

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

5-24-2016

Schmidt v. Huston Respondent's Brief Dckt. 43620

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Schmidt v. Huston Respondent's Brief Dckt. 43620" (2016). *Idaho Supreme Court Records & Briefs, All*. 7771.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7771

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT FOR THE STATE OF IDAHO

R. GORDON SCHMIDT,

Plaintiff-Appellant,

vs.

TIM HUSTON,

Defendant-Respondent.

Supreme Court Docket No. 43620

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2016 MAY 24 PM 1:47

RESPONDENT'S BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho,
in and for the County of Ada, Case No. CV OC 1420513
The Honorable Richard D. Greenwood, District Judge, Presiding

Michelle R. Points
POINTS LAW, PLLC
910 W. Main Street, Suite 222
Boise, ID 83702
Office: (208) 287-3216
Fax: (208) 336-2088
mpoints@pointslaw.com

*Attorneys for Defendant-Respondent
Tim Huston*

Thomas J. Angstman
Anthony M. Shallat
ANGSTMAN JOHNSON
3649 N. Lakeharbor Lane
Boise, ID 83703
Office: (208) 384-8588
Fax: (208) 853-0117
tj@angstman.com
anthony@angstman.com

*Attorneys for Plaintiff-Appellant
R. Gordon Schmidt*

RESPONDENT'S BRIEF

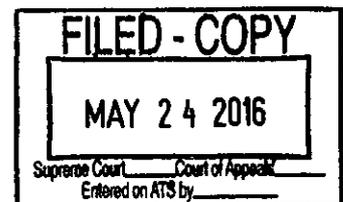


TABLE OF CONTENTS

I. STATEMENT OF CASE 1

II. ADDITIONAL ISSUES PRESENTED ON APPEAL 2

III. ATTORNEY FEES ON APPEAL..... 3

IV. ARGUMENT..... 3

 A. Standard of Review..... 3

 B. The Application of Common Law Contribution Is Equitable, Thus, Not
 Mandatory 4

V. CONCLUSION 9

TABLE OF AUTHORITIES

Cases

<i>Agren v. Staker</i> , 46 Idaho 36, 267 P. 460 (1928).....	4
<i>Gilbert v. Nampa Sch. Dist. No. 131</i> , 104 Idaho 137, 657 P.2d 1 (1983).....	8
<i>Hoopes v. Hoopes</i> , 124 Idaho 518, 861 P.2d 88 (Ct. App. 1993).....	7, 8
<i>Houghtelin v. Diel</i> , 47 Idaho 636, 277 P. 699 (1929).....	5, 6
<i>Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.</i> , 135 Idaho 316, 17 P.3d 260 (2000).....	3
<i>In re Bahara</i> , 219 B.R. 77 (M.D. Pa. 1998)	7
<i>Independence Lead Mines v. Hecla Mining Co.</i> , 143 Idaho 22, 137 P.3d 409 (2006)	3
<i>Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp.</i> , 118 Idaho 116, 794 P.2d 1389 (1990).....	3
<i>Williams v. Johnston</i> , 92 Idaho 292, 442 P.2d 178 (1968)	6

Statutes

Idaho Code § 12-120(3).....	3
Idaho Code § 12-616.....	4, 7

Rules

Idaho Rule of Civil Procedure 52(a).....	3
Idaho Rule of Civil Procedure 54	3

I.

STATEMENT OF CASE

This is a case brought in equity. Appellant R. Gordon Schmidt sought contribution from the Respondent Mr. Huston related to a loan Appellant had paid off in which Mr. Huston was a guarantor.

Mr. Huston began working for a company called RNR Enterprises (aka Roto Rooter) in 1987. Richard Navert was President and CEO of RNR Enterprises (“RNR”) when Mr. Huston was hired.

In July of 2007, Appellant, Robin Navert (wife of Richard) and Mr. Huston formed TRG Leasing, LLC (“TRG”). The purpose of its TRG’s formation was to purchase equipment and lease it to RNR Enterprises. Both Appellant and Richard Navert were shareholders in RNR. *See e.g.* Tr., 000030.

On October 19, 2007, Appellant, Robin Navert, Mr. Huston and RNR became co-guarantors on a loan to TRG from Bank of the West (“the Loan”) in the amount of \$26,000. TRG purchased equipment that was used or “leased” by RNR, but RNR never made a lease payment to TRG, and in fact, sold the equipment without applying the sale proceeds to the loan. *See e.g.*, Tr., 0000158 - 166.

Mr. Huston never received a benefit from the proceeds of the Loan, and the Loan proceeds were used to benefit RNR exclusively (i.e. Richard Navert and Appellant, not TRG). These facts were not disputed by at trial by the Appellant.

In 2011, Mr. Huston was terminated as a member of TRG by Navert, Appellant and TRG, who continued to operate TRG and RNR following Mr. Huston's termination.

The right for payment of the Loan existed as between Bank of the West and the guarantors on the loan. On or about September 24, 2014, Appellant paid off the Loan in the amount of \$27,492. When Appellant made the payment, Mr. Huston was released from any obligation under the guaranty he signed with Bank of the West for the payoff of the Loan.

On October 28, 2014, Appellant filed this lawsuit against Robin Navert and Mr. Huston.

There was no showing by Appellant at trial that he could not recover funds from RNR Enterprises, Inc., or why RNR is not a proper party to this litigation.

There was no showing by Appellant at trial that confirmed Appellant's claim that Robin Navert was insolvent. To the contrary, evidence presented at trial revealed that the Naverts were quite solvent.¹

Based on equitable considerations, which were supported by substantial evidence, the District Court properly found that Mr. Huston was not liable to Appellant for any theory pled in Appellant's complaint, which single count was titled "Breach of Guaranty."

II.

ADDITIONAL ISSUES PRESENTED ON APPEAL

Whether the Respondent is entitled to attorney fees on appeal.

¹ In 2013 alone, Navert made \$614,465 as evidenced on his K-1 from RNR. Tr., 0000174.

III.

ATTORNEY FEES ON APPEAL

Mr. Huston is entitled to an award of attorney fees and cost on appeal pursuant to Idaho Code § 12-120(3) and Idaho Rule of Civil Procedure 54.

IV.

ARGUMENT

A. Standard of Review

The review of a trial court's decision after a court trial is limited to ascertaining "whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law." *Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.*, 135 Idaho 316, 319, 17 P.3d 260, 263 (2000). The trial court's findings of fact will not be set aside unless clearly erroneous. *Id.*; see I.R.C.P. 52(a). Thus, if the findings of fact are supported by substantial and competent evidence, even if the evidence is conflicting, this Court will not disturb those findings. *Idaho Forest Industries, Inc.*, 135 Idaho at 319, 17 P.3d at 263. In view of the trial court's role to weigh conflicting evidence and testimony and to judge the credibility of witnesses, the trial court's findings of fact will be liberally construed in favor of the judgment entered. *Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118, 794 P.2d 1389, 1391 (1990). In reviewing a trial court's conclusions of law, however, a different standard applies: this Court is not bound by the legal conclusions of the trial court, but may draw its own conclusions from the facts presented. *Idaho Forest Industries, Inc.*, 135 Idaho at 319, 17 P.3d at 263.

Independence Lead Mines v. Hecla Mining Co., 143 Idaho 22, 26, 137 P.3d 409, 413 (2006).

B. The Application of Common Law Contribution Is Equitable, Thus, Not Mandatory

Appellate begins his argument by asserting that the statute that specifically relates to suretyship bonds for judgments on appeal (I.C. § 12-616) should apply in this case, and that the District Court should found by way of mandate that Appellant was substituted to the rights of Bank of the West. That statutory provision does not apply to the facts of this case.

The District Court correctly held that Appellant's payment of the Loan extinguished the guaranty as between Mr. Huston and Bank of the West, and the rights that Bank of the West had to collect against Mr. Huston were not transferred to Appellant.

Mr. Huston did not dispute during the litigation of this case before the District Court that contribution and subrogation are recognized principles that could be applied in particular cases, including this one. The District Court correctly held, consistent with Appellant's argument on appeal that:

... the law generally provides that where there are two or more separate guarantors or sureties on loan from a principal to the bank, the guarantors may stand in the relationship of co-sureties to each other and to the principal; if one of the sureties or guarantors pays more than a proportionate amount in extinguishing the liability of the principal, that guarantor or surety may have a claim of contribution from his co-surety or sureties.

R.0000547.

Again, whether contribution or subrogation “exists” or can be applied under Idaho law was and is not disputed² and was the issue before the District Court. Nor is it the issue before this Court. This is a case of equity. What the District Court had to determine was whether, given the facts of the case, the equitable doctrines of subrogation or contribution should be applied, and if so, to what degree.

This Court, in *Houghtelin v. Diel*, 47 Idaho 636, 639-640, 277, 280-281 P. 699 (1929)(emphasis added) held:

Subrogation, in its broadest sense, is the substitution of one person for another, so that he may succeed to the right of the creditor in relation to the debt or claim and its rights and remedies and securities. The doctrine is derived from the civil law from which it has been adopted by the courts of equity ...its principal is often extended to those who, because of their interest in the property on which debts of others are a charge, are entitled to pay such debts and be substituted to the place of the original creditor. Generally speaking it is only in cases where one advances money to pay the debt of another to protect his own rights that a court of equity substitutes him in place of the creditor as a matter of course, without an express agreement to that effect. The doctrine of subrogation is not administered as a legal right but the principal is applied to subserve the ends of justice and to do equity.

...

[Subrogation] does not rest on contract and no general rule can be laid down which will afford a test in all cases for its application, and whether the doctrine is applicable to any particular case depends upon the peculiar facts and circumstances of such case.

² “The duty of contribution extends to persons who are within the scope of the equitable obligations.” *Agren v. Staker*, 46 Idaho 36, 41 267 P. 460, 465 (1928).

Appellant appears to recognize that “[c]ertain circumstances may warrant a court of equity to redistribute the shared liability of a debt.” But then Appellant goes on to state that “[h]owever, a gate to this equitable relief must be in place. Affirmative defenses, set-offs, cross-claims, indemnifications, and other tools available to litigants must be utilized prior to obtaining equitable relief from the court.” This curious line of argument is apparently based on Appellant’s belief that because Mr. Huston did not an affirmative defense of unclean hand he somehow waived his defense to Appellant’s claims at trial, or that the District Court was precluded as a Court in equity, that Appellant’s claims were barred in equity. This line of argument is incorrect. *See* Appellant’s Brief, pp. 13-14.

Mr. Huston denied that Appellant had a right of contribution, and as such, presented substantial evidence that it was not equitable for Appellant to receive any contribution from Mr. Huston.³ The District Court agreed, making several findings supporting its decision, which did **not** include a specific finding that Appellant came to the court with unclean hands, but did include findings that it would be inequitable to apply contribution in the instant case.

In *Williams v. Johnston*, 92 Idaho 292, 442 P.2d 178 (1968), this Court, citing *Diel*, *supra*, held:

[t]he principal to be derived from the doctrine of subrogation is that it is born of equity and results from the natural justice of placing the burden where it ought to rest. **It does not flow from any fixed rule of law, but rather from principals of justice, equity and benevolence. It is a purely equitable result depending like other equitable doctrines, upon the facts and circumstances of each case to call it forth.** It is a

³ In his Complaint, Appellant alleged that he had a right of contribution as a co-surety. R-000008.

devise adopted or invented by equity to compel the ultimate discharge of a debt or obligation by him who in good conscience ought to pay it.

Id. at 298, 442 P.2d 185 (citation omitted); *see also Hoopes v. Hoopes*, 124 Idaho 518, 521, 861 P.2d 88, 91 (Ct. App. 1993) (subrogation must not work any injustice to the rights of others)(emphasis added).⁴

Appellant attempts to somehow claim error by the District Court in its citation to *In re Bahara*, 219 B.R. 77 (M.D. Pa. 1998). The District Court cited *Bahara* for a “comprehensive discussion of equitable principles” (R. 000057), only cited it for this discussion in one instance, and never cites it for a specific holding or in its conclusions of law. The District Court made its “comprehensive discussion of equitable principles” statement, and then stated, consistent with Appellant’s argument, that “[t]hese general rules apply with equal force to the relationship between the creditor and another surety for the same debt.” R., 000058. Contrary to the allegation made by Appellant, the District Court was not “misguided” nor did it base its legal reasoning “entirely” on this Pennsylvania case.

Pages one through ten of Appellant’s brief attempt to persuade the Court that the equitable rights of subrogation and contribution are recognized and applied in Idaho. Again, Mr. Huston does not dispute that these rights exist and can be applied in Idaho. What Appellant fails to grasp is that these principles or “rights” only apply in certain cases depending on the peculiar facts and circumstances of each case, and they are only applied if found to be equitable.

⁴ As noted earlier, Appellant would like this Court to apply I.C. §12-616 to the facts of this case, however, it is not applicable. This is not a case involving a surety bond on appeal, nor does it have to do with a payment to a judgment creditor following affirmation on appeal.

Appellant does not challenge any of the findings of fact listed by the District Court. R., 000063 - 000065, nor does he specifically challenge the District Court's conclusions of law. R., 000065 - 69.

Contrary to the allegation that the District Court "sua sponte" deemed the right of contribution inequitable, this was Mr. Huston's defense all along, the crux of which was that Appellant did not have a had a right of contribution given the facts of the case.

Appellant criticizes the District Court by citing "no other" case law, and alleges that the District Court "simply stated that suretyship was an equitable concept so all parties must have clean hands to be afforded its protection." What Appellant does not acknowledge is that the District Court correctly stated the law. "Idaho Courts have long subscribed to the principle that 'he who comes into equity must come with clean hands', and 'a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.'" *Hoopes, supra* at 522, 861 P.2d 92, citing *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983) (other citations omitted). The District Court repeatedly held that Appellant's conduct was inequitable and unfair as it pertained to Mr. Huston and Appellant's right of contribution against him. See Findings of Fact Nos. 5 - 16, R., 000063 - 65.

At no place in his briefing does Appellant point to any error made in the District Court's application of the law.

In briefing, Appellant raises generic and general objections regarding the evidence was admitted at trial, however, did not raise these evidentiary objections as issues in this appeal and gives no detail as to what specific evidence was presented or admitted into evidence.

V.

CONCLUSION

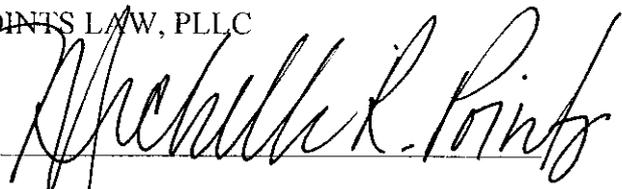
There is no statute that dictates Appellant's rights. This is a case of equity. The District Court properly weighed the equities and inequities. The District Court's written opinion is thorough, and confirms that the findings of fact were supported by substantial and competent evidence. The findings of fact support the conclusions of law.

The District Court's ruling should be affirmed and Mr. Huston should be awarded his attorneys fees and costs incurred on appeal.

RESPECTFULLY SUBMITTED this 24th day of May, 2016.

POINTS LAW, PLLC

By



Michelle R. Points
Attorneys for Defendant-Respondent Tim
Huston

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below, addressed to each of the following:

Thomas J. Angstman
Anthony M. Shallat
ANGSTMAN JOHNSON
3649 N. Lakeharbor Lane
Boise, ID 83703

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile 208-853-0117

Michelle R. Points