

STATE OF MICHIGAN  
COURT OF APPEALS

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J.D. SMITH,

Plaintiff-Appellant,

v

INA M. SMITH,

Defendant-Appellee.

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UNPUBLISHED

October 8, 1996

No. 182482

LC No. 94-031295

Before: Gribbs, P.J., and Saad and J. P. Adair,\* JJ.

PER CURIAM.

Plaintiff appeals from the circuit court's grant of summary disposition in favor of defendant, (plaintiff's ex-wife). Finding no error, we affirm.

Following foreclosure on two real estate parcels, a deficiency judgment of \$88,559.34 was entered against plaintiff and defendant, jointly and severally, on June 18, 1984. On August 28, 1994, plaintiff filed a complaint seeking contribution from defendant alleging plaintiff had paid the judgment creditor \$27,257.96, while defendant had paid only \$15,000. Defendant moved for summary disposition, arguing that: (1) she had negotiated with the judgment creditor and obtained a satisfaction of judgment in exchange for her \$15,000 payment, and (2) the statute of limitations had run on the deficiency judgment. There was also undisputed evidence that plaintiff had left Michigan after the deficiency judgment was entered, and that his \$27,257.96 payment had been made pursuant to an order of an Indiana court. The circuit court granted summary disposition in favor of defendant.

The doctrine of contribution rests on the principle that when parties stand "in equal right," one of the parties will not be obliged to bear more than his just share of a common burden or obligation to the advantage of his co-obligors. *Caldwell v Fox*, 394 Mich 401, 417; 231 NW2d 46 (1975). "It is applied in those cases where one or more of several parties equally obligated have done more than their share in performing a common obligation. . . .one who has paid more than his share of the joint obligation may recover contribution from his co-contractors." *Id.*

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\* Circuit judge, sitting on the Court of Appeals by assignment.

In order for a party to be entitled to contribution from a co-obligor, plaintiff must have paid the whole obligation or more than his equal share of the common obligation. *Id.*; See also *Sziber v Stout*, 419 Mich 514, 533-534; 358 NW2d 330 (1984) (joint tortfeasors). Here, the total obligation was \$88,559.34, resulting in shares of \$44,279.67 each. Plaintiff paid \$27,257.96 – less than the entire obligation and less than his “share” of the obligation. Plaintiff has no right to contribution from defendant.

Defendant’s satisfaction of judgment obtained from the judgment creditor is not significant to the disposition of the issue.<sup>1</sup> The discharge of one obligor does not discharge other co-obligors or impair their right to contribution. See *Fidelity & Deposit Co v Hartshorn*, 288 Mich 575, 579; 285 NW 462 (1939); *Lorimer v Julius Knack Coal Co*, 246 Mich 214, 218; 224 NW 362 (1929).

Despite the fact that plaintiff paid \$12,257.96 more than defendant, this result is equitable under the circumstances of the case. As the trial court concluded, defendant chose to negotiate with the judgment creditor, resulting in the creditor granting defendant a satisfaction of judgment in exchange for \$15,000. On the other hand, plaintiff moved out of state and paid only after the creditor had the judgment entered in Indiana so that it could be enforced through collection proceedings. Because contribution is an action in equity, the party seeking the aid of equity must come before the court with clean hands. *Isbell v Brighton Schools*, 199 Mich App 188, 189; 500 NW2d 748 (1993).

Affirmed.

/s/ Roman S. Gibbs  
/s/ Henry William Saad  
/s/ James P. Adair

<sup>1</sup> The right of contribution among joint *tortfeasors* is governed by MCL 600.2925a; MSA 27A.2925(1). However, this statute is inapplicable because the debt here arose out of a deficiency judgment.