

STATE OF MICHIGAN
COURT OF APPEALS

BEZTAK LAND CO., as Subrogee of the CITY OF
DETROIT,

UNPUBLISHED
April 21, 2000

Plaintiff-Appellant,

v

No. 206894
Wayne Circuit Court
LC No. 97-718964-CK

DETROIT PLAZA LIMITED,

Defendant-Appellee,

and

BEZTAK II LTD PARTNERSHIP, GRISWOLD
HOLDING CO., McCARTHY MARINE, INC., and
NBD BANK NA,

Defendants,

and

JAMES D. BLAIN and J & J SLAVIK, INC.,

Intervening Defendants.

Before: Doctoroff, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a final judgment denying its motion for summary disposition, granting defendants' motion for summary disposition, and dismissing plaintiff's complaint with prejudice. We affirm.

This is a subrogation action brought by plaintiff against defendant Detroit Plaza Limited Partnership (Detroit Plaza), and intervening defendants, James D. Blain and J & J Slavik Inc. Plaintiff

and intervening defendants are equal partners in Detroit Plaza.¹ In 1996, the City of Detroit began foreclosure proceedings against Detroit Plaza for unpaid property taxes on four pieces of property located on East Atwater Street. A settlement agreement was reached in which Detroit Plaza agreed to pay according to a set schedule all outstanding taxes, including accruing interest and penalties.² Thereafter, a dispute between the partners developed that impacted on the final balloon payment. Apparently, plaintiff alone made the final balloon payment to the city in April 1997. Plaintiff then commenced this present action, seeking to subrogate itself to the rights of the city. A contemporaneous six count complaint was also filed by plaintiff in Oakland Circuit Court against Blain, Slavik Inc., J. Ronald Slavik, and J.R. Slavik and Associates II.³

Plaintiff argues that the trial court erred in dismissing its claim of equitable subrogation. We disagree. “Equitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other.” *Commercial Union Ins Co v Medical Protective Co*, 426 Mich 109, 117; 393 NW2d 479 (1986). Accord *Citizens Ins Co v Buck*, 216 Mich App 217, 226; 548 NW2d 680 (1996).

Plaintiff’s approach to the subrogation argument differs significantly between that first offered in its brief on appeal and that set forth by substituted counsel in plaintiff’s reply brief. Originally, plaintiff did not contest that a general partner is primarily liable for the debts and obligations of the partnership.⁴ See *Tempo, Inc v Rapid Electric Sales & Service, Inc*, 132 Mich App 93; 347 NW2d 728 (1984); *Commonwealth Capital Investment Corp v McElmurry*, 102 Mich App 536, 541; 302 NW2d 222 (1980). Rather, plaintiff asserted that because it was acting in its capacity as a limited partner at the time it made the balloon payment, plaintiff therefore should be allowed to step into the shoes of the City of Detroit. In essence, plaintiff’s argument was that to the extent that it paid its partners’ part of the balloon payment, plaintiff was participating as a limited partner. We are unpersuaded. While it is true that a general partner may contribute to the partnership as a limited partner, see MCL 449.1404; MSA 20.1404, that is not what happened in this case. Because plaintiff was discharging a debt owed by the partnership, plaintiff was acting in its capacity as a general partner when it made the balloon payment.

In its reply brief, plaintiff challenges the notion that a general partner is primarily liable for a partnership debt. Specifically, plaintiff argues that because the partnership itself is a separate entity that is liable for the property taxes, plaintiff cannot be considered primarily liable for the debt, and thus is not barred from asserting a right to subrogation. Unfortunately, plaintiff’s argument is based more on lexical distinctions than the realities of partnership law. All denotative ambiguities aside, it is axiomatic that “[t]he individual liability of a partner for a partnership debt is not collateral like that of a surety, but primary and direct.” 73 Am Jur 2d, Subrogation, § 64, p 638. Indeed, the difference in the limits of liability for business investors is a significant distinction between corporations and partnerships, as well as general and limited partners.

Further, contrary to plaintiff’s assertion, we find nothing in *Laylin v Knox*, 41 Mich 40; 1 NW 913 (1879), to support plaintiff’s position. In *Laylin*, the Court was dealing with a mortgage on certain saw-mill property. *Id.* at 42. As the *Laylin* Court repeatedly noted, the debt at issue in that case was the responsibility of one of the two mill owners, *id.* at 43, 44, 47, not the business entity.

We therefore find no merit in either position taken by plaintiff on the issue of liability and subrogation.⁵ There is nothing in the circumstances of the case that causes us to question the trial court's decision not to impose the pretense of subrogation into this matter. Accordingly, plaintiff should pursue those adequate legal remedies available to it. MCL 449.15(b); MSA 20.15, 449.1403(b); MSA 20.1403(b).⁶

Finally, we also reject plaintiff's contention that the trial court erred because the grant of summary disposition to defendant effectively deprived plaintiff of the opportunity to argue its theory of abandonment. Not only has plaintiff failed to cite any supporting legal authority for its proposition that a partner's failure to pay a proportionate portion of property taxes amounts to abandonment, see *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999), but we also note the opportunity available to plaintiff to raise this issue in the ongoing litigation in Oakland Circuit Court.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

¹ The partnership agreement provides that plaintiff, Blain, and Slavik Inc. each own a ten percent interest in Detroit Plaza as general partners and a twenty-three and one-third percent interest as limited partners.

² The schedule to be followed was set forth in paragraph (1)(c)(ii) of the settlement agreement:

\$250,000.00 on or before September 30, 1996; . . . \$50,000.00 on or before the 28th day of each of the months of October, 1996, November, 1996, December, 1996, January, 1997, February, 1997 and March, 1997; and . . . on or before April 1, 1997, the total remaining indebtedness shall be paid in full.

³ The Oakland complaint raises the following causes of action: (1) breach of fiduciary duties; (2) misappropriation of business opportunities and prospects; (3) misappropriation of confidential and proprietary information; (4) fraud; (5) constructive trust; and (6) breach of contract.

⁴ This point of law was also conceded below.

⁵ Because we reject plaintiff's assertion that it can pursue a subrogation claim, the major premise underlying its argument on the issue of abatement is thereby invalidated. Accordingly, we need not further address plaintiff's abatement argument.

⁶ For example, plaintiff itself notes in its reply brief of the potential for bringing a claim of contribution.