into the agreement to provide services **during the time when its corporate charter had been suspended**, making the contract of no effect. In the instant matter, Defendant completed the purchase order on

February 18, 2010 or prior to the date Plaintiff was notified that its activities were suspended and prior to its dissolution by the State of North Carolina on April 16, 2012.

Indeed, in *South Mecklenburg*, the Court distinguished its decision from those of other North Carolina courts, including that of the North Carolina Supreme Court in *Mica Industries v. Penland*, 249 N.C. 602, 107 S.E.2d 120 (1959) by explaining:

The corporation's suit in *Mica* was based upon transactions occurring while operation of the company was statutorily valid, see *Mica*, 249 N.C. 602, 107 S.E.2d 120 (corporation may bring action regarding transactions consummated before suspension), and a corporation may sue to enforce rights acquired prior to its suspension, see *Swimming Pool [Co. v. Country Club]*, 11 N.C. App. 715, 716, 182 S.E.2d 273-274] (corporation had legal capacity to bring suit to enforce contract entered into before suspension, notwithstanding suspension of corporation's articles of incorporation prior to commencement of suit), and *Page [v. Miller]*, 252 N.C. 23, 26, 113 S.E.2d 52, 55] (corporation's transfer of property not invalid where judicial sale to corporation was confirmed but articles of incorporation suspended prior to corporation's assignment of its bid to judgment creditor and joining with creditor to convey the property, because G.S. 105-230 was not intended to 'deprive a corporation of its properties nor penalize innocent [third] parties'."

In the instant case, however, SMPC sought to enforce contract rights allegedly acquired *during* a period of suspension. The present circumstance is thereby distinct from case-law grounded upon the rationale that suspension of a corporate charter 'while depriving the corporation of the power to engage in ordinary business for which it has been chartered, [does not] take[] away ... the incidental powers necessary to [the corporation's] survival [*i.e.*,] the power to protect its property in a court of law, either by assertion or defense of right.'" [Citations omitted.]

South Mecklenburg, *supra*, 134 N.C. App. 307, 311-12, 517 S.E.2d 167, 169-70.

Indeed, the Application For Certificate Of Authority attached as Exhibit "B" to Defendant's Response demonstrates that it was Griffiths Corporation, organized and existing

under the laws of the State of Minnesota that applied for authority to transact business in the State of North Carolina and represented that it would use "Wrico Stamping Co. of North Carolina" in the State of North Carolina. In other words, in North Carolina, Griffiths Corporation, a corporation in good standing in the State of Minnesota and engaged solely in interstate commerce in the State of Ohio, conducted business as "Wrico Stamping Co. of North Carolina." And, since Griffiths Company, dba Wrico Stamping Co. of North Carolina, was a company in good standing under North Carolina law when the purchase order was submitted to it by Defendant, and it is engaged solely in interstate commerce in Ohio so that per R.C. 1703.02 it is not required to comply with R.C. 1703.03 and 1703.29(A), Plaintiff has the legal capacity or standing to pursue its action on the account.

Accordingly, Defendant's Motion to Dismiss is DENIED.

IT IS SO ORDERED.

Pamela A. Barker

JUDGE PAMELA A. BARKER

3-20-13
DATED

RECEIVED FOR FILING

MAR 26 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By: *[Signature]* Deputy