

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

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RAMESH JAJOO,

Plaintiff-Appellant,

v

ENGINEERING SERVICES, INC,

Defendant-Appellee.

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UNPUBLISHED

January 31, 1997

No. 189816

Oakland Circuit Court

LC No. 95-490127-CZ

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway,\* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant in this action in which plaintiff sought indemnification for \$13,410.03 in attorney fees stemming from an underlying lawsuit. In the underlying suit, Stevens Environmental Services (SES) sued plaintiff and defendant for payment on the excavation and remediation of contaminated soil on plaintiff's property. After plaintiff settled out of this litigation without monetary liability to SES, he filed the present lawsuit seeking indemnification from defendant for sums expended in defense of the underlying suit. The trial court granted summary disposition to defendant on the ground that plaintiff was not entitled to indemnification. We affirm.

The trial court properly determined that plaintiff was not entitled to indemnification because the underlying complaint alleged active fault against plaintiff. In order to be entitled to implied contractual indemnification, one must be free from active negligence. *Paul v Bogle*, 193 Mich App 479, 483; 484 NW2d 728 (1992). Thus, a party may not seek indemnity under an implied contract where the primary complaint alleges active, rather than passive, liability. *Oberle v Hawthorne Metal Products Co*, 192 Mich App 265, 270; 480 NW2d 330 (1991). Because the primary complaint in this case alleged active fault against plaintiff, we conclude that defendant was entitled to judgment as a matter of law. MCR 2.116(C)(10).

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

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Barbara B. MacKenzie  
/s/ Amy Patricia Hathaway