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NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-2735-12T2

MARANGE PRINTING, INC.,

Plaintiff-Respondent,

v.

FINISH LINE NJ, INC.,

Defendant,

and

FINISH LINE NJ, LLC,

Defendant-Appellant.

March 7, 2014

Submitted February 12, 2014 - Decided

Before Judges Waugh and Accurso.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5031-10.

Davenport & Spiotti, attorneys for appellant (Dominic P. DiYanni, on the brief).

Law Offices of David J. Finkler, P.C., attorneys for respondent (Howard A. Suckle, of counsel; David J. Finkler, on the brief).

PER CURIAM

Defendant Finish Line NJ, LLC (the LLC), appeals the Law Division's December 7, 2012 order denying its motion to vacate an amended judgment entered against it and in favor of plaintiff Marange Printing, Inc. We reverse.

We discern the following facts and procedural history from the record on appeal. In 2010, Marange sued defendant Finish Line NJ, Inc. (the Corporation), seeking payment for unpaid invoices. It

successfully obtained a judgment against the Corporation in the amount of $63,347.26 in August 2011.

While attempting to collect on its judgment, Marange learned that the Corporation had filed for Chapter 7 protection. Representatives of Marange, including its attorney, attended the bankruptcy trustee's 341 hearing in September 2011. At the hearing, they were informed that Kevin Horan, the president and sole shareholder of the Corporation, had formed the LLC while Marange's collection action was pending against the Corporation.

In May 2012, Marange filed a motion to amend the judgment to add the LLC as a defendant and judgment debtor. Marange served the motion papers on the attorney who had represented the Corporation in the collection action. It also mailed a copy of the motion papers to the address at which the Corporation had done business and the LLC was then doing business.

The Corporation's attorney advised Marange's attorney that he no longer represented the Corporation and was not able to accept service. He copied the Corporation on that letter. Horan asserted that he was subsequently advised by the Corporation's bankruptcy attorney that the Corporation's debt had been discharged through the bankruptcy.

Horan took no further action until after Marange's motion was granted and it executed against the LLC's property. The LLC then obtained counsel and filed a motion to vacate the judgment.

The motion was denied following oral argument. This appeal followed.

It appears from the record that the Corporation and the LLC are separate corporate entities. Although they had the same principal and there was some overlap in their businesses, they were formed at different times. It is equally clear that Marange did business with the Corporation, rather than the LLC, because the latter did not come into existence until after Marange commenced suit against the former. The LLC was not a party to the collection action at the time it was filed or at the time the judgment was entered.

Marange may ultimately have the right to collect from the LLC on the theory of successor liability, which is a legal doctrine under which one entity can be found accountable for another entity's debts.[1]

> The general rule of corporate-successor liability is that when a company sells its assets to another company, the acquiring company is not liable for the debts and liabilities of the selling company simply because it has succeeded to the ownership of the assets of the seller. Traditionally, there have been only four exceptions: (1) the successor expressly or impliedly assumes the predecessor's liabilities; (2) there is an actual or de facto consolidation or merger of the seller and the purchaser; (3) the purchasing company is a mere continuation of the seller; or (4) the transaction is entered into fraudulently to escape liability.

[Lefever v. K.P. Hovnanian Enters., 160 N.J. 307, 310 (1999).]

It cannot, however, do so simply by filing a motion to amend the judgment to include a non-party to the original action.

Marange was obligated to file a new action or to seek leave to amend the original action to add the LLC as a party under a successor-liability theory. It was also obligated to obtain personal jurisdiction over the LLC by serving it with the new or amended complaint as required by the court rules. Under Rule 4:4-4(c), mail service is permissible, but

> such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and . . . default shall not be entered against a defendant who fails to answer or appear in response thereto.

Because the LLC was not a party to the original action, the court lacked personal jurisdiction and service under Rule 1:5-1 and Rule 1:6-3 was ineffective. In addition, the Corporation's attorney in the original action was no longer counsel of record to the Corporation, R. 1:11-3, and was not in a position to accept service for either the Corporation or the LLC.

For all of these reasons, we conclude that the amended judgment against the LLC was void, Jameson v. Great Atl. and Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003), certif. denied, 179 N.J. 309 (2004), and the motion judge erred as a matter of law in declining to vacate it. We reverse and remand to the Law Division with instructions to vacate the amended judgment.

Reversed.

1 We express no opinion with respect to the merits of such a claim or the implications of the bankruptcy proceedings with respect thereto.