

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Michael P. Mayes, MD,

PLAINTIFF,

vs.

Thomas P. Lenns, MD, Paul M. Long,
MD, and Heritage Medical Partners,
LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2016-CP-07-00515

ORDER

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SC Court of Appeals

This matter came before the Court on November 1, 2017 on cross Motions for Summary Judgment as to Plaintiff's claims for equitable indemnification/subrogation/contribution against Defendant Thomas P. Lenns, MD ("Lenns") and Paul M. Long, MD ("Long"). All remaining causes of actions against Lenns and Long were dismissed pursuant to a Consent Order for Dismissal of Certain Claims and Order of Reference entered on October 24, 2017.

The Plaintiff was represented by his attorney, William R. Padget, Esquire. Defendant Lenns was present with his attorney, James F. Berl, Esquire. Defendant Long was also present in the Court, *pro se*. Prior to the hearing, the Plaintiff filed a Memorandum in Support of his Motion for Partial Summary Judgment, Defendant Lenns filed a Return and Opposition to the Motion, along with a cross motion for summary judgment, and Defendant Long joined in the cross motion.

FACTUAL BACKGROUND

This matter stems from a debt owed jointly and severally by the Defendants. In 1998, Defendant Heritage Medical Partners, LLC ("Heritage") was organized by, *inter alia*, Defendants Long and Lenns. Heritage was formed for operating an internal medicine practice on

an outpatient basis and activities directly ancillary thereto. Later, Plaintiff, an internal medicine physician, joined the Heritage practice and ultimately became a member of the medical practice. At all times pertinent to this matter, there were four physician members of Heritage - Plaintiff, Defendant Lenns, Defendant Long, and William Petty, MD ("Petty") who is not a party to this action (collectively "the members" or "the guarantors").

On or about March 31, 2010, Heritage entered into a commercial lease with HTA-Hilton Head, LLC ("HTA"). In order to secure this lease, all members of Heritage (Plaintiff, Lenns, Long, and Petty) executed a Guaranty of Lease in HTA's favor whereby they each were jointly and severally liable for payment of the lease. Defendants Long and Lenns each testified that Heritage entered into this Lease and that the members all individually guaranteed the Lease.

Heritage defaulted on the terms of the lease with HTA, thereby exposing all the guarantors to personal liability for the full balance owed to HTA. HTA filed an action for the breach of the lease and sought over \$4,000,000 in damages against Heritage and all guarantors. The guarantors settled the claims made by HTA in November 2015. However, because each faced exposure to a judgment holding them jointly and severally liable for the full amount of the debt, and, more importantly, because each had different financial exposure to a potential judgment, the members entered into separate settlement agreements for vastly different sums. The terms of each of these settlement agreements are confidential, so at the hearing, the Plaintiff submitted an exhibit incorporating these settlement agreements to the Court to review *in camera*.

As co-guarantors of the debt, the members are each equitably responsible for 25% of the total mediated settlement with HTA. Upon review, it is clear that the Plaintiff contributed more than his pro rata share of this debt. Plaintiff filed this action against Long and Lenns alleging equitable indemnification/subrogation/contribution and seeking a judgment against Long and

Lenns to equalize their contribution toward the collective debt owed to HTA, which they equally shared and guaranteed.

CONCLUSIONS OF LAW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c) SCRCF. Rule 56(e) states that the party opposing the motion “may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCF.

The United States Supreme Court has interpreted Rule 56(e) to require the party opposing the motion for summary judgment to “go beyond the pleadings . . . and designate ‘specific facts showing that there is a genuine issue for trial.’” *Cellotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quoting Fed. R. Civ. P. Rule 56(e)). The party opposing the motion must establish the existence of a genuine issue of material fact by referring to the depositions, answers to interrogatories, and admissions on file. *Id.* The party opposing the motion, not the Court, bears the burden of identifying the specific facts in the record which establish a genuine issue of material fact. *Id.* Finally, summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (S.C. 1991).

Under South Carolina law, equitable subrogation is well recognized. “[Equitable] subrogation is not dependent upon contract.¹ The doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and **relationship** of the parties.” *Shumpert v. Time Ins. Co.*, 329 S.C. 605, 612, 496 S.E.2d 653, 656 (Ct. App. 1998). The elements of equitable subrogation are:

1. The party claiming subrogation has paid the debt.
2. The party was not a volunteer but had a direct interest in the discharge of the debt or lien.
3. The party was secondarily liable for the debt or for the discharge of the lien.
4. No injustice will be done to the other party by the allowance of the equity.

United Carolina Bank v. Caroprop, Ltd., 316 S.C. 1, 3, 446 S.E.2d 415, 416 (1994).

I find and conclude that there is no question of material fact that Plaintiff paid more than his pro rata share and should be equitably subrogated by Long and Lenns pursuant to the holding set forth in *Caroprop*. Plaintiff was forced to pay the vast majority of the debt as opposed to his 25% equal share. Plaintiff was not a volunteer but had a direct interest in the discharge of the debt. As a co-guarantor, Plaintiff was not *primarily* liable for this debt, but is only *secondarily* liable. By definition, a guarantor is someone who promises to fulfil another party’s obligation “if the other party fails to perform.” WEX LEGAL DICTIONARY²; *see also* BLACKS LAW

¹ This ruling is not based upon the terms of the various agreements the parties entered into with HTA, rather it is dependent upon principles of equity. The parties’ respective settlement agreements with HTA do not address or release any liabilities between each other.

² Available at: <https://www.law.cornell.edu/wex/guarantor>

DICTIONARY, Tenth Edition (2009).³ Further, the holding of *Caroprop* makes clear that when a co-debtor pays over his pro-rata share, he is then, *in equity*, only *secondarily* liable for the share he paid of his co-debtor. *Id.* at 2, 446 S.E.2d at 417 (emphasis added). No injustice will be done to the Defendants by the allowance of the equity and specifically by the Court equalizing the debt they each guaranteed.

South Carolina also recognizes the doctrine of equitable contribution. *Andrade v. Johnson*, 345 S.C. 216, 225, 546 S.E.2d 665, 670 (Ct.App.2001) (defining contribution as “the [r]ight of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear”), *rev'd on other grounds, Andrade v. Johnson*, 356 S.C. 238, 588 S.E.2d 588 (2003); 18 Am. Jur. 2d Contribution 19 (2004) (explaining that a party seeking contribution is entitled to recover “the amount he has paid in excess of his share a ratable sum of the loss actually sustained”). *See also McKenna v. George*, 19 S.C. Eq. 15, 22 (S.C. App. Eq. 1845) (“one surety may compel another, in equity, to contribute towards payment of a debt for which they were jointly bound.”); *Lucas v. Garrett*, 209 S.C. 521, 527, 41 S.E.2d 212, 215 (1947) (“The rule of contribution is an equitable rule and is based on the fact that those who insure or become sureties for the same duty ought to share the results of the default.”).

I find and conclude that there is no question of material fact that the co-guarantors had the same liability on the lease, and the Plaintiff, who bore the greater burden to settle the case, is entitled to receive from the other co-guarantors equitable subrogation/contribution.

³ Guaranty is defined in Black’s Law Dictionary as “[a] promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance; a collateral undertaking by one person to be answerable for the payment of some debt or performance of some duty or contract for another person who stands first bound to pay or perform.”

NOW THEREFORE, based upon the pleadings duly filed, the evidence before the Court, the sworn deposition testimony of the parties, the arguments of counsel, and the Factual Background and Conclusions of Law set forth above,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff Michael P. Mayes, MD is entitled to summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil procedure on his claim for equitable indemnification/subrogation/contribution against Defendant Thomas P. Lenns, MD and Paul M. Long, MD;
2. Plaintiff is entitled to judgment against Defendant Thomas P. Lenns, MD in the amount of One Hundred and Seventy-Three Thousand, Seven Hundred and Fifty and 0/100 (\$173,750) Dollars; and
3. Plaintiff is entitled to judgment against Defendant Paul M. Long, MD in the amount of One Hundred and Ninety Eight Thousand, Seven Hundred and Fifty and 0/100 (\$198,750) Dollars;

IT IS SO ORDERED.

Marvin H. Dukes, III
Master-In-Equity, Beaufort County

Beaufort, South Carolina
December _____, 2017



Beaufort Common Pleas

Case Caption: Michael P Mayes VS Thomas P Lenns , defendant, et al

Case Number: 2016CP0700515

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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