UIdaho Law
Digital Commons @ UIdaho Law

Idaho Supreme Court Records & Briefs, All
Idaho Supreme Court Records & Briefs

6-14-2016

Schmidt v. Huston Appellant's Reply Brief Dckt. 43620

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

Recommended Citation
"Schmidt v. Huston Appellant's Reply Brief Dckt. 43620" (2016). *Idaho Supreme Court Records & Briefs, All*. 7772.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7772

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIdaho 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 JUN 14 PM 4: 19

APPELLANT'S REPLY 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

---

Thomas J. Angstman
Anthony M. Shallat
ANGSTMAN JOHNSON
3649 N. Lakeharbor Lane
Boise, ID 83703
Ph: 208-384-8588
Fax: 208-853-0117
tj@angstman.com
anthony@angstman.com
Counsel for Plaintiff-Appellant

Michelle R. Points
Points Law, PLLC
910 W. Main Street, Suite 222
Boise, ID 83702
Ph: 208-287-3216
Fax: 208-336-2088
mpoints@pointslaw.com
Counsel for Defendant-Respondent

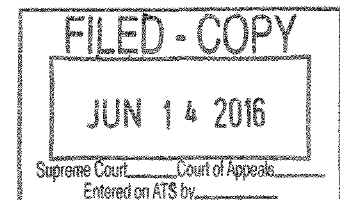


TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 1

III. CONCLUSION 11

TABLE OF CASES AND AUTHORITIES

Cases

Bagott v. Mullen, 32 Ind. 332, 337 (1869) 7
Barhara 5
Cook v. Crabtree, 1986 Tenn. App. LEXIS 2867, *18-19, 1986 WL 3437 (Tenn. Ct. App. Mar. 19, 1986) 7, 11
First Nat'l Bank of Irwin v. Foster, 291 Pa. 72, 75, 139 A. 609 (1927) 6
Houghtehn v. Diel, 47 Idaho 636, 639-640 (1929) 3, 4
In re Bahara, 219 B.R. 77 (M.D. Pa. 1998) 2, 5, 6
Keystone Bank v. Flooring Specialists, Inc., 513 Pa. 103, 114, 518 A.2d 1179 (1987) 6
Murr v. Selag Corp., 113 Idaho 773, 785-86, 747 P.2d 1302, 1314-15 (Ct. App. 1987) 2
Williams v. Johnston, 92 Idaho 292, 442 P.2d 178 (1968) 3

Secondary Sources

First Restatement of Security 8

I. INTRODUCTION

The Respondent's argument centers entirely on the presumption that contribution and subrogation are solely equitable remedies that allow the Trial Court to disregard well-founded precedent to rule in the Respondent's favor. The Respondent stated, "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." *See* Respondent's Brief at p. 5. However, neither the Trial Court nor the Respondent take into account the nature of these doctrines. Critically, the Trial Court failed to base its decision on any case law that allows a co-surety to disregard its equitable contribution obligation.

Moreover, the Trial Court disregarded well-established equitable principles. Idaho precedent requires the Trial Court to fashion a remedy that does not contradict already existing equitable doctrines such as contribution and subrogation. The cases cited by the Respondent do not support the Trial Court's decision. Finally, the Respondent claims that the Appellant's conduct was inequitable and unfair as it pertained to the Respondent. But, as the Appellant has already shown, neither the record nor the law supports a relief from the contribution requirement on these facts. Upholding the Trial Court's decision will ignore the equitable doctrines of contribution and subrogation and lead to bad policy. Thus, this Court should reverse the Trial Court's decision.

II. ARGUMENT

A. Subrogation and Contribution Doctrines Apply to the Current Dispute

The Respondent reiterates throughout his brief that "[t]his is a case of equity…" which thus allowed the Trial Court discretion in how it applied the subrogation and contribution doctrines.

Although contribution and subrogation are equitable concepts, the Trial Court may not disregard the application of these concepts. A court in equity only has "discretion" to fix a remedy "as long as the court's choice is not in contrary to established equitable principles." *See Murr v. Selag Corp.*, 113 Idaho 773, 785-86, 747 P.2d 1302, 1314-15 (Ct. App. 1987)(Burnett, J., concurring). The Trial Court's ruling that the Respondent should not have to pay its contribution due to the general inequitable circumstances is a faulty legal conclusion which was based on a misunderstanding of both equitable principals and the law.

Despite the Respondent's contention, this Court must review the Trial Court's decision on a *de novo* basis because it chose to make a conclusion of law on what would be "inequitable." *Id.* The Trial Court only cited *In re Bahara,* 219 B.R. 77 (M.D. Pa. 1998) for "comprehensive discussion of equitable principals" in rendering its decision. Yet, all of the equitable principals discussed in that decision allow a right of recovery for co-sureties on the same debt. The Appellant fully discussed this case in its opening appellant brief, but the findings of that court bear repeating. The *Bahara* court specifically held that "action taken by the creditor with respect to one co-surety cannot eliminate the other cosureties' indebtedness for their proportionate share of the total debt owed to the creditor." *In re Bahara,* 219 B.R.77 at 82. (M.D. Pa. 1998). In other words, if one co-surety pays off the creditor, the other co-sureties still owe a right of contribution to the co-sureties which paid off the debt. In the present case, the Appellant his right of contribution from the Respondent. Thus, the Respondent owes the Appellant the same liability for the proportionate share of the debt which the Court discussed in *Bahara.* The Appellant fully discussed this concept in its opening brief, and the Respondent appears to concede that theses principals do in fact apply

stating: "Mr. Huston does not dispute that these rights exist and can be applied in Idaho." *See* Respondent Brief at p. 7. Thus, the Court should apply the law discussed on pages 1 through 10 of Appellant's opening brief to the current dispute since the Respondent does not contest this legal application.

B. The Respondent Misstates the Subrogation Doctrine

Despite conceding that the case law cited by the Appellant applies in Idaho, the Respondent cites two additional cases (*Houghtenhn v. Diel,* 47 Idaho 636, 639-640 (1929) *and Williams v. Johnston,* 92 Idaho 292, 442 P.2d 178 (1968)). However, each case only addresses the Subrogation Doctrine. Essentially, the Respondent cites these two cases to highlight the concept that subrogation arises from equity. *Houghtehn* confirms that subrogation is derived from equity "...and is so administered as to secure real and essential justice without regard to form, and it will not be allowed where it would work an injustice to others, as where it would disturb the priorities of liens or defeat any rights of others." *Houghtenhn*, 47 Idaho at 639.

The *Williams* court clarifies "others" referred to by *Houghtenhn* as "third parties adversely affected..." *Williams*, 92 Idaho at 300. The *Williams* court also clarified who is entitled subrogation. *Id. at* 299-300. That decision held that as long as the person satisfying the debt is not a "volunteer", they are entitled to the rights of subrogation. *Id.* Volunteers are defined as those who satisfy debts of another, and not those with interests to protect, such as co-defendants. *Id.*

Ironically, the authority cited by the Respondent actually contradicts the Trial Court's holding as it related to the Subrogation. The Trial Court held:

> Whether the bank could have enforced the guaranty against Huston under the circumstances shown by the evidence here is immaterial Schmidt extinguished the principal's debt to the bank and with it the contractual provisions of all of the individual guaranties evaporated. Schmidt does not "step into the bank's shoes" in enforcing the bank's guaranties against other sureties- those guaranties evaporated.

See Clerk's Record on Appeal at p. 58. Yet, the authority cited by the respondent 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.....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

See Respondent's Brief, p. 5 *citing Houghtehn v. Diel,* 47 Idaho 636, 639-640, 277, 280-281 P. 699 (1929). Both the Appellant and Respondent jointly and severally guaranteed the entire TRG debt from the Bank of the West loan. The Respondent is a co-guarantor to the debt, not a third party. The Appellant did not voluntarily pay off a debt he had no interest in; the Appellant paid a debt both he and the Respondent jointly and severally owed to Bank of the West in an attempt to protect himself from further expenses. Therefore, the legal authority cited by the Respondent only bolster's the Appellant's contention that he has been subrogated into the position of the creditor and may enforce the creditor's rights against his other co-sureties.

C. The Respondent Fails To Address the Contribution Doctrine

The Respondent does not cite any case law in refuting the right of contribution doctrine. The Respondent has thus waived his right to contend that the right of contribution is not a proper theory of recovery. Instead, the Respondent attempts to avoid any liability by claiming 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 it [sic] found to be equitable." *See* Respondent Brief at p. 7. Unlike the Appellant, who provided over ten equitable contribution cases in which the Court held a right of contribution applied, the Respondent does not identify any examples of case law in which these principles or rights did not apply.

D. The Trial Court Erred in Finding That the Appellant's Conduct created Inequity for the Respondent

The Respondent attempts to argue that a court of equity should not allow the Appellant to recover because it would be "inequitable" given the specific facts of this case. As Appellant has shown, the Trial Court based its decision upon a misreading of a singular, non-controlling case. Moreover, this Court reviews the Trial Court's decision *de novo* given that its inequitable finding was a conclusion of law, not fact. Finally, the Record does not support the Trial Court's finding of fact that the Respondent was kept out of the loop on the status of the TRG Loan.

The Trial Court did not specifically hold that the Appellant had unclean hands or purposely prejudiced the Respondent, but instead held that the circumstances surround the Respondent's firing *from a separate company* created an inequity that barred the Appellant from any recovery of a contribution. The Trial court based its decision on a general premise it gleaned from the *Bahara* case that co-sureties can be discharged from their obligation due to prejudicial transactions between the other co-sureties or the creditor and sureties. *See* Clerk's Record on Appeal at p. 62. But the prejudicial transaction mentioned in *Barhara* never occurred in this case. Regarding the prejudicial transactions, the *Barhara* court held:

> The debtors' argument is based on the proposition that if a creditor discharges a principal in a manner that prejudices the rights and interests of the surety, the surety

> will be discharged from performing. *See Keystone Bank v. Flooring Specialists, Inc.*, 513 Pa. 103, 114, 518 A.2d 1179 (1987); *see also First Nat'l Bank of Irwin v. Foster*, 291 Pa. 72, 75, 139 A. 609 (1927) ("The uniform rule is that ***where a creditor releases the principal from payment of a debt he thereby releases the surety entirely, or, if he releases the principal from a part only, the surety is released pro tanto***.").
>
> But the fact that the Bank may have released the Kubeckis from liability under the 1979 Guaranty for less than their proportionate share ***does not, contrary to the debtors' assertion, serve to discharge the debtors from all liability*** under the 1979 Guaranty.

See In re Bahara, 219 B.R. at 81. This passage and the remaining opinion demonstrate that the *Bahara* court held that a creditor or co-surety cannot discharge a principal for payment of a debt and then seek that amount again from the other sureties. Essentially, the *Bahara* court held that a creditor cannot "double-dip" on a debt, and a surety would be discharged from its obligation under such a circumstance. The *Barhara* court **did not** hold that a co-surety may disregard its obligation to pay its share of debt owed under a guaranty when another co-surety pays off the full balance owed to the creditor. In fact, as stated above and fully explained in the Appellant's opening brief, the *Bahara* court reaffirms the right of contribution exists and cannot be extinguished unless actual proof of co-surety or creditor double-dipped. Even then, the creditor or co-surety is still entitled to its proportionate right of contribution share; the co-surety cannot simply **profit** off of the transaction. Thus, both the Trial Court and the Respondent base their entire decision and argument off a misreading of one Pennsylvania District Court opinion.

Moreover, the Respondent's entire argument that equity should discharge him from his contribution obligation is not based in any precedent. This argument has been raised by litigants in other jurisdictions, but none of these jurisdictions allowed litigants to escape their duty of

contribution under a general "inequitable" argument. For example, the Tennessee Appellate Court addressed this argument that equity allows a trial court to discharge a co-surety's contribution obligation whenever it deems an injustice occurs. The Tennessee Appellate Court rejected this argument:

> Our understanding of this rule, however, is that its applicability does not turn on the sole basis of a request by a surety who is already bound. Cases and commentators alike discuss the rule and its availability in view of the totality of the circumstances existing among the parties at the time of the transaction, ***and a right to contribution has been found where a refusal to recognize it would be inequitable.***
>
> . . . As stated in *Bagott v. Mullen*, 32 Ind. 332, 337 (1869): "If a surety making the request, receive any personal benefit from the execution of the obligation -- as where the money raised thereon goes into his hands, or where he has already incurred a liability upon an instrument completed by delivery -- we can see a propriety in the court treating the person thus benefited and making the request, as a principal, and the person signing at such request as his surety only and not liable to contribute for his benefit . . . ***But where parties standing in an equal relation to the principal sign as sureties for that principal, the one at the request of the other, we are not satisfied that any sound principle of law or equity will discharge either from the legal obligation he assumes on the face of the instrument to contribute his proportion on default of the chief obligor.***"

See Cook v. Crabtree, 1986 Tenn. App. LEXIS 2867, *18-19, 1986 WL 3437 (Tenn. Ct. App. Mar. 19, 1986) (emphasis added). The Tennessee Appellate Court's holding makes a salient point that should be applied to the current case: allowing the Respondent to dodge his contribution responsibility would result in an inequitable result for the Appellant.

The Respondent has conceded that the Appellant's conduct did not amount to unclean hands, and thus hang's his hat that it would be "inequitable" for him to be required to pay his fair

share of the debt. Legal precedent addressing this argument is scarce, but the First Restatement of Security discusses what constitutes inequitable conduct among co-sureties:

> Where the conduct of a surety causes the default of the principal or cosurety or decreases the amount that would otherwise have been available from the principal or a cosurety, his right to contribution from the cosureties is proportionately diminished.
>
> *Comment*:
> *a*. The right to contribution depends upon equitable principles. If the conduct of a cosurety is responsible for increasing the ultimate liability of another cosurety, it would be inequitable to allow him to recover as much as would otherwise have been allowed.

See Restat 1st of Security, § 161 (1941). No findings of fact from the Trial Court concluded that the Appellant either caused TRG to default or is responsible for increasing the ultimate liability of the Respondent. Instead, the Trial Court made a conclusion of law that, despite the Appellant having clean hands, the general circumstances surrounding the default of TRG made it inequitable for the Respondent to pay his fair share.

The Trial Court does not base this finding on a single fact, but rather a holistic view of the circumstances surrounding the relationships between the co-guarantors. No evidence in the record supports a finding that a prejudicial transaction occurred between either Bank of the West, the Respondent, or Robin Navert. All the co-sureties signed guarantees backing the debt of the principal, TRG. There is no evidence in the record that the Appellant, Robin Navert, or RNR received more of a benefit from the loan than the Respondent. Neither is there evidence in the record that TRG received any benefit from the loan at all.

Despite holding that "There is no evidence that Schmidt was paid anything on his debts in preference to the bank…", the Trial Court determined that Schmidt could have "insisted" that sale of RNR's assets be applied to the TRG loan balance. *See* Clerk's Record at p. 60. Yet in the very next sentence, the Trial Court admitted that the President of RNR could not recall the amount or disposition of the assets. *Id.* The presumption that the Appellant could have forced a sale of the assets to pay off the loan fails to take into account the fact that the Respondent was an equal member of TRG and yet did nothing to monitor the company's financial situation or the status of its loan.

The Trial Court ultimately ruled that Appellant and Navert's involvement in RNR prejudiced the Respondent to the point that requiring a contribution on the TRG loan would be inequitable. But the Trial Court made no finding that either the Appellant or Navert prevented the Respondent from participating in TRG or requesting information regarding the status of the TRG loan. On the contrary, the Respondent retained his membership in TRG even during trial. *See* Trial Transcript at p. 179, L2-13. Additionally, the Respondent never attempted to inquire about the status of the TRG loan. The Respondent even admitted that he called Mr. Navert after he was released from RNR, but did not think of asking about the status of either his membership in TRG or the status of the TRG loan. *See* Trial Transcript at p. 212. Ultimately, the Respondent seeks to uphold a decision by the Trial Court that allowed him to ignore his responsibilities to both TRG and Bank of the West due to a business dispute involving an entirely separate entity. Given the misapplication of the law and the errors by the Trial Court, this Court should reverse the Trial Court's decision.

E. Upholding the Trial Court Decision would create Disastrous Precedent and Public Policy

Aside from the legal and factual errors made by the Trial Court, the Appellant asks this Court to consider the effect upholding the Trial Court's decision would have on both public policy and precedent.

The Respondent proposes the Court waive his contribution requirement not because of the Appellant's conduct, and not because the contribution doctrine does not exist, but because the general circumstances surrounding this situation created a purported inequitable result. The Respondent cannot point to a general rule that allows him to escape paying his fair share of the debt, but rather parrots the Trial Court's decision which alludes to the Appellant being "better informed" of the TRG Loan status. *See* Clerk's Record on Appeal at p. 61. The Trial Court concluded that "on the totality of the circumstances it would be inequitable for Schmidt to be able to impose an obligation of contribution on Huston for any part of the debt due the bank."

Upholding this decision will create a new equitable doctrine that allows co-sureties to dodge their contribution requirements if they submit evidence that their other co-sureties were "better informed." An affirmation would motivate the co-sureties to hedge their bets through willful ignorance of co-guaranteed loans in the hopes that another surety will get stuck paying the bill. Instead of paying their fair share of the debt, the co-sureties would sue for an equitable release of their responsibility based on a totality of circumstances surrounding a default. Even more revolutionary, <u>the co-sureties, like Huston here, would be relieved of their obligation to assert an equitable affirmative defense in the pleadings when asserting this theory</u>. Perhaps the most

frightening result of an affirmation would be legal precedent prioritizing one co-surety's equitable rights over another. The rule mentioned by the court in *Cook v. Crabtree*—recognizing the right of contribution because failing to adopt it would create an inequitable result for other co-sureties—would not exist in Idaho. Thus, co-sureties who have not paid their proportional portion of debt would have more equitable rights then the surety which pays off the entire balance of a loan upon demand by a lender.

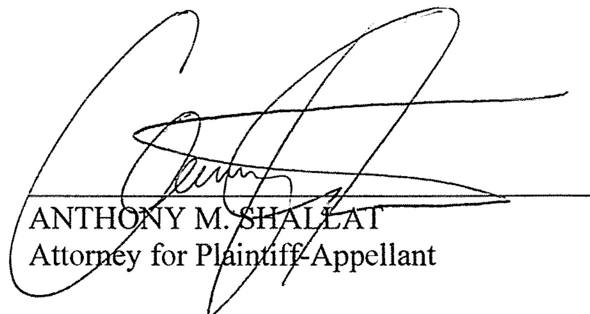
The result from this precedent will lead to unwieldy and backwards public policy. Instead of encouraging lending and economic growth, Idaho law will discourage wealthier investors from starting new business ventures with less affluent partners who will perform more of the daily operations. More business disputes will wind up in litigation when co-sureties attempt to avoid paying their fair share due to a claim of inequity stemming from the totality of the circumstances. Co-sureties will hide and stop communicating with other sureties when it becomes clear a loan cannot be paid. This Court will be flooded with equitable appeals, not based upon solid legal precedent, but generalities on what should be "fair" in each circumstance. The practice of law will suffer because attorneys will be less motivated to formalize their pleadings by asserting affirmative defenses that allow discovery to test the merits of the defense before trial. Although the above scenario sounds apocalyptic, these results would be the consequence of affirming the Trial Court's decision.

III. CONCLUSION

An affirmed decision from this Court will create an inequitable result and set bad precedent that will lead to troubling public policy. The Appellant requests that this Court follow the well-

established doctrines of contribution and subrogation by reversing the Trial Court's decision and entering judgment in favor of the Appellant.

DATED this 14th day of June, 2016.



ANTHONY M. SHALLAT
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

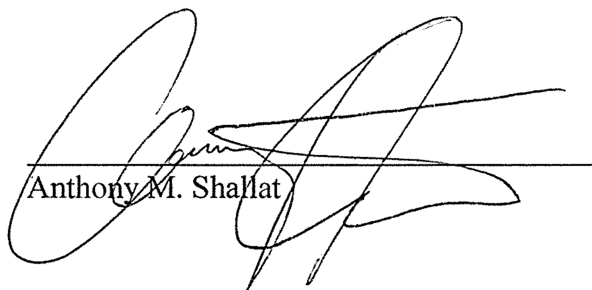
I HEREBY CERTIFY that on this 14th day of June, 2016, I caused to be served a true copy of the foregoing APPELLANT'S REPLY BRIEF by the method indicated below, and addressed to those parties marked served below:

Michelle R. Points
Points Law, PLLC
910 W. Main Street, Suite 222
Boise, ID 83702
Fax: 208-336-2088

X U.S. Mail, postage prepaid

___ Hand-Delivery

___ Facsimile



Anthony M. Shallat