

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL UNION 159,

Plaintiff,

v.

MEMORANDUM AND ORDER
05-C-613-S

CIRCUIT ELECTRIC, L.L.C., TRINITY
TECHNOLOGIES, L.L.C., PETER BUCHANAN,
PATRICK McFALLS, and SCOTT BRAUN,

Defendants.

Plaintiff International Brotherhood of Electrical Workers Local Union 159 commenced this action alleging, among other things, that defendant Trinity Technologies, L.L.C. was established by defendant Circuit Electric, L.L.C. as its alter ego in order to avoid the obligations of the collective bargaining agreement between plaintiff and Circuit Electric. The alter ego question was tried to a jury which returned a verdict in plaintiff's favor. The matter is presently before the Court on defendants' motion for a new trial on that issue pursuant to Rule 59, Fed. R. Civ. P. The sole basis for the motion is the contention that the Court's jury instruction was inadequate. Also before the Court is plaintiff's motion to recover its attorney fees on the basis that defendants position was meritless.

BACKGROUND

At the time this action was commenced defendant Circuit was no longer employing electricians or performing work covered by the union contract. Plaintiff sought to impose the contract obligations on defendant Trinity arguing that it was the continuation of Circuit, formed to avoid the contract obligations. Defendants took the position before and during trial that Trinity was established for business reasons unrelated to any desire to avoid Circuit's obligations under the union contract.

The Court provided the following special verdict question and jury instruction to the jury on the alter ego issue:

1. Did Defendant Circuit Electric, LLC establish Trinity Technologies, LLC as its alter ego in order to avoid the obligations of its collective bargaining agreement?

ANSWER:

_____ (Yes or no)

ALTER EGO DOCTRINE

Plaintiff claims that defendant Trinity Technologies is the alter ego of defendant Circuit Electric and therefor bound by Circuit's collective bargaining agreement with the union. Defendant Trinity is the alter ego of defendant Circuit if Trinity is the disguised continuance of Circuit, created to avoid the obligations of a collective bargaining agreement.

In determining whether Trinity is a disguised continuance of Circuit you should consider whether the following are substantially identical between the entities: ownership, management, business purposes, equipment, type of customers, and operations.

You should also consider the extent to which the two entities intermingled their assets and affairs and whether they dealt with each other at arms length typical of unrelated entities. It is not necessary for you to find each of the factors present in order to find that Trinity is the alter ego of Circuit. No single factor standing alone should be considered dispositive of your inquiry.

You must decide whether Trinity was established to avoid the obligations of Circuit's collective bargaining agreement with the union. You may find intent to avoid the collective bargaining agreement obligations from direct evidence or from the circumstances surrounding the creation of Trinity. Plaintiff does not have to prove that avoidance of the Collective bargaining agreement was the only reason Trinity was established.

MEMORANDUM

A new trial may be granted pursuant to Rule 59 if the verdict is against the weight of the evidence or for some other reason the trial was not fair to the moving party. Forrester v. White, 846 F.2d 29, 31 (7th Cir. 1988). Where a party is requesting a new trial based on erroneous jury instructions, the party must show that: 1) the instructions did not adequately state Seventh Circuit law, and 2) the party was prejudiced by the error because the jury was likely confused or misled. Susan Wakeen Doll Co., Inc. v. Ashton Drake Galleries, 272 F.3d 441, 452 (7th Cir. 2001). An erroneous jury instruction cannot be found to be prejudicial unless considering the instructions as a whole, along with all of the

evidence and arguments, the jury was misinformed about the applicable law. Id.

In this case defendants can show neither element. The critical language of the instruction is lifted directly from the controlling Seventh Circuit precedent: "What is essential for the application of the alter ego doctrine, though, is a finding of 'the existence of a disguised continuance of the former business entity or an attempt to avoid the obligations of a collective bargaining agreement....'" Trustees of Pension, Welfare and Vacation Fringe Ben. Funds of IBEW Local 701 v. Favia Elec. Co., Inc., 995 F.2d 785, 789 (Quoting Int'l Union of Operating Engineers v. Centor Contractors, 831 F.2d 1309, 1312 (7th Cir. 1987)). The question and instruction asked of the jury conforms precisely to this teaching.

Defendants object that the instruction did not sufficiently emphasize the importance of motive or intent. Yet the special verdict question and the instruction, particularly the final paragraph, specifically emphasize intent to avoid union obligations: "You may find intent to avoid the collective bargaining agreement obligations from direct evidence or from the circumstances surrounding the creation of Trinity." Thus, intent is central to the entire inquiry submitted to the jury. The question itself: "Did Defendant Circuit Electric, LLC establish Trinity Technologies, LLC as its alter ego in order to avoid the

obligations of its collective bargaining agreement?" necessarily focuses the jury on the plaintiff's purpose in forming Trinity. The "substantial or motivating factor" language proffered by defendants is found nowhere in the relevant precedent.

The jury was certainly not misled or deceived in any way as to the importance of defendants intent and purpose in forming Trinity. Given the form of the question and instruction, it is inconceivable that the jury would have answered "yes" to the verdict question had it not found that defendants formed Trinity with the intent to avoid the collective bargaining agreement. Furthermore, the evidence at trial was extremely persuasive on that point. Accordingly, defendants have failed to demonstrate either that the instruction does not accurately state Seventh Circuit law on the issue or that the jury was in any way led to believe that intent was not central to the question before it.

There is no statutory provision authorizing attorneys fees in a § 301 action. Accordingly, fees are only recoverable if the defendant's position was frivolous - advanced in bad faith rather than to win. Miller Brewing Co. v. Brewery Workers Local Union No. 9, AFL-CIO, 939 F.2d 1159, 1167-68 (7th Cir. 1984). Plaintiff discusses in some detail various Seventh Circuit dicta concerning whether the standard for recovering fees might be the slightly more lenient "without justification" rather than "frivolous." Because defendants' position was neither frivolous nor without

justification, the request for fees must be denied and the need to distinguish between the two standards is unnecessary.

Circuit Electric had ceased operations by the time of the arbitration proceedings. Defendants' consistent position has been that defendant Trinity was formed for business reasons other than the avoidance of the Circuit union contract obligations. That underlying issue was central to whether the arbitration award could be enforced in any meaningful way. See Memorandum and order of March 10, 2006 at 10. As the Court discussed in some detail in its summary judgment memorandum, there was genuine factual dispute on the issue. Id. at 10-14. While the jury ultimately resolved this issue in plaintiff's favor there is simply no basis to conclude that pursuit of the defense was without justification or frivolous.

ORDER

IT IS ORDERED that defendants' motion for a new trial is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for attorneys fees is DENIED.

Entered this 6th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge