

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN H. DORAN, ESQUIRE, Trustee in Bankruptcy for	:	NO. 03-02,099
Advanced Electronics, Inc.,	:	
Appellant	:	
	:	
vs.	:	
	:	CIVIL ACTION
TRI CO. REALTY, INC., a/k/a TRI COUNTY REALTY,	:	IN EQUITY
INC., TC CONSTRUCTION & DEVELOPMENT CO.,	:	
COMPRO DISTRIBUTING, INC., trading as	:	
TC CONSTRUCTION & DEVELOPMENT CO.,	:	
MARVIER ADVERTISING, INC., and 2595	:	
LYCOMING CREEK, INC.,	:	
Appellees	:	

OPINION IN SUPPORT OF ORDERS OF OCTOBER 3, 2005,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellant appeals from this Court’s Orders of October 3, 2005, the first of which denied Appellant’s Motion to Extend the Discovery Deadline and the second of which granted the Appellees’ Motions for Summary Judgment. In his Statement of Matters Complained of on Appeal, Appellant appears to challenge the Court’s ruling on his Motion to Extend on the basis that he had not previously requested an extension, and with respect to the ruling on summary judgment, claims he was denied the opportunity to argue the dispositive issue.

As Appellant offered no reason for failing to previously engage in the discovery for which he sought the extension, and as the request was made after the deadline had passed and motions for summary judgment had been filed, Appellant’s Motion to Extend the Discovery Deadline was denied. While ordinarily the Court attempts to accommodate counsel when scheduling problems prevent timely depositions or motions to compel are required to obtain discovery, in the instant matter, none of those appeared to be the issue. The Court is hard-pressed to see the error in its ruling.

With respect to the motions for summary judgment, Appellant contends that at oral argument, “it was clear that the sole, controlling legal issue was whether a collusive mortgage

foreclosure sale could be a fraudulent transfer.”¹ He objects to the Court’s resting its decision on the issue of reverse piercing of the corporate veil,² alleging he was denied the opportunity to brief that issue. On the contrary, at oral argument counsel was requested to brief not only the issue described above, but also the issue of whether and when a creditor of a stockholder could obtain relief against the corporation. While at argument the Court did focus on the issue of whether the sheriff’s sale somehow “cleansed” the transaction, the Court nevertheless indicated that issue would be reached only if it was determined Appellant had sufficiently supported his claim of “alter ego”, to reach the corporations rather than the stockholders, who were the actual “debtors”. Therefore, the Court does not believe it denied Appellant the opportunity to argue the relevant issues, and the basis for its decision should have come as no surprise. In any event, it was actually a lack of evidence, rather than want of a persuasive argument, that resulted in Appellant’s undoing.

Accordingly, as neither of Appellant’s contentions of error appear to this Court to have merit, it is respectfully suggested that the Orders of October 3, 2005, be affirmed.

Dated: November 28, 2005

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Robert C. Nowalis, Esq., 69 Public Square, Suite 700, Wilkes-Barre, PA 18701
Joseph R. Musto, Esq.
James D. Casale, Esq.
Robert E. Chericoff, Esq., 2320 North Second Street, Harrisburg, PA 17106
Robin Read, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

1 Actually, the issue framed for further briefing was whether a properly advertised sheriff’s sale eliminated any issue of collusion.

2 Summary judgment was granted on the basis that the corporations which were alleged in the complaint to have fraudulently transferred assets were not “debtors” of the creditor, and any attempt to reach those assets required a reverse piercing of the corporate veil, no evidence in support of which theory had been offered by Appellant.