

SPARKS
v.
PROGRESSIVE AMERICAN INSURANCE CO.
(La. App. 1987)

Daniel M. Sparks (hereafter Sparks) appeals the judgment of the trial court which dismissed Dallas Charles Broussard (hereinafter Broussard) and Elk's Concrete Products, Inc. (hereinafter Elk's) from his damage claim for injuries which resulted from a rear end collision. Sparks sued D. Charles Broussard Trucking Company, Inc. (hereinafter Broussard Trucking), its insurer, Progressive American Insurance Company (hereinafter Progressive), Broussard, Ulysses Hebert (hereafter Hebert), the driver of the tandem truck, and Elk's. The trial court determined Broussard Trucking was the lessee of the tandem truck and, as Hebert's employer, was responsible in damages for the rear and collision. Therefore, Broussard Trucking and its insurer were cast in judgment and ordered to pay Sparks medical expenses of \$17,226.16, general damages of \$150,000 and property damages of \$2,294.30. Progressive's liability was limited to its \$100,000 policy limits for bodily injury. Sparks appeals, contending trial court erred in finding . . . Dallas Charles Broussard, individually, was not legally liable for the negligent actions of Ulysses Hebert. We affirm.

FACTS

Elk's manufactures various building materials, principally concrete blocks, at its Lafayette plant. Broussard is Elk's production manager. One of the chief components of the products made by Elk's is aggregate, which is simply expanded clay. For many years Big River Industries, Inc., the only nearby supplier, shipped aggregate to Elk's either by rail or truck. In January 1982 Broussard suggested to Elk's that it would be mutually advantageous to allow him to purchase a truck and haul the aggregate to the Elk's plant. On approximately February 1, 1982, he purchased a truck and began hauling aggregate from Big River to Elk's. Thereafter Broussard hired Hebert to haul the aggregate, and the record indicates he started driving the truck on February 11, 1982. On February 15, 1982, the Louisiana Secretary of State issued a certificate of incorporation of D. Charles Broussard Trucking Company, Inc. effective retroactively to February 12, 1982, the date of filing. The accident in th[is] case . . . occurred on February 17, 1982, when Hebert, driving Broussard's truck which was leased to Broussard Trucking, rear ended Spark's 1980 Cadillac on Interstate 10.

BROUSSARD---INDIVIDUAL LIABILITY

Sparks argues that even though Broussard Trucking was incorporated, Broussard was individually liable for Hebert's negligence.

A corporation is a distinct legal entity from those persons who compose it. LSA-C.C. Art. 435. Only exceptional circumstances warrant the radical remedy of piercing the corporate veil. *Chef's Fried Chicken, Inc. v. Bull McWood, Inc.*, 459 So.2d 1371 (La.App. 3rd Cir.1984), and they must be so strong as to indicate that the corporation and shareholder operated as one. *Kingsman Enterprises v. Bakerfield Electric Co.*, 339 So.2d 1280 (La.App. 1st Cir.1976).

Sparks asserts five reasons to impose liability personally on Broussard: 1) Broussard purchased the truck and leased it to the corporation prior to the beginning of corporate existence; 2) Broussard personally hired Hebert and Hebert began hauling operations prior to the formation of the corporation; 3) Broussard Trucking never answered Spark's lawsuit; 4) insurance was issued on the truck prior to Broussard Trucking's corporate existence; and 5) Broussard Trucking has held no corporate meetings since the accident.

We have analyzed the record in light of the reasons asserted by Sparks and conclude that the trial court correctly found no personal liability on Broussard's part. The corporation was legally formed prior to the accident and, though Hebert began work prior thereto, it was uncontroverted that his employment was ratified by the payment to him through a corporate bank account. Since Broussard was the chief executive officer under the corporate bylaws, he certainly was authorized to hire Hebert to work for the corporation. The same analysis is true for the lease of the truck: though the corporation was still being planned when it became the lessee of the truck, its use of the vehicle subsequent to the date of corporate existence serves a ratification of that action. The issuance of insurance coverage prior to incorporation furthermore presents no assistance to Sparks' argument; Progressive stipulated coverage for the vehicle and stated it issued the policy to Broussard Trucking Service. Lastly, we find it of no moment to an adjudication of this issue that Broussard Trucking did not file an answer to Sparks' law suit. The record reflects that Broussard Trucking was served with the petition on January 26, 1983, and never filed responsive pleadings; despite this, Broussard Trucking has not objected to its adjudication of liability. Notwithstanding, we cannot impute individual liability to Broussard because of this.

For the foregoing reasons, we affirm the judgment of the trial court. Costs of this appeal are assessed to Sparks.