

Successor Corporate Liability.

<Note: TPC = third party corporation.>

To prove that DFT is responsible to PLF for the debt of TPC, PLF must prove that at least one of the following things is more probably true than not true:

<delete any that is not relevant>

1. *<if applicable>* DFT expressly or impliedly assumed TPC's obligation;
2. *<if applicable>* DFT effectively merged or consolidated with TPC;
3. *<if applicable>* DFT's business merely continued TPC's business;
or
4. *<if applicable>* DFT's business was a fraudulent effort to avoid TPC's liabilities.

I will now describe these matters in more detail.

(a) Express or Implied Assumption of Liabilities

PLF is claiming that DFT agreed to assume TPC's liabilities. You must decide whether PLF has proved that it is more likely true than not that DFT agreed, either expressly or through conduct, to assume TPC's liabilities. For example, an individual may expressly agree in writing or orally to do something. Or an individual may indicate his or her agreement by performing the act at issue.

(b) Mere Continuation or Effectively a Merger

PLF could also show that DFT is liable for TPC's liabilities if it shows that TPC was essentially merged into DFT, so that TPC's business has essentially been continued by DFT under a new name.

In deciding whether the transfer of TPC's assets to DFT was a continuation of TPC or effectively a merger of the two companies, you should consider the following factors:

- Has the management, personnel, physical location, assets, and general business operations remained the same;
- Did TPC acquire DFT's assets with shares of its own stock resulting in a continuation of shareholders;
- Did TPC stop its ordinary business operations, liquidate, and dissolve as soon as legally and practically possible;
- Did DFT take responsibility for TPC's obligations which were necessary for TPC's normal business operations; and
- Did TPC transfer its business to DFT in an attempt to eliminate its debt.¹

No single factor is necessary or sufficient to establish a merger or mere continuation. You are to consider each of these factors in arriving at your findings with respect to DFT.

(c) Fraudulent Effort to Avoid Liabilities

The final circumstance in which liability may be imposed upon DFT is if you find that it is more probably true than not true that DFT was involved in a fraudulent effort to help TPC wrongfully avoid its liabilities.

¹ See *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 557 (2008), and the discussion in *Atlantic Resort Development v. InnSeason Mgmt., Inc.*, 95 Mass. App. Ct. 1112 (2019) (unpublished), when deciding whether to give this portion of the jury instruction as a mandatory or optional element.