

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MILTON H. GOLDRATH, HENRY WHITING, JR.,  
CLARA G. WHITING, SEYMOUR GORDON,  
MARILYN GORDON, ROBERT W. APPLEFORD,  
MARY M. WHITING, MACAULEY WHITING,  
JR., SARA WHITING, D. EUGENE THOMPSON,  
ANNE A. THOMPSON, MARVIN D. SIEGEL,  
GLORIA J. SIEGEL, BRUCE A. KRESGE, PEGGY  
KRESGE, STUART K. JESKE, BARBARA H.  
JESKE, JAMES B. JACKSON, ROSEMARY  
JACKSON, JOSEPH L. HARDIG JR., D. LARRY  
SHERMAN, JANE F. SHERMAN, PILGRIM  
INVESTMENT COMPANY, VINCENT C.  
SECONTINE, HALPERIN FAMILY  
PARTNERSHIP, MARVIN GORDON, and  
SYLVIA A. GORDON,

Plaintiffs-Appellees,

v

PATRICK L. BEACH,

Defendant-Appellant.

UNPUBLISHED  
January 31, 1997

No. 185562  
Washtenaw Circuit Court  
LC No. 93-000963-CK

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Before: Sawyer, P.J., and Young and D.A. Burress,\* JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court granting summary disposition in favor of plaintiffs on their contract claims against defendant. We reverse.

Defendant was a general partner in East Huron Limited Partnership, which owned real property in Ann Arbor known as the City Center Building. In 1988, City Center Partners Limited Partnership (CCPLP) offered to purchase the building, but had difficulty arranging financing. Defendant agreed to

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

assist in arranging financing and was offered a share of the general partners' interest in CCPLP. Financing was arranged and the conditions of the mortgage included a promise by the partners to be individually responsible for the mortgage if CCPLP defaulted.

In 1990, defendant withdrew as a general partner and assigned his interests to BRG Management, which became the successor general partner. In 1991, the president of BRG informed the mortgagee that CCPLP would no longer be making payments on the mortgage. Thereafter, the limited partners met with the bank's loan officers to discuss how the bank could collect the amount due. Ultimately, plaintiffs (except Pilgrim) agreed to pay the balance due on the mortgage and the bank agreed to assign the mortgage to plaintiffs (except Pilgrim) after the loan was paid in full.

The limited partners made a series of payments over approximately a two-month period. On April 16, 1992, the bank executed a discharge of the mortgage. On April 17, the bank executed an assignment of the mortgage. Thereafter, plaintiffs instituted this action to collect the amount due under the mortgage from defendant as a guarantor of the mortgage.

Defendant raises a number of issues on appeal, which involve essentially two issues: (1) that the trial court erred in denying defendant's motion for summary disposition based upon the argument that the assignment was invalid and (2) that the trial court erred in granting plaintiff's motion for summary disposition based upon an implied indemnity theory. At oral argument in this Court, the parties agreed that there is no viable theory of implied indemnity. Accordingly, we need only address the issue whether there was a valid assignment (or at least a genuine issue of material fact concerning the assignment). We agree with defendant that there was not.

An assignment is valid only if, at the time of the assignment, the assignor possessed the rights which he is assigning. *Weston v Dowty*, 163 Mich App 238, 242; 414 NW2d 165 (1987); *Damerau v C L Rieckhoff Co, Inc*, 155 Mich App 307, 313; 399 NW2d 502 (1986). The bank had discharged the mortgage on April 16. Therefore, it had nothing to assign on April 17.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer  
/s/ Robert P. Young, Jr.  
/s/ Daniel A. Burress