

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

EDWARD O. SLAYMAKER,
Plaintiff,

vs.

**KENNETH BREYER and ELAINE
BREYER, husband and wife,**
Defendants and Third-Party
Plaintiffs,

vs.

**GREEN VALLEY IRRIGATION, INC., a
Nebraska corporation, successor in
interest to GREEN ACRES, an unknown
entity,**
Third-Party Defendant.

Case No. 20293

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

DATE OF HEARING: April 9, 2001.
DATE OF RENDITION: May 8, 2001.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
TYPE OF HEARING: Open court.
APPEARANCES:
For plaintiff: No appearance.
For defendants:
Breyer: C.J. Gatz without defendants.
Green Valley: Daniel M. Placzek.
SUBJECT OF ORDER: (1) defendants' motion for summary judgment, and, (2) third-party defendant's motion for summary judgment.
PROCEEDINGS: See journal entry rendered April 9, 2001.
FINDINGS: The court finds and concludes that:

1. In *Morrison Enters. v. Aetna Cas. & Surety Co.*, 260 Neb. 634, ___ N.W.2d ___ (2000), the Nebraska Supreme Court restated the familiar principles applicable to motions for summary judgment:

a. Summary judgment is proper when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

b. In considering a summary judgment motion, the court views the evidence in a light most favorable to the nonmoving party and gives such party the benefit of all reasonable inferences deducible from the evidence.

c. On a motion for summary judgment, the question is not how a factual issue is to be decided, but whether any real issue of material fact exists.

d. The party moving for summary judgment has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law.

e. A prima facie case for summary judgment is shown by producing enough evidence to demonstrate that the movant is entitled to a judgment in its favor if the evidence were uncontroverted at trial.

f. After the moving party makes a prima facie case for summary judgment, the burden to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law shifts to the party opposing the motion.

2. A corporation that purchases the assets of another corporation does not succeed to the liabilities of the selling corporation. *Jones v. Johnson Machine and Press Co.*, 211 Neb. 724, 320 N.W.2d 481 (1982). However, four exceptions may apply to the rule.

3. Regarding the defendants' motion, viewed in the light most favorable to the third-party defendants, a genuine issue exists as to a material fact or facts or as to the ultimate inferences that may be drawn from those facts. The evidence can be viewed in the light that the transfer constituted a mere sale of assets and that none of the exceptions to the general rule applies. The defendants' motion must be denied.

4. Regarding the third-party defendant's motion, viewed in the light most favorable to the defendants, a genuine issue exists as to a material fact or facts or as to the ultimate inferences that may be

drawn from those facts. The evidence can be viewed in the light that one of the exceptions to the general rule applies.

5. The third party defendant also relies on the accepted work doctrine. *Parker v. Lancaster Cty. Sch. Dist. No. 001*, 254 Neb. 754, 579 N.W.2d 526 (1998). An exception to the accepted work doctrine exists in situations where the parties dealt with inherently dangerous elements or the defect at issue was latent and could not have been discovered by the owner or employer. *Id.* Viewed in the light most favorable to the defendants, a genuine issue exists as to a material fact or facts or as to the ultimate inferences that may be drawn from those facts. The evidence can be viewed in the light that the defect was latent and could not have been discovered by the owners. The third party defendant's motion must be denied.

ORDER: IT IS THEREFORE ORDERED that:

1. The defendants' motion for summary judgment is denied.
2. The third-party defendant's motion for summary judgment is denied.
3. The final pretrial conference is rescheduled for **Monday, June 4, 2001, at 1:40 p.m.**, or as soon thereafter as the same may be heard. The pretrial conference will be held in the District Judge's chambers, Holt County Courthouse, O'Neill, Nebraska. All other provisions of the prior progression order(s) remain fully effective.

Signed in chambers at Ainsworth, Nebraska, on May 8, 2001.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed "Order on Motions for Summary Judgment" entered denying both motions.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel, District Judge