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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

JOHN CARDULLO & SONS, INC. and
PASQUALE CARDULLO

v.

MICHAEL DIBELLA, DIBELLA
GENERAL CONTRACTORS, LLC,
DIBELLA & SONS, INC. and DIBELLA
CONSTRUCTION

NOVEMBER TERM 2018

Case ID: 181101444

COMMERCE PROGRAM

Control No. 24127124

DOCKETED

FEB 27 2025

R. POSTELL
COMMERCE PROGRAM

ORDER GRANTING PLAINTIFFS' POST-TRIAL MOTION

Plaintiffs John Cardullo & Sons, Inc. ("Cardullo & Sons"), and Pasquale Cardullo (collectively, "Cardullo") brought this action against defendants Michael DiBella, DiBella General Contractors, LLC ("DiBella General Contractors"), DiBella & Sons, Inc. ("DiBella & Sons"), and DiBella Construction (collectively, "DiBella"). On November 27, 2024, the Court issued Findings of Fact and Conclusions of Law ("Findings and Conclusions") and found for:

- a. plaintiff Cardullo & Sons and against defendant DiBella General Contractors on the breach of contract claim for the diesel fuel deliveries in the amount of \$39,836.00 plus 1.5 percent monthly interest since January 28, 2015 (\$109,748.18);
- b. plaintiff Mr. Cardullo and against DiBella General Contractors on the breach of contract claims for the \$40,000 check in the amount of \$40,000 plus the statutory annual rate of six percent since May 15, 2016 (\$60,200.00);
- c. plaintiff Cardullo & Sons and against defendant DiBella General Contractors on the breach of contract claims for the \$2,750 check in the amount of \$2,750 plus the statutory annual rate of six percent since July 24, 2017 (\$3,946.25); and

ORDER-John Cardullo



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- d. plaintiff Mr. Cardullo and against defendants Mr. DiBella and DiBella & Sons on the \$16,503.55 credit card advances plus the credit card annual interest rate of 18 percent since October 2017 (\$37,298.02).

Plaintiffs Cardullo timely filed a post-trial motion on December 9, 2024. The Court entered an order on December 13, 2024, directing Cardullo to file a brief in support of their motion on or before January 8, 2025; requiring defendants DiBella to file a responsive brief on or before February 5, 2025; allowing Cardullo to file a reply brief on or before February 19, 2025, and scheduling oral argument on February 25, 2025. While Cardullo filed their brief in support of the motion, DiBella filed no response and failed to appear at the oral argument.

Having reviewed the motion and heard oral argument, the Court **GRANTS** Cardullo's motion, **STRIKES** paragraph 69 of the Findings and Conclusions and instead enters judgment for:

- a. plaintiff Cardullo & Sons and against defendant DiBella General Contractors and Michael DiBella on the breach of contract claim for the diesel fuel deliveries in the amount of \$39,836.00 plus 1.5 percent monthly interest since January 28, 2015 (\$111,540.80);¹
- b. plaintiff Mr. Cardullo and against DiBella General Contractors and Michael DiBella on the breach of contract claims for the \$40,000 check in the amount of \$40,000 plus the statutory annual rate of six percent since May 15, 2016 (\$60,749.90);²

¹ The trial record reflects that the fuel contract was between Cardullo & Sons and DiBella General Contractors and that Michael DiBella promised to pay for the delivered fuel. Findings and Conclusions ¶¶ 8 and 9. Accordingly, Mr. DiBella as well as DiBella General Contractors is liable for this debt.

² The trial record reflects that Mr. Cardullo loaned \$40,000 to DiBella General Contractors and that Mr. DiBella agreed to pay the loan. Findings and Conclusions ¶¶ 18-22. Accordingly,

- c. plaintiff Cardullo & Sons and against defendant DiBella General Contractors and Michael DiBella on the breach of contract claims for the \$2,750 check in the amount of \$2,750 plus the statutory annual rate of six percent since July 24, 2017 (\$4,001.25);³ and
- d. plaintiff Mr. Cardullo and against defendants Mr. DiBella and DiBella General Contractors on the \$16,503.55 credit card advances plus the credit card annual interest rate of 18 percent since October 2017 (\$38,288.24).⁴

footnote 2 of the Findings and Conclusions is erroneous and stricken to the extent it fails to recognize Mr. DiBella's liability for this loan.

³ The trial record supports that Mr. Cardullo wrote the check for the \$2,750 loan on behalf of DiBella General Contractors. Findings and Conclusions, ¶ 30. While the trial record is equivocal on whether Mr. DiBella assumed personal responsibility for the \$2,750 loan, the pleadings establish Mr. DiBella's liability. Mr. DiBella responded to the allegations in the Amended Complaint regarding the \$2,750 loan with only general denials. *See* Amended Complaint, Docket ("Dkt.") at 1/24/19, ¶ 16 ("The parties agreed that the said \$2,750.00 would be repaid by Defendants to Plaintiffs either on demand or pursuant to a payment schedule that was never developed."); Defendants' Answer and New Matter to the Amended Complaint, Dkt. at 11/14/22, ¶ 16 ("Denied. Defendants deny any liability for any alleged loan issued by Plaintiffs.") Rule 1029 of the Pennsylvania Rules of Civil Procedure provides that "[a] general denial" in a pleading "shall have the effect of an admission." *See* Pa.R.Civ.P. 1029. Accordingly, the Court finds that Mr. DiBella, through the general denials of his answer, admitted liability for the \$2,750 loan.

⁴ The trial record also supports that Mr. Cardullo used his personal credit card to pay expenses on behalf of DiBella General Contractors and Mr. DiBella with the understanding that Mr. Cardullo would be reimbursed. Findings and Conclusions ¶¶ 24. The Findings and Conclusions erroneously found against Mr. DiBella and DiBella & Sons on this debt instead of against Mr. DiBella and DiBella General Contractors.

Having found for Cardullo & Sons or Mr. Cardullo on each count in the Amended Complaint based on the pleadings and the evidence of record, the Court does not reach any of the other arguments Cardullo advanced in their post-trial motion.

BY THE COURT:

Asse F. R.

ABBE F. FLETMAN, J.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs John Cardullo & Sons, Inc. ("Cardullo & Sons"), and Pasquale Cardullo (collectively, "Cardullo") brought this action against defendants Michael DiBella, DiBella General Contractors, LLC ("DiBella General Contractors"), DiBella & Sons, Inc. ("DiBella & Sons"), and DiBella Construction (collectively, "DiBella"). Cardullo seeks judgment in its favor in the amount of \$137,035.84, including interest and service charges, for DiBella's failure to pay for certain diesel fuel products sold and delivered; \$59,400.80, including interest, for the non-payment of an April 15, 2016, loan; \$3,863.75, including interest, for non-payment of a July 24, 2017, loan; and \$33,170.16, including interest, for credit card advances from Cardullo to DiBella.

For the reasons discussed below, the Court finds for: 1) Cardullo & Sons and against DiBella General Contractors on the diesel fuel delivery breach of contract claim; 2) Mr. Cardullo and against DiBella General Contractors on the April 15, 2016, loan breach of contract claim; 3) Cardullo & Sons and against DiBella General Contractors on the July 24, 2017, loan breach of contract claim; and 4) Mr. Cardullo and against Mr. DiBella and DiBella General Contractors for the credit card advances breach of contract claim.

FACTS-John Cardullo



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FINDINGS OF FACT

1. Pasquale Cardullo and Michael DiBella were close friends who lived and worked in the same neighborhood in South Philadelphia. 04/03/24 Trial Transcript ("Trial Tr.") at 15:1-3, 28:11-15, 30:14-20 (Pasquale Cardullo testimony).
2. Mr. Cardullo was the president of Cardullo & Sons, a company that delivers fuel. *Id.* at 15:14-17, 25:19-20.
3. On August 24, 2017, Mr. DiBella formed DiBella & Sons to have a contracting company named after his sons. *Id.* at 25:6-13; Trial Tr. at 59:17-23 (Michael DiBella testimony); see Ex. D-1 (DiBella & Sons, Inc. Subsistence Certificate).
4. Before August 24, 2017, Mr. DiBella owned and operated DiBella General Contractors. Trial Tr. at 59:15-23 (Michael DiBella testimony).
5. DiBella General Contractors was no longer in operation after August 24, 2017, the day that Mr. DiBella created DiBella & Sons. *Id.* at 59:17-23.
6. DiBella & Sons and DiBella General Contractors share the same telephone number, customer base, ownership, and business activities. Trial Tr. at 49:21-50:6 (Cardullo testimony).
7. DiBella Construction is an unregistered entity owned and operated by Mr. DiBella and used by Mr. DiBella as a trade name. *Id.* at 16:9-15.
8. On October 8, 2013, Mr. Cardullo made an oral agreement with Mr. DiBella for Cardullo & Sons to deliver fuel to DiBella General Contractors. *Id.* at 15:11-16:8.
9. This occurred when Mr. Cardullo and Mr. DiBella met by chance at the Food Distribution Center in South Philadelphia and Mr. DiBella asked Mr. Cardullo to begin fueling dump trucks he had just bought. *Id.* at 15:11-16:8. Because of their longstanding friendship, Mr.

Cardullo did not require a credit application or financial information from Mr. DiBella, but he asked for and obtained an oral agreement from Mr. DiBella: "I will pay you." *Id.* at 18:22-24. Mr. DiBella further said, "I'll take full responsibility." *Id.* at 19:10-12.

10. Cardullo & Sons began fuel deliveries on October 8, 2013, to DiBella Construction. Ex. P-4 (John Cardullo and Sons Ledger); Trial Tr. at 18:10-13 (Cardullo testimony).

11. Cardullo & Sons maintained a ledger containing the date, invoice number, gallons, price per gallon, debit, and running balance. Ex. P-4 (John Cardullo and Sons Ledger); Trial Tr. at 18:2-9 (Cardullo testimony).

12. Payments for the fuel deliveries were made to Cardullo & Sons by cash and check from May 15, 2014, to January 28, 2015. Trial Tr. at 36:8-37:7 (Cardullo testimony); *see* Ex. P-4 (John Cardullo and Sons Ledger).

13. Monthly invoices were sent to DiBella, which were received and acknowledged as correct or accepted without comment. Trial Tr. at 23:8-24:8 (Cardullo testimony); Ex. P-1 (Amended Complaint) at ¶ 4; *see* Ex. P-2 (Answer) at ¶ 4; Pa.R.Civ.P. 1029 ("A general denial or a demand for proof . . . shall have the effect of an admission.")

14. The last of these fuel deliveries was made on February 10, 2015, and the last payment was on January 28, 2015, for \$669.81. Ex. P-4 (John Cardullo and Sons Ledger).

15. As of February 10, 2015, Cardullo & Sons' ledger states that DiBella Construction's unpaid balance for the fuel deliveries totaled \$39,836.00, not including interest. Ex. P-4 (John Cardullo and Sons Ledger).

16. Cardullo & Sons' fuel delivery slips also contain a term of 1.5 percent monthly interest or 18 percent annual interest for delayed payments. Trial Tr. at 20:20-25 (Cardullo testimony); Ex. P-4 (John Cardullo and Sons Ledger).

17. Mr. DiBella testified at trial and did not say that the Cardullo & Sons fuel deliveries were:

- a. Not made,
- b. Paid in full,
- c. Subject to additional credits,
- d. Mispriced or otherwise erroneously recorded in the ledger, or
- e. Otherwise erroneous.

Trial Tr. at 58:17-66:18 (DiBella testimony).

18. Separately, on April 15, 2016, Mr. Cardullo loaned DiBella General Contractors \$40,000. *Id.* at 60:10-20. To effectuate this loan, Mr. Cardullo wrote a check from his personal bank account in the amount of \$40,000 payable to "Dibella." *See* Ex. P-5 (Pasquale Cardullo Check #234).

19. DiBella General Contractors endorsed the \$40,000 check, which was deposited into DiBella General Contractors' business bank account. *Id.*; Trial Tr. at 60:13-17 (DiBella testimony).

20. The \$40,000 was used for business operations at DiBella General Contractors. *Id.* at 60:18-20.

21. The parties did not agree to a specific rate of interest on the \$40,000 loan, nor was there a payment plan. Trial Tr. at 27:8-15 (Cardullo testimony).

22. Mr. Cardullo and Mr. DiBella, however, agreed that Mr. DiBella would repay the \$40,000 to Mr. Cardullo. *Id.* at 27:8-15.

23. Subsequently, Mr. Cardullo started working for Mr. DiBella, at DiBella General Contractors and later for DiBella & Sons, for about six months starting around May 2017 to October 2017. *See* Trial Tr. at 33:21-23, 45:7-45:19 (Cardullo testimony).

24. While Mr. Cardullo was employed by Mr. DiBella, Mr. Cardullo used his personal credit card to pay for several expenses on behalf of Mr. DiBella's business and Mr. DiBella personally, with the understanding that Mr. Cardullo would be reimbursed. *Id.* at 30:23-31:14.

25. Diane Mastruzio, a clerical worker for Mr. DiBella's businesses, kept records and tallied the expenses Mr. Cardullo paid on behalf of Mr. DiBella's businesses and Mr. DiBella personally. *Id.* at 30:23-31:22, 32:15-33:3; *see also* Ex. P-7 (Adding Machine Tape with Notations).

26. The slips prepared by Ms. Mastruzio totaled \$16,503.55. Trial Tr. at 32:5-19 (Cardullo testimony); Ex. P-7 (Adding Machine Tape with Notations).

27. These tallied expenses include fuel, cement, truck parts, and daycare fees for Mr. DiBella's son. Trial Tr. at 30:23-31:14, 47:15-48:24 (Cardullo testimony).

28. Mr. DiBella said, "We're going to work on payment arrangements" but never made a payment plan. *Id.* at 33:5-14.

29. Service Energy bought Cardullo & Sons from Mr. Cardullo in 2017 and sought to collect on Mr. DiBella's outstanding balance to Cardullo & Sons. *Id.* at 29:8-30:11.

30. On July 28, 2017, Mr. Cardullo wrote a check in the amount of \$2,750 payable to Service Energy, on behalf of DiBella General Contractors. Ex. P-6 (John Cardullo and Sons Check #3593). This check came from the Cardullo & Sons business bank account. *Id.*

31. Mr. Cardullo and Mr. DiBella entered an oral agreement for Mr. DiBella to repay Mr. Cardullo for this loan, but the details for payment were not worked out. Trial Tr. at 29:8-30:11 (Cardullo testimony).

32. Cardullo commenced this action on November 13, 2018, with the filing of a complaint. (Complaint, Trial Court Docket ("Dkt.") at 11/13/18).

33. Cardullo filed an amended complaint on January 24, 2019, seeking payment from Mr. DiBella, DiBella General Contractors, DiBella & Sons, and DiBella Construction for the unpaid balance for gas received; a loan of \$40,000; and money loaned via credit card advances. (Amended Complaint, Dkt. at 1/24/19).

34. On September 12, 2019, Mr. DiBella filed for personal bankruptcy. Trial Tr. at 62:3-5 (DiBella testimony); Ex. P-9 at 88 (United States Bankruptcy Court for the Eastern District of Pennsylvania in re: Michael P. DiBella CNo. 19-15674 Certified Copy of Docket Entries).

35. Cardullo & Sons was listed as an unsecured creditor for an unknown amount in schedules filed on Mr. DiBella's behalf and verified by him in his bankruptcy proceeding. Trial Tr. at 63:8-23 (DiBella testimony); Ex. P-8 at 60, 87 (United States Bankruptcy Court for the Eastern District of Pennsylvania in re: Michael P. DiBella CNo. 19-15674 Certified Copy of Filing of September 26, 2019 (Schedules)).

36. The disputed box was left unmarked for the debt owed to Cardullo & Sons. Trial Tr. at 63:8-23 (DiBella testimony); Ex. P-8 at 60 (United States Bankruptcy Court for the Eastern District of Pennsylvania in re: Michael P. DiBella No. 19-15674 Certified Copy of Filing of September 26, 2019 (Schedules)).

37. DiBella General Contractors also filed for bankruptcy. Trial Tr. at 49:6-9 (Cardullo testimony); Trial Tr. at 62:3-5 (DiBella testimony).

38. A bench trial on Cardullo's claims was held on April 3, 2024.

CONCLUSIONS OF LAW

I. DIBELLA GENERAL CONTRACTORS BREACHED ITS ORAL CONTRACT WITH CARDULLO & SONS

A. Cardullo & Sons Established a Contract with DiBella General Contractors for Fuel Delivery, Which DiBella General Contractors Breached

39. While the Amended Complaint does not straightforwardly assert recognized causes of action, no preliminary objections were filed and Cardullo appears to be asserting claims for breaches of oral contracts.

40. To establish a breach of contract, a plaintiff must show "[(1)] the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages." *Discover Bank v. Booker*, 259 A.3d 493, 495 (Pa. Super. 2021).

41. "[I]t is axiomatic that a contract may be manifest orally, in writing, or as an inference from the acts and conduct of the parties." *Id.* at 495-496.

42. "In cases involving contracts wholly or partially composed of oral communications, the precise content of which are not of record, courts must look to the surrounding circumstances and course of dealing between the parties in order to ascertain their intent." *United Env't Grp., Inc. v. GKK McKnight, LP*, 176 A.3d 946, 963 (Pa. Super. 2017).

43. "[[A]n account stated] consists in an agreement to, or acquiescence in, the correctness of the account, so that in proving the account stated, it is not necessary to show the nature of the original transaction, or indebtedness, or to set forth the items entering into the

account.” *David v. Veitscher Magnesitwerke Actien Gesellschaft*, 35 A.2d 346, 349 (Pa. Super. 1944).

44. The ledger constitutes an account stated because monthly invoices were sent to DiBella and were received and acknowledged as correct or accepted without specific comment. Trial Tr. at 23:8-24:8 (Cardullo testimony); Ex. P-1 (Amended Complaint) at ¶ 4.

45. Additionally, the ledger contains a term of 1.5 percent monthly interest or 18 percent annual interest for delayed payments. Ex. P-4 (John Cardullo and Sons Ledger).

46. The debt also is supported by the allegations of the Amended Complaint, to which DiBella responded with only general denials. *See* Pa.R.Civ.P. 1029 (“A general denial or a demand for proof . . . shall have the effect of an admission.”); Amended Complaint, Dkt. at 1/24/19, ¶¶ 2-5; Defendants’ Answer and New Matter to the Amended Complaint, Dkt. at 11/14/22, ¶¶ 2-5.

47. The Court finds credible the testimony of Mr. Cardullo that an oral contract existed between DiBella General Contractors and Cardullo & Sons for the delivery of fuel by Cardullo & Sons and payment by DiBella General Contractors; Mr. DiBella breached the terms of the oral contract with DiBella General Contractors; this resulted in damages to Cardullo & Sons.

B. Applicable Statute of Limitations and Exceptions

48. The applicable statute of limitations for an oral contract is four years, 42 PA. STAT. AND CONS. STAT. ANN. § 5525(3) (West) (“[T]he following actions and proceedings must be commenced within four years: . . . An action upon an express contract not founded upon an instrument in writing.”)

49. Cardullo commenced the case on November 13, 2018. (Commencement of Civil Action, Dkt. at 11/13/18). The applicable statute of limitations would therefore bar any debt incurred before November 13, 2014.

50. Partial payment, however, is an exception that may toll the statute of limitations. Under Pennsylvania law, for a payment on account of a debt to toll the statute of limitations, the burden is on the plaintiff to show that the payment was made, that it was made by the debtor on the very debt upon which the action was brought, and that the debt is identified and its amount fixed expressly or by reference to something from which it can be ascertained. *Brandeis v. Charter Mut. Ben. Ass'n*, 27 A.2d 425, 427 (Pa. Super. 1942).

51. The diesel fuel deliveries began on October 8, 2013, and continued through February 10, 2015. Ex. P-4 (John Cardullo and Sons Ledger).

52. A last payment totaling \$669.81 was made on January 28, 2015. *Id.* at 34.

53. Cardullo & Sons accordingly proved the factors for the partial payment exception to apply. Mr. DiBella made payments on an identifiable debt, which is the subject of this action, the amount is ascertainable, and Mr. DiBella made a payment on the debt less than four years before the action was commenced.

54. Thus, the statute of limitations is not a bar to recovery on this debt and DiBella General Contractors is liable to Cardullo & Sons for \$39,836 plus 1.5 percent monthly interest from January 28, 2015.¹

¹ Cardullo asserted that all defendants are liable to both Mr. Cardullo and Cardullo & Sons for the fuel-associated debt. Plaintiffs, however, provided no evidence that Mr. Cardullo personally provided the fuel or received payment for it, and also provided no evidence that any defendant other than DiBella General Contractors was responsible for this debt.

**II. BREACH OF ORAL CONTRACT AND LIABILITY FOR THE LOANS
OF \$40,000, \$2,750, AND \$16503.88**

**A. Mr. Cardullo Established a Contract with DiBella General Contractors
for a Loan of \$40,000, which DiBella General Contractors Breached**

55. Mr. Cardullo has proven that DiBella General Contractors accepted a \$40,000 loan from him, agreed to repay it, and failed to do so.

56. DiBella General Contractors is liable to Mr. Cardullo for \$40,000 plus the statutory annual interest rate of six percent.²

**B. Cardullo & Sons Established a Contract with DiBella General Contractors
for a loan of \$2,750, which DiBella General Contractors Breached**

57. On July 28, 2017, Mr. Cardullo wrote another check on behalf of DiBella General Contractors in the amount of \$2,750 payable to Service Energy. Ex. P-6 (John Cardullo and Sons Check #3593); Trial Tr. at 29:8-30:11 (Cardullo Testimony).

58. There is an enforceable oral contract between Mr. Cardullo and DiBella General Contractors for the \$2,750 check paid to Service Energy.

59. DiBella General Contractors is liable to Cardullo & Sons for \$2,750 plus the statutory annual interest of six percent.³

² Cardullo asserted that all defendants are liable to both Mr. Cardullo and Cardullo & Sons for the \$40,000 loan. Cardullo, however, provided no evidence that any defendant other than DiBella General Contractors was responsible for this debt and provided no evidence that Cardullo & Sons loaned this money.

³ Cardullo asserted that all defendants are liable to both Mr. Cardullo and Cardullo & Sons for the \$2,750 check. Cardullo, however, provided no evidence that any defendant other than DiBella General Contractors and Mr. DiBella was responsible for this debt and provided no evidence that Mr. Cardullo loaned this money personally.

C. Mr. Cardullo Loaned \$16,503.55 to Mr. DiBella and DiBella General Contractors

60. Mr. Cardullo established that there was an oral contract for the credit card advances totaling \$16,503.55 that Mr. Cardullo paid on behalf of Mr. DiBella's business and for Mr. DiBella personally.

61. Therefore, DiBella General Contractors and Mr. DiBella are liable to Mr. Cardullo for the credit card advances totaling \$16,503.55 plus the 18 percent annual interest rate for Mr. Cardullo's credit card. Ex. P-1 (Amended Complaint) at ¶¶ 22-23; Ex. P-2 (Answer) at ¶¶ 22-23; *see* Pa.R.Civ.P. 1029 ("A general denial or a demand for proof . . . shall have the effect of an admission.").⁴

III. NO SUCCESSOR LIABILITY FOR DIBELLA & SONS

62. Cardullo argues that DiBella & Sons is subject to successor liability for the debts of DiBella General Contractors. *See* Plaintiffs' Proposed Conclusions of Law at ¶¶ 66-69.

63. "In Pennsylvania, it is a general principle of corporation law that a purchaser of a corporation's assets does not, for such reason alone, assume the debts of the selling corporation, unlike a purchaser of the corporation's stock." *Smith v. A.O. Smith Corporation*, 270 A.3d 1185, 1192 (Pa. Super. 2022).

64. "However, exceptions to this general rule against successor liability have been recognized where: (1) the purchaser expressly or implicitly agreed to assume liability, (2) the transaction amounted to a consolidation or a de factor merger, (3) the purchasing corporation was merely a continuation of the selling corporation, (4) the transaction was fraudulently entered into

⁴ Cardullo asserted that all defendants are liable to both Mr. Cardullo and Cardullo & Sons for the \$16,503.55 credit card advance. Cardullo, however, provided no evidence that any defendant other than DiBella General Contractors and Mr. DiBella was responsible for this debt and provided no evidence that Cardullo & Sons loaned this money.

to escape liability, or (5) the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation." *Id.*

65. To reach the question of whether an exception to the rule against successor liability applies, there must first be a purchasing or acquiring business. *Carpenter v. Fed. Ins. Co.*, 637 A.2d 1008, 1012 (Pa. Super. 1994) ("It is the general rule in this Commonwealth that the sale or transfer of a business' assets to a successor entity does not automatically include the liabilities of the predecessor."). In other words, there must be a successor.

66. Cardullo failed to establish successor liability because they introduced no evidence into the record that DiBella & Sons purchased or acquired any assets of DiBella General Contractors.

67. While Cardullo established that the telephone number, customer base, ownership, and business activities of DiBella & Sons and DiBella General Contractors remained the same, this falls short of establishing successor liability under the mere continuation theory.

68. Thus, Cardullo are not entitled to judgment against DiBella & Sons.

CONCLUSION

69. For all the foregoing reasons, the Court finds for:

- a. plaintiff Cardullo & Sons and against defendant DiBella General Contractors on the breach of contract claim for the diesel fuel deliveries in the amount of \$39,836.00 plus 1.5 percent monthly interest since January 28, 2015 (\$109,748.18);
- b. plaintiff Mr. Cardullo and against DiBella General Contractors on the breach of contract claims for the \$40,000 check in the amount of \$40,000 plus the statutory annual rate of six percent since May 15, 2016 (\$60,200.00);

- c. plaintiff Cardullo & Sons and against defendant DiBella General Contractors on the breach of contract claims for the \$2,750 check in the amount of \$2750 plus the statutory annual rate of six percent since July 24, 2017 (\$3,946.25); and
- d. plaintiff Mr. Cardullo and against defendants Mr. DiBella and DiBella & Sons on the \$16,503.55 credit card advances plus the credit card annual interest rate of 18 percent since October 2017 (\$37,298.02).

70. The Court holds that the record evidence does not establish that defendant DiBella & Sons, Inc. is liable under the theory of successor liability.

BY THE COURT:

Asse 

ABBE F. FLETMAN, J.

11/27/24