

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 23, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

Nos. 97-0395 & 97-0821

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

97-0395

JOHN J. SURINAK AND TIMOTHY TYRE,

PLAINTIFFS-APPELLANTS,

V.

JOHN KAISHIAN,

**DEFENDANT-THIRD-
PARTY PLAINTIFF-RESPONDENT,**

**CIGNA INSURANCE CO., MARYLAND CASUALTY CO.,
NORTHWESTERN NATIONAL INSURANCE CO.,
HERITAGE INSURANCE CO., EDWARD C. POBLOCKI,
WILLIAM POBLOCKI, JAMES POBLOCKI AND
SOUTHRIDGE BANK OF GREENDALE, N/K/A M&I
MARSHALL & ILSLEY BANK,**

THIRD-PARTY DEFENDANTS.

97-0821

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THIRD-PARTY DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. John J. Surinak and Timothy E. Tyre appeal from the trial court's grant of summary judgment dismissing their cause of action against John Kaishian, which arose out of their purchase of environmentally contaminated land from the bankruptcy trustee of a corporation with which Kaishian had formerly been associated. Surinak and Tyre sued Kaishian to recover the costs of clean-up, asserting claims of nuisance, negligence and strict liability for the contamination. Surinak and Tyre claim that the trial court erred in concluding that: (1) Kaishian did not have an ownership interest in the land at the time it became contaminated; and (2) the undisputed facts established that Kaishian was not sufficiently involved in the operation of the corporation to impose liability on him. We affirm.

I. BACKGROUND

In 1989, Surinak and Tyre purchased property located at 3238 West Pierce Street, Milwaukee. The property was sold by the bankruptcy trustee who was disposing of the assets of Aqua-Matic Pier, Incorporated. In 1993, Surinak and Tyre discovered that the property had been contaminated with a hazardous substance, tricholorethene. Aqua-Matic had used tricholorethene as a cleaning agent for its products in the late 1970s.

The property on which Aqua-Matic was located had been purchased by Melvin Schmidt in 1971, pursuant to a land contract. On March 29, 1975, Schmidt assigned his interest in the land contract to the Southridge Bank of Greendale. Throughout the 1970s, Kaishian made several loans to Schmidt for Aqua-Matic. To secure those loans, Schmidt transferred a majority share of stock in Aqua-Matic to Kaishian in 1977; he also assigned his interest in the land contract for the property to Kaishian in 1978.

Kaishian was not involved in the manufacturing operations of Aqua-Matic. Kaishian did, however, provide financial assurances to an Aqua-Matic customer on at least one occasion, in 1978. In August of 1982, Kaishian also used his majority-shareholder status to temporarily assume the position of president of Aqua-Matic and fire Schmidt's son from Aqua-Matic after learning that he was misappropriating Aqua-Matic funds. In order to resolve this dispute, an agreement was reached in October of 1982, whereby Schmidt and his son paid money to Kaishian, and Kaishian transferred over to them his shares of Aqua-Matic stock and his interest in the land contract.

II. DISCUSSION

Surinak and Tyre assert that Kaishian is liable for the costs of cleaning up the contaminated property by virtue of both his prior status as an officer of Aqua-Matic, and his prior status as an owner of the property. They argue that the trial court improperly granted summary judgment because, they claim, the trial court erred in concluding that Kaishian did not have an ownership interest in the property by virtue of the assignment of the land contract, and because there is a material issue of fact as to whether Kaishian participated in the operations of Aqua-Matic to a degree that would subject him to liability.

Summary judgment allows controversies to be settled without trial where there are no disputed material facts and only legal issues are presented. *See Preloznik v. City of Madison*, 113 Wis.2d 112, 115–116, 334 N.W.2d 580, 582–583 (Ct. App. 1983). On review of an order for summary judgment, we employ the same methodology as the trial court. *See Green Spring Farms v. Kersten*, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). If there is no genuine issue as to any material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the trial court order granting summary judgment. *See id.*; § 802.08(2), STATS.

Kaishian argued in his summary judgment brief, and the trial court concluded, that Kaishian could not be held liable by virtue of his alleged ownership status because Schmidt's assignment to Kaishian of his land-contract interest was invalid, and thus Kaishian never had any ownership interest in the property. The trial court reasoned that Schmidt had already assigned his land-contract interest to the Southridge Bank, and, therefore, he had no further interest to assign to Kaishian.

Surinak and Tyre assert that the assignment to the bank was made solely in order to provide security for a debt, and that the bank's security interest in the land contract did not inhibit Schmidt's ability to assign his interest in the land contract to Kaishian. Although referring to tax-stamp records in connection with the transactions transferring the property, Surinak and Tyre provide no authority for the proposition that Schmidt retained a transferable interest in the land contract after he had assigned it to the bank as security for a debt. We thus reject their argument. See *Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (reviewing court need not address "amorphous and insufficiently developed" arguments); *State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered."). Thus, we agree with the trial court that Surinak and Tyre have not raised genuine issues of material fact supporting their view that Kaishian was an owner of the land.

The trial court also concluded that there was no genuine issue of material fact regarding Kaishian's degree of participation in the operations of Aqua-Matic, and that Kaishian's participation was not sufficient to subject him to liability for the environmental contamination. "[A] corporate officer is personally liable for violations of Wisconsin's solid and hazardous waste laws committed by the corporation if the officer is responsible for the overall operation of the corporation's facility which violated the law." *State v. Rollfink*, 162 Wis.2d 121, 125, 475 N.W.2d 575, 576 (1991).

We agree with the trial court's conclusion that the undisputed facts establish that Kaishian was not responsible for the overall operation of Aqua-Matic. The only evidence that Surinak and Tyre cite regarding Kaishian's participation in the operations of Aqua-Matic is the fact that Kaishian had once

“personally guaranteed” the payment of an invoice to one of Aqua-Matic’s suppliers; and that Kaishian acted as president of the corporation in order to remove Schmidt’s son. Surinak and Tyre assert that this involvement with the operations of Aqua-Matic was sufficient to create an issue of fact as to whether Kaishian was responsible for the overall operations of Aqua-Matic. We disagree. In light of the other undisputed evidence establishing that Kaishian was not involved in the daily operations of Aqua-Matic, the evidence of his limited involvement in Aqua-Matic’s financial concerns did not create a genuine issue of material fact to establish liability under *Rollfink*. To the contrary, the undisputed evidence shows that Kaishian had only limited involvement with Aqua-Matic, in order to protect his financial investment.¹

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

¹ The materials considered on the summary judgment motion included portions from the depositions of Kaishian and of Schmidt’s son. Kaishian testified in his deposition that Schmidt and his son ran Aqua-Matic’s daily operations without input from Kaishian. Schmidt’s son also testified in his deposition that he and his father controlled the operations of Aqua-Matic, that Kaishian was not involved in Aqua-Matic’s daily operations, that Kaishian had very little involvement in any of Aqua-Matic’s operations, and that Kaishian infrequently visited Aqua-Matic’s business site. Schmidt’s son also testified that Kaishian was not involved in decisions to purchase equipment.

