STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: October 25, 2024)

GREAT POINT, INC.	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. KC-2019-0705**
	:	
NE FIBERS, LLC,	:	
US GREENFIBER, LLC, AND	:	
APPLEGATE GREENFIBER	:	
HOLDINGS, LLC,	:	
Defendants.	:	

DECISION

LICHT, J. Plaintiff Great Point, Inc. (Great Point) and Defendant Applegate Greenfiber Holdings, LLC (Applegate) have filed cross-motions for summary judgment. Great Point asserts Applegate is liable as the successor-in-interest for its breach-of-contract claim against Defendants NE Fibers, LLC and US Greenfiber, LLC, owned by non-party parent company Greenfiber Holdings, LLC (collectively, the Sellers). Additionally, Great Point has moved pursuant to Rule 25(c) of the Superior Court Rules of Civil Procedure to join US Greenfiber, LLC, and Greenfiber Canada ULC (collectively, the Purchasers) as successors-in-interest to the Sellers. The Court has jurisdiction over this action under G.L. 1956 §§ 8-2-13 and 8-2-14.

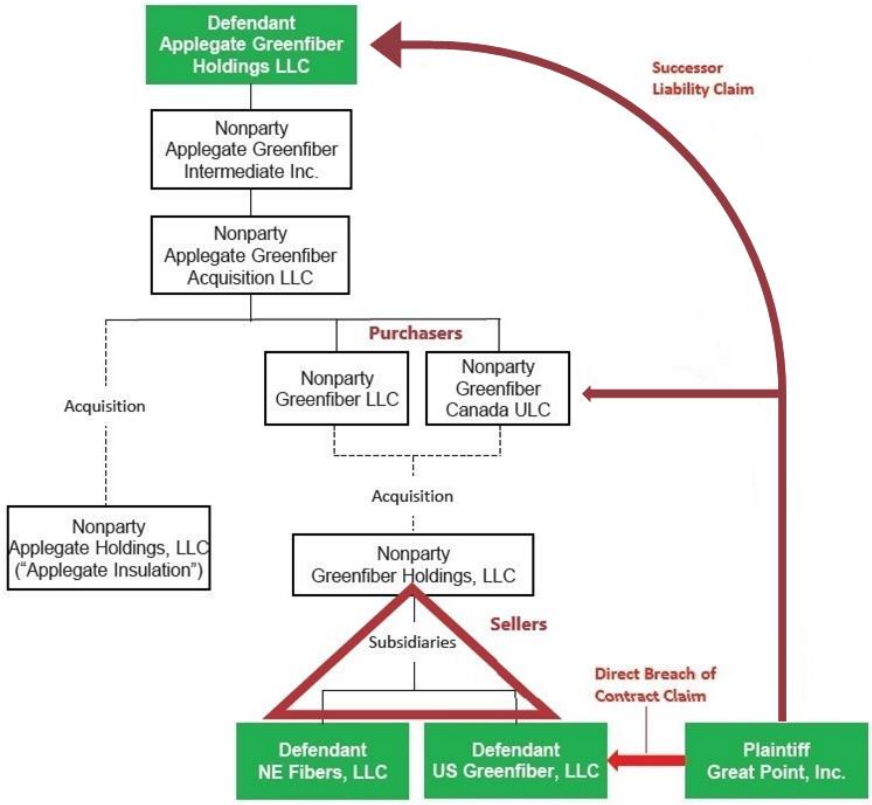
I

Facts and Travel

These motions stem from a breach-of-contract action filed by Great Point against Sellers NE Fibers, LLC and US Greenfiber, LLC. (Second Am. Compl.; Agreed Statement of Facts (ASOF) ¶ 3.) Great Point alleges that Sellers NE Fibers, LLC and US Greenfiber, LLC failed to

pay it several commissions on sales it performed pursuant to a contract.[1] (Second Am. Compl. ¶¶ 29-36.) Following the close of discovery, Great Point learned that the Sellers had sold all their assets to the Purchasers. (ASOF ¶ 3.) Great Point then amended its complaint to include Applegate as liable for the breach-of-contract claim under the theory that it is the successor-in-interest to the Sellers. (Second Am. Compl. ¶ 40; Pl.'s Mem. in Supp. of Mot. for Summ. J. (Pl.'s Mem.) 1.) The following facts are gleaned from the parties' Agreed Statement of Facts.

Applegate is the "indirect" parent company of the Purchasers. (ASOF ¶ 2.) The chart below is illustrative of Applegate's corporate structure and the relationships amongst the parties in this action:



[1] The parties have stipulated that the damages arising from Great Point's breach-of-contract claim amount to $977,434.40. (ASOF ¶ 16.)

See Def.'s Cross-Mot. for Summ. J. (Def.'s Mem.) 4. On December 31, 2021, the Purchasers entered into a contract with the Sellers to purchase the Sellers' assets. (ASOF ¶ 3.) Prior to this sale, the Sellers were in the business of producing and selling cellulose-based insulation products and hydroseeding mulches. *Id*. ¶ 5. The sale of assets included everything the Purchasers required to continue the Sellers' business operations, including "inventory, equipment, real property, contracts, accounts receivable, intellectual property, licenses, trade secrets, proprietary information, and good will, among other assets." *Id*. ¶¶ 6-7. However, the sale excluded liability for any action or suit, such as Great Point's breach-of-contract claim. *Id*. ¶ 12. In consideration, the Purchasers paid the Sellers $48.5 million in cash and stock of Applegate. *Id*. ¶ 9. Pursuant to the sale agreement, $12,670,296.59 of the consideration paid was allocated to pay the Sellers' debts. *Id*. ¶ 10. Yet, in their Memorandum in Opposition to Great Point's current motion, the Sellers assert that, after closing, they still owed their creditors more than $10 million. (Defs. NE Fibers, LLC and US Greenfiber, LLC's Mem. Opp'n to Summ. J. 2.)

Additionally, the Purchasers agreed to offer employment to the Sellers' employees, and two members of the Sellers' executive team assumed leadership roles with the Purchasers. (ASOF ¶¶ 13(a), 15(a).) The Purchasers then continued the Sellers' business from the same location, serving the same customer base, selling the same products, and using the same vendors as the Sellers. *Id*. ¶¶ 15(e)-(j). The Purchasers also have continued to use the Greenfiber name, causing the Sellers to agree to change their branding to avoid confusion and to remove their association with the Greenfiber branding. *Id*. ¶¶ 13(c), 15(c). Since the sale, the Sellers have ceased to conduct business operations. *Id*. ¶ 15(d). In connection with the sale, a joint press release by the Purchasers and Sellers described it as a "merger." *Id*. ¶ 14.

Both Great Point and Applegate move for summary judgment, respectively, solely on the issue of whether Applegate and the Purchasers are liable as successors-in-interest in Great Point's claim against the Sellers. (Pl.'s Mem. 1; Def.'s Mem. 1.) Subsequent to the filing of those motions, Great Point submitted a motion to join the Purchasers in the action on the same bases of successor liability it applied in its motion for summary judgment. (Mot. to Join.) Applegate and the Purchasers have objected to that motion and have incorporated the arguments Applegate presented in its motion for summary judgment. (Defs.' Rule 25 Obj.)

II

Rule 25(c) Motion

A

Standard of Review

Rule 25(c) provides: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." When a Rhode Island rule of Civil Procedure is substantially similar to its federal counterpart, Rhode Island courts will look to decisions regarding the federal rule for guidance. *Greensleeves, Inc. v. Smiley*, 942 A.2d 284, 290 (R.I. 2007). "A 'transfer of interest' in a corporate context occurs when one corporation becomes the successor to another by merger or other acquisition of the interest the original corporate party had in the lawsuit." *Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 71 (3d Cir. 1993). "Because joinder or substitution under Rule 25(c) does not ordinarily alter the substantive rights of parties but is merely a procedural device designed to facilitate the conduct of a case, a Rule 25(c) decision is generally within the district court's discretion." *Id*. at 71-72.

"In contrast to Rule 56 . . . Rule 25(c) does not specify a method for deciding motions or a

standard to use in determining whether motions can be decided on the papers." *Id*. at 72. "[W]here competing affidavits focus on a material issue, a . . . court may not decide factual issues arising in the context of Rule 25(c) motions simply by weighing the sworn affidavits against one another." *Id*. If granting the motion effectively would impose liability on the successor, "the court must first determine whether the affidavits 'show that there is no genuine issue as to any material fact and that the moving party is entitled to [joinder or substitution] as a matter of law.'" *Id*. (quoting Fed. R. Civ. P. 56(c)).

B

Analysis

1. Mere Continuation

Great Point first argues that the Purchasers are the successors-in-interest to the Sellers under the mere continuation theory, and, therefore, they must be joined to the action. *See* Pl.'s Mot. to Join 3. Although, "[g]enerally, a company that purchases the assets of another is not liable for the debts of the transferor company," the Rhode Island Supreme Court has held that a corporation may be a successor-in-interest after it acquires the assets of a former corporation, under a mere continuation basis, when:

> "(1) there is a transfer of corporate assets; (2) there is less than adequate consideration; (3) the new company continues the business of the transferor; (4) both companies have at least one common officer or director who is instrumental in the transfer; and (5) the transfer renders the transferor incapable of paying its creditors because it is dissolved either in fact or by law." *H.J. Baker & Bro., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989) (citing *Jackson v. Diamond T. Trucking Co.*, 241 A.2d 471, 477 (N.J. 1968)).

Additional factors to be considered include the "common identity of officers, directors, and stockholders and the continued use of the same office space and service to the same client base." *Id*. (internal citations omitted). "The *Baker* court was careful to note that the 'mere continuation'

inquiry is multifaceted, and normally requires a cumulative, case-by-case assessment of the evidence by the factfinder." *Ed Peters Jewelry Co. v. C & J Jewelry Co., Inc.*, 124 F.3d 252, 269 (1st Cir. 1997).

In *Baker*, the plaintiff sought to recover from Orgonics a judgment obtained in New York for a breach-of-contract claim. *Baker*, 554 A.2d at 198. Additionally named as a defendant was James O'Donnell (O'Donnell)—the past president and major stockholder of Orgonics—who also was doing business as The Homestead. *Id*. The plaintiff argued that O'Donnell, doing business as The Homestead, was liable for the judgment against Orgonics as its successor-in-interest because Orgonics had transferred its assets to O'Donnell and The Homestead. *Id*. at 204. Our Supreme Court noted the general rule that a company which acquires the assets of another is not typically liable for the debts of the transferor, but then went on to adopt the five non-exhaustive factors of the mere continuation exception listed above. *Id*. at 205. In applying those factors to the facts of the case, the Court stated:

> "[W]e are convinced that the record supports a conclusion that The Homestead, having absorbed the business and property of Orgonics, was a mere continuation of that corporation. The record establishes that O'Donnell was a principal officer in both entities. Even though the form of the organization changed from a corporation to a sole proprietorship, the management remained substantially the same. In addition, both companies sold virtually identical 38–percent–nitrogen products. The Homestead operated from the same manufacturing plant as Orgonics under a similar leasing arrangement with Fezido, Inc. Many of the original employees continued working for The Homestead and, in fact, were initially paid with Orgonics's checks and covered under Orgonics's workers' compensation plan. Because we exercise our right to make an independent determination, we find that the evidence strongly supports a 'mere continuation' theory[.]" *Id*.

Notably, the Court did not pass on whether adequate consideration was paid for the asset sale. *See id*. Instead, the Court determined that The Homestead was the successor-in-interest to Orgonics because (1) it received Orgonics' assets, (2) shared a principal officer with Orgonics, (3)

management of the two companies remained the same, (4) both companies sold the same product, (5) it operated from the same manufacturing plant as Orgonics with a similar leasing arrangement, and (6) The Homestead employed the same workers that were formerly employed by Orgonics, who were paid with Orgonics' checks and received benefits under Orgonics' workers' compensation plan. *Id*.

In the instant motions, the parties have stipulated to facts surrounding the asset transfer between the Sellers and Purchasers.[2] *See generally* ASOF. Those facts show there was a transfer of assets between the Purchasers and the Sellers, meeting the first factor of the mere continuation theory. *Id*. ¶ 7.The Court will discuss the second factor below and will turn first to the other factors.

The Court is satisfied that the Purchasers continued the business of the Sellers, which meets the third factor of the *Baker* analysis. *See Baker*, 554 A.2d at 205; *see also Ed Peters Jewelry Co.*, 124 F.3d at 272 ("Among the considerations pertinent to the business continuity inquiry are: (1) whether the divesting and acquiring corporations handled identical products; (2) whether their operations were conducted at the same physical premises; and (3) whether the acquiring corporation retained employees of the divesting corporation."); *Asea Brown BOVERI, et al. v. ALCOA FUJIKURA LTD., et al.*, No. PC-02-1084, 2007 WL 1234523, at *33 (R.I. Super. Apr. 11, 2007) ("The mere continuation test 'is not the continuation of the business operation but the continuation of the corporate entity.'") (internal quotation omitted); *Bagin v. IRC Fibers Co.*, 593 N.E.2d 405, 407 (Ohio Ct. App. 1991) ("The gravamen of the 'mere continuation' exception is

[2] Notably, Great Point and Applegate stipulated to the ASOF originally for the purpose of the cross-motions for summary judgment, prior to the filing of the Rule 25(c) motion for joinder. *See* ASOF 1. However, both Great Point's motion for joinder and Applegate's objection to it, which was joined by the Purchasers, incorporate their summary judgment arguments that relied on those stipulated facts. *See* Pl.'s Mot. to Join 3-4; *see also* Defs.' Rule 25 Obj. 1. Therefore, the Court will consider the ASOF in adjudicating the motion for joinder.

whether there is a continuation of the corporate entity. Indicia of the continuation of the corporate entity would include the same employees, a common name, the same product, the same plant."). The Court cannot ignore that the assets transferred to the Purchasers included the Sellers' "inventory, equipment, real property, contracts, accounts receivable, intellectual property, licenses, trade secrets, proprietary information, and goodwill," and that those assets were "adequate and sufficient for the continued conduct of the Business after the Closing in substantially the same manner, in all material respects, as conducted by [the . . . Sellers] immediately prior to the Closing." ASOF ¶¶ 6-7. Additionally, the Purchasers have offered employment to all the Seller's employees, they "have continued to operate the physical locations where the [Sellers] historically operated," and "[t]he vast majority, if not all, of the [Sellers'] customers and vendors have become the customers and vendors of the [Purchasers]." *Id*. ¶¶ 15(b), 15(e), 15(f). Further, all of the Sellers' products have been consolidated with the Purchaser's products under the "Greenfiber" name, and "[t]he manufacturing, shipping, advertising, and pricing of the [Sellers'] products is largely unchanged[.]" *Id*. ¶¶ 15(h), 15(g).

Continuing to the fourth factor of the *Baker* analysis, "[t]wo members of the [Sellers'] six person executive leadership team . . . have assumed executive leadership roles with the [Purchasers]." *Id*. ¶ 15(a). As to the fifth factor, the Sellers have represented that at the time of the closing they owed their secured creditors more than $38 million and following the closing they still owed more than $10 million. (Defs. NE Fibers, LLC and US Greenfiber, LLC's Mem. Opp'n to Summ J. 2.) The Sellers have ceased operating their business. (ASOF ¶ 15(d)). Thus, it is unlikely that Great Point could ever recover from the Sellers alone if they are found to be liable for the breach-of-contract claim.

Turning to the second factor, the consideration for the sale was $48,500,000, delivered by

the Purchasers to the Sellers in a combination of cash, seller notes, and Class W Units issued by Applegate. *Id*. ¶ 9. Applegate has provided a detailed expert report that valued the Sellers' company as being worth $25.33 million as of the date of the sale, much less than the $48,500,000 paid. (Millsom Aff., Ex. 1 ¶ 3.) However, as noted above, the Sellers have represented to the Court that they still owed over $10 million to their lenders after the sale closed. (Defs. NE Fibers, LLC and US Greenfiber, LLC's Mem. Opp'n to Summ J. 2.)

Therefore, there is a question of fact as to whether there was adequate consideration paid for the asset transfer. *See Luxliner P.L. Export, Co.*, 13 F.3d at 72. In *Luxliner*, the United States Court of Appeals for the Third Circuit noted that, because joinder under Rule 25(c) is a procedural device to facilitate the conduct of the case and does not ordinarily alter the substantive rights of the parties, "a Rule 25(c) decision is generally within the . . . court's discretion." *Id*. However, in that case, the motion to join the new party came after judgment already had been entered against the original defendant. *Id*. The Third Circuit was rightly concerned about the due process rights of the new party, since granting the motion would effectively impose liability upon it. *Id*. ("[A]t least in a context such as this *in which a decision on a Rule 25(c) motion effectively imposes liability,* the court must first determine whether the affidavits 'show that there is no genuine issue as to any material fact and that the moving party is entitled to [joinder or substitution] as a matter of law.'") (emphasis added) (internal quotation omitted). The posture of this case is entirely different, the Purchasers, if joined, will have the opportunity to challenge liability for the Sellers' alleged breach of contract later in these proceedings.

Nonetheless, Applegate and the Purchasers argue that adequate consideration is a dispositive factor when applying the *Baker* factors, relying on *Brown*, 2007 WL 1234523and on *Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 51 F. Supp. 2d 81, 95 (D.R.I. 1999). (Defs.' Mem.

10-11.) *Brown* was decided on summary judgment and *Peters* decided after a bench trial. The instant motion is simply to join the Purchasers as parties to this action; it is not a motion for summary judgment. Therefore, the Court need not address adequate consideration at this stage. The Sellers have indicated that, at the time of the closing, they owed their subordinated lenders more than $38 million, and, following the closing, they still owed more than $10 million. (Defs. NE Fibers, LLC and US Greenfiber, LLC's Mem. Opp'n to Summ. J 2.) The Sellers have conceded they still owe the creditors an amount that is significantly more than the $977,434.40 in damages Plaintiff has stipulated to. (ASOF ¶ 16.) The fact the Purchasers and Sellers share common principal officers, operate essentially the same business from the same facilities, employ the same employees, use the same brand name, the Sellers have indicated that they may not be able to satisfy a judgment against them, and this particular motion's procedural posture are enough to distinguish this matter from *Brown*—notwithstanding the remaining question of fact as to whether adequate consideration was paid for the transfer. *Compare Brown*, 2007 WL 1234523, at *31-34, *with* ASOF; *see also Ed Peters Jewelry Co.*, 124 F.3d at 269 (holding that the *Baker* analysis "is multifaceted, and normally requires a cumulative, case-by-case assessment of the evidence by the factfinder").

Thus, the failure to show that the consideration for the transferer was inadequate is not an absolute bar for the Court to continue to consider the additional *Baker* factors which the Court has established that Great Point has shown through the stipulated facts of the case. Further, not every factor in the mere continuation analysis must be met for a plaintiff to show that a transferee is the successor-in-interest of the transferor. *See Brown*, 2007 WL 1234523, at *33 (citing *Ed Peters Jewelry Co.*, 124 F.3 at 269); *see also Blouin v. Surgical Sense, Inc.*, No. PC-07-6855, 2008 WL 2227781, *6 (R.I. Super. May 12, 2008) (citing *Baker*, 554 A.2d at 205). Therefore, this Court

finds the Purchasers may be joined to the instant action as the potential successors-in-interest to the Sellers because Great Point has presented a prima facie case that the Purchasers have continued the Sellers' business operation and corporate entity. *See Baker*, 554 A.2d at 205. Whether the Purchasers will definitively be held to be the successors-in-interest of the Sellers as a matter of law is discussed below where the Court considers the cross-motions for summary judgment.

2. *De Facto* Merger

Another exception to the general rule that the transferee is not liable for the liabilities of a transferor after an asset purchase is the *de facto* merger exception. Our Supreme Court has recognized the existence of such a theory but has yet to apply it. *Douglas v. Bank of New England*, 566 A.2d 939, 941 (R.I. 1989) ("[I]n the event the transaction amounted to a de facto merger of the buyer and the seller, there would be an assumption of debts and liabilities."); *see also John T. Callahan & Sons, Inc. v. Dykeman Electric Co., Inc.*, 266 F. Supp. 2d 208, 226 (D. Mass. 2003) (providing that the "Rhode Island Supreme Court has not discussed the de facto merger exception" in a case applying Rhode Island law on successor liability). The Superior Court previously has stated the factors to consider when applying this exception are:

> "1. that there was a continuation of the enterprise of the selling corporation vis a vis a continuation of management, personnel, physical location, assets, and general business operation;
> "2. that there is a continuity of shareholders resulting from the purchase of the assets with shares of stock, rather than cash;
> "3. that the selling corporation ceases operations, liquidates, or dissolves as soon as possible; and
> "4. that the purchasing corporation assumes the obligations of the selling corporation necessary for uninterrupted continuation of business." *Blouin*, 2008 WL 2227781, at *6 (internal quotations omitted).

The judge in the *Brown* case also previously considered this theory as a valid exception to the general rule against successor liability, noting that both exceptions, "[w]hile treated as separate,

the requirements and underlying policies of each theory significantly overlap with each other." *Brown*, 2007 WL 1234523, at *27. The "mere continuation" and *de facto* merger theories also have been treated as the same theory by other persuasive authorities. See Timothy J. Murphy, *A Policy Analysis of a Successor Corporation's Liability for its Predecessor's Defective Products when the Successor has Acquired the Predecessor's Assets for Cash*, 71 Marq. L. Rev. 815, 821 (1988) ("In essence, the policy behind [the "mere continuation"] exception is the same as that behind the de facto merger exception in that a corporation should not be able to avoid liabilities merely due to a change in its form or name.").

To repeat, there was a transfer of corporate assets between the Sellers and the Purchasers. (ASOF ¶ 3.) That transfer was sufficient for the Purchasers to continue the business operations of the Sellers—two of the Sellers' former executives joined the Purchasers' executive team, the Sellers' employees were offered employment with the Purchasers, and the Purchasers operate from the same physical locations as the Sellers previously operated from. *Id*. ¶¶ 6-7, 15(b), 15(e), 15(f). Those facts satisfy the first factor of the *de facto* merger analysis. *Blouin*, 2008 WL 2227781, at *6. Additionally, although the consideration paid included cash, "Purchasers paid and delivered to [Sellers] . . . Rollover Units issued by [Applegate] valued at $16,000,000 [and] . . . Class W Units issued by Applegate . . ." (ASOF ¶ 9.) Applegate and Purchasers argue that those units were "not paid to the [Seller's] *owners*, but rather were given to three noteholders in exchange for partial satisfaction and release of [Sellers'] debt." (Defs.' Mem. Mot. to Join 5). However, the stipulated facts state: "*Purchasers paid and delivered to [Sellers]*. . . Rollover Units issued by [Applegate] . . . valued at $16,000,000 [and] . . . Class W Units issued by [Applegate] . . ." (ASOF ¶ 9.) (emphasis added). Applegate and the Purchasers stipulated that such units were paid and delivered to the Sellers, and not to three noteholders as they now argue. *Id*. That stipulation cannot be

changed now. Therefore, the second factor of the *de facto* merger test has been met. *Blouin*, 2008 WL 2227781, at *6.

As to the third factor, the parties stipulated that the Sellers have ceased operations. (ASOF ¶ 15(d).) Finally, for the fourth factor, the parties additionally stipulated the asset transfer was "adequate and sufficient for the continued conduct of the Business after the Closing in substantially the same manner, in all material respects, as conducted by [the Sellers] immediately prior to the Closing," and the transfer included all contracts, other than those specifically excluded. *Id*. ¶¶ 6, 8. Thus, the Purchasers assumed at least some of the Sellers' contractual obligations necessary to continue the business, which satisfies the fourth factor. *Blouin*, 2008 WL 2227781, at *6. Therefore, the Purchasers are also joined to the instant action as the potential successors-in-interest to the Sellers under the *de facto* merger analysis.

III

Cross-Motions for Summary Judgment

A

Standard of Review

"A motion for summary judgment 'is designed to decide in an expeditious fashion cases presenting groundless claims.'" *Town of Exeter by and through Marusak v. State*, 226 A.3d 696, 700 (R.I. 2020) (quoting *Hexagon Holdings, Inc. v. Carlisle Syntec Incorporated*, 199 A.3d 1034, 1038 (R.I. 2019)). However, "'[s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). "'Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the

motion justice finds that the moving party is entitled to prevail as a matter of law."' *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011)) (further internal quotation omitted); *see* Super. R. Civ. P. 56. "In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013); *see Beauregard v. Gouin*, 66 A.3d 489 (R.I. 2013).

Moreover, the moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The burden then shifts to the "nonmoving party [who] bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk*, 82 A.3d at 532 (internal quotation omitted). "'[C]ompetent evidence[]' . . . is generally presented on summary judgment in the form of . . . 'depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits.'" *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018) (quoting *Leone v. Mortgage Electronic Registration Systems*, 101 A.3d 869, 872, 874 (R.I. 2014)).

B

Analysis

With respect to the cross-motions for summary judgment, Great Point argues the stipulated facts show Applegate and Purchasers should be found successors-in-interest to the Sellers, and thus liable for the Sellers' alleged breach of contract. *See generally* Pl.'s Mem. 1. Unsurprisingly, Applegate and the Purchasers both argue they are not the successors-in-interest to the Sellers. *See generally* Def.'s Mem. 1. Those arguments will be addressed as they apply to the Purchasers and Applegate separately.

1. The Purchasers

The Court need not readdress the mere continuation and *de facto* merger analyses it has performed directed toward the Purchasers above. However, the instant motion for summary judgment—which seeks to definitively impose liability on the Purchasers should Great Point succeed in proving its breach-of-contract claim—came before they had been joined to this action. Thus, they have not had the opportunity to substantively address Great Point's arguments for summary judgment. As the Purchasers have now been joined—because of Great Point's prima facie showing of successor liability—the Court provides them thirty days to respond to Great Point's arguments. Great Point will then have ten days to submit a reply. Of particular interest to the Court are facts regarding the consideration paid for the transfer of assets and arguments of law addressing whether adequate consideration is a dispositive factor in the *Baker* analysis or if it constitutes a genuine issue of material fact.

2. Applegate

At the outset, Applegate did not receive any assets of the Sellers. *See generally* ASOF. Rather, the Purchasers received those assets, and the only relationship shared between those two is that Applegate is the "indirect" parent company of the Purchasers. *Id*. ¶ 3. Additionally, both the *Baker* and *de facto* merger analyses require that there be a transfer of assets and only consider the rest of the factors as applicable to the transferee. *See Baker*, 554 A.2d at 205. There being no transfer of assets is dispositive for both the mere continuation and *de facto* merger exceptions. *See Baker*, 554 A.2d at 205; *see also Blouin*, 2008 WL 2227781, at *6. Further, even if Great Point could pass that initial hurdle, the stipulated facts only show that the Purchasers, not Applegate, operated from the same location, employed the same employees, and ultimately continued the business of the Sellers. *See generally* ASOF.

Further, there is no indication that a parent company can legally be held out as the successor-in-interest for its subsidiary solely by virtue of that corporate relationship. *See Bestfoods v. Aerojet-General Corp.*, 173 F. Supp. 2d 729, 759 (W.D. Mich. 2001) ("Absent the formal merger [to show successive liability for its subsidiary], parental liability must be established by other means, such as corporate veil-piercing."); *see also Shannon v. Samuel Langston Co*, 379 F. Supp. 797, 799, 802-03 (W.D. Mich. 1974) (finding parent company liable for personal injury damages of subsidiary that purchased assets of company whose product caused injury, because parent company statutorily merged with its subsidiary); *but see Continental Insurance Co. v. Schneider, Inc.*, 873 A.2d 1286, 1288 n.3 (Pa. 2005) (finding parent company could be liable as successor-in-interest despite four subsidiaries continuing purchased business). Instead of showing how the Purchasers are the successors-in-interest of the Sellers, Great Point would either need to show how Applegate is the successor-in-interest of the Purchasers for Applegate to be liable for the Sellers' alleged breach-of-contract or that corporate veil-piercing is applicable. *See Bestfoods*, 173 F. Supp. 2d at 759; *see also Miller v. Dixon Industries Corp*., 513 A.2d 597, 604 (R.I. 1986) ("Absent a showing of inequity, fraud, undercapitalization, or domination by the parent corporation, separate corporate identities must be observed.").

Great Point attempts to show the latter by arguing that Applegate is the "alter-ego" of the Purchasers. (Pl.'s Mem. at 17-18; Pl.'s Reply Mem. at 2-8.) Specifically, it points to interrogatories answered by Applegate, directed at discovering information about the Purchasers, stating that Applegate shared the same location, phone numbers and website as the Sellers, sold the same products at the same prices to the same customers, and used the same vendors of the Sellers. (Pl.'s Reply Mem. 4.) Great Point relies on *National Hotel Associates ex rel. M.E. Venture Management, Inc. v. O. Ahlborg & Sons, Inc.*, 827 A.2d 646 (R.I. 2003), to show that those facts are enough to

deem Applegate the alter-ego of the purchasers. *Id*. at 6. In *O. Ahlborg & Sons, Inc.*, our Supreme Court held that a subsidiary operated as "a mere conduit or instrumentality" of its parent organization when the two companies shared the same sole stockholder who comingled funds between the two organizations, which left the subsidiary undercapitalized and unable to satisfy the plaintiff's judgment. *O. Ahlborg & Sons, Inc.* 827 A.2d at 652. The Court explained that, "in circumstances in which there is such a unity of interest and ownership between the corporation and its owner or parent corporation such that their separate identities and personalities no longer exist we have held that adherence to the principle of their separate existence would, under the circumstances, result in injustice." *Id*. (internal quotation marks omitted).

However, Great Point has not shown that Applegate dominated the Purchasers or left them undercapitalized and unable to satisfy Great Point's potential judgment, and it cannot do so because it has stipulated that the Purchasers—not Applegate—have the assets of the Sellers that are necessary to satisfy the potential judgment. (ASOF ¶ 3.) However, at this point in the litigation, the Purchasers have been joined to this action as the potential successors-in-interest of the Sellers. Should further discovery be conducted and evidence is produced that Applegate has dominated or undercapitalized the Purchasers, the Court will consider a request to pierce the corporate veil at that time.

IV

Conclusion

For the foregoing reasons, Great Point's motion to join the Purchasers pursuant to Rule 25(c) is **GRANTED**. As for the cross-motions for summary judgment, Great Point's request that Applegate be held liable as a successor-in-interest to the Sellers is **DENIED** without prejudice. The Court **RESERVES** from ruling on Great Point's request that the Purchasers be held liable as

the successors-in-interest to the Sellers until the Purchasers have the opportunity to respond to the motion for summary judgment. Likewise, Applegate's requests are **GRANTED** and **RESERVED** respectively.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Great Point, Inc. v. NE Fibers, LLC, US Greenfiber, LLC, and Applegate Greenfiber Holdings, LLC**
CASE NO:	**KC-2019-0705**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**October 25, 2024**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Caroline R. Thibeault, Esq.** **Robert Corrente, Esq.** **Matthew H. Parker, Esq.**
For Defendant:	**Geoffrey W. Millsom, Esq.** **Andrew Tugan, Esq.**