Affirmed and Opinion filed August 31, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00823-CV

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JESSIE M. ROEBUCK AND CARMOLENE ROEBUCK, Appellants

V.

TEREX-TELECT, INC., Appellee

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 98-39500

O P I N I O N

Appellants, Jessie and Carmolene Roebuck, appeal the grant of summary judgment against them. We affirm.

Jessie Roebuck was working in an aerial device commonly known as a "cherry picker," when it contacted a power line, injuring him. The device had been manufactured by Mobile Aerial Towers, Inc., a corporation that was subsequently acquired by Hi-Ranger, Inc., which was ultimately acquired by Terex-Telect, Inc. Mr. Roebuck sued Terex, alleging both strict liability and negligence. Terex argued in its motion for summary judgment that it was not responsible for the injury because it did not manufacture, design, or sell the cherry picker in which Roebuck was injured.

Appellants, in their response to Terex's motion for summary judgment, argued that Terex had not properly pled its affirmative defense of successorship liability[1] and that the defense did not apply to out-of-state corporations. The trial court, however, granted summary judgment in favor of Terex.

On appeal, Appellants ask us to reverse that summary judgment under the "product line" exception to the defense of successorship liability.[2] "An appellate court cannot consider as grounds for reversal, issues the non-movant did not expressly present to the trial court by written response to the summary judgment motion." *Fry v. Commission for Lawyer Discipline*, 979 S.W.2d 331,334 (Tex. App.-Houston[14 Dist.] 1998) (citing *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 676 (Tex.1979)); *See also Dreyer v. Greene*, 871 S.W.2d 697, 698 (Tex.1993). Because appellant's grounds for reversal were not presented to the trial court, we must overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 31, 2000.
Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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[1] This doctrine holds that a successor corporation is not responsible for any liability or obligation of an acquired corporation unless the successor has expressly assumed such liability. *See* TEX. BUS. CORP. ACT ANN. art. 5.10 B(2) (Vernon Supp.1997); *Holden v. Capri Lighting, Inc.*, 960 S.W.2d 831,833 (Tex. App.–Amarillo 1997); *Celotex Corp. v. Tate*, 797 S.W.2d 197, 206 (Tex. App.–Corpus Christi 1990, writ dism'd by agr.).

[2] This exception provides for liability if the successor corporation has continued to make the same or similar product line. *See Mudgett v. Paxson Mach. Co.*, 709 S.W.2d 755, 758 (Tex. App.–Corpus Christi 1986, writ ref'd n.r.e.). This theory, however, has been rejected in Texas. *See Griggs v. Capitol Machine Works, Inc.*, 690 S.W.2d 287 (Tex. App.–Austin 1985, writ ref'd n.r.e., 701 S.W.2d 238 (Tex. 1985)); *see also Mudgett*, 709 S.W.2d at 759 (holding that "the successor cannot be said to have created the risk associated with a product manufactured by its predecessor.").

Appellant's argue that, without this exception, the successor corporation is free to continue to manufacture and sell defective products without fear of liability. That, however, is a misunderstanding of the doctrine. The successor corporation is liable for any defective units manufactured and sold by it *after* the acquisition.

Do Not Publish — TEX. R. APP. P. 47.3(b).