

**IN THE COURT OF APPEALS OF IOWA**

No. 8-564 / 07-1693  
Filed October 15, 2008

**ANTHONY T. HALLIGAN,**  
Plaintiff-Appellee,

**vs.**

**DANIEL WILLIAM SHIMON and  
THERESA M. SHIMON,**  
Defendants-Appellants.

---

Appeal from the Iowa District Court for Pocahontas County, Joel E. Swanson, Judge.

Primary obligors appeal from the district court's ruling in favor of a guarantor. **AFFIRMED.**

William Alexander, Laurens, and William Thomas of Shors & Thomas, Pocahontas, for appellants.

Donald Beneke, Pocahontas, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MAHAN, P.J.**

Daniel and Theresa Shimon appeal the district court's judgment in favor of Anthony Halligan. We affirm.

**I. Background Facts and Proceedings.**

In January 2002 Daniel and Theresa Shimon executed an agreement for the purchase of a photography business from Anthony Halligan for \$15,000. Because it was a cash purchase, the Shimons applied for financing with Rolfe State Bank (Rolfe) in Rolfe, Iowa. A condition for the financing was a personal guaranty from Halligan. The Shimons executed a promissory note in favor of Rolfe, and Halligan gave Rolfe his personal guaranty. The Shimons began making payments to Rolfe on the promissory note.

In 2003 the Shimons filed bankruptcy and defaulted on the promissory note. The Shimons gave notice of the default to all parties and reaffirmed the promissory note obligation to Rolfe. The Shimons continued making payments to Rolfe. In 2006 the Shimons defaulted on the promissory note a second time. At that time, Rolfe called upon Halligan to honor his personal guaranty. Halligan paid Rolfe \$6641.74, the balance remaining under the promissory note that Rolfe held with the Shimons, in satisfaction of the guaranty.<sup>1</sup> Rolfe then gave Halligan the promissory note. Halligan did not give Rolfe any new consideration for the promissory note, nor did the promissory note contain any endorsement transferring rights from Rolfe to Halligan.

In December 2006 Halligan filed suit against the Shimons to recover for the outstanding obligation owed under the promissory note that Halligan had paid

---

<sup>1</sup> The balance was the sum of \$6402.25 of principal and \$222.82 in interest.

in satisfaction of the guaranty. The basis set forth in Halligan's petition alleged Halligan's ownership of the promissory note. After a hearing, the district court entered an order on August 14, 2007. In the order, the court noted that upon Rolfe's request, Halligan, as guarantor, paid the delinquent obligation owed to Rolfe by the Shimons, and Halligan was therefore subrogated to the rights of Rolfe. See 38 Am. Jur. 2d *Guaranty* § 120, 971-72 (1999). The court granted Halligan judgment on the promissory note in the sum of \$6402.25 with interest from and after March 29, 2006, at the rate of 9.5% per annum. The Shimons filed a motion for reconsideration. The court denied the motion on August 28, 2007. The Shimons now appeal.

## **II. Scope and Standard of Review.**

Because this matter was tried at law, our review is for the correction of errors of law. Iowa R. App. P. 6.4; *State v. Johnson*, 744 N.W.2d 646, 648 (Iowa 2008). Findings of fact in a law action are binding on appeal if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(a); *Harrington v. University of N. Iowa*, 726 N.W.2d 363, 365 (Iowa 2007). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Beal Bank v. Siems*, 670 N.W.2d 119, 125 (Iowa 2003). We are bound by the trial court's findings of fact if they are supported by substantial evidence. *Harrington*, 726 N.W.2d at 365.

### III. Merits.

#### A. Subrogation of Rights under the Promissory Note.

The Shimons contend the district court erred in finding that Rolfe made a complete transfer to Halligan of rights to the promissory note made between Rolfe and the Shimons. The Shimons argue Halligan failed to prove Rolfe endorsed and transferred ownership of the promissory note to him under the provisions of Iowa Code sections 554.3203 and 554.3104 (2005). Halligan argues, however, that ownership of the promissory note was effectively transferred from Rolfe to Halligan when Rolfe delivered the note to Halligan, and Halligan therefore had a right to enforce the terms of the note against the Shimons.

Under Iowa law, a guarantor is generally entitled to reimbursement from the primary borrower if the guarantor is required to pay under the guaranty. *Halverson v. Lincoln Commodities, Inc.*, 297 N.W.2d 518, 522 (Iowa 1980). As our supreme court has stated:

Where a guarantor, who has entered into a contract of guaranty at the request of, or with the consent of, the principal obligor, pays or is compelled to pay his principal's debt, the law raises an implied promise, unless there is an express one, on the part of the principal to reimburse the guarantor, and on the payment of the debt the guarantor at once has a right of action against the principal *for reimbursement of the amount which he has paid*, with interest thereon at the legal rate.

*Id.* (emphasis added). The right of a party who has satisfied a claim to seek reimbursement from another party can generally be pursued by three interrelated common law doctrines: indemnity, contribution, and subrogation. *State ex rel.*

*Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149 (Iowa 2001). These doctrines are equitable in nature and employed to correct or prevent unjust enrichment. *Id.*

The district entered judgment in favor of Halligan based on the unjust enrichment claim of subrogation. Similar to contribution and indemnity, subrogation is a separate form of restitution that rests on the principles of natural equity. *Id.* at 156. The object of subrogation is to prevent injustice. *Id.* Subrogation “essentially provides that one who has been compelled to pay a debt that ought to have been paid by another is entitled to exercise all remedies which the creditor possessed against the other.” *Id.* (internal quotations omitted). It allows a person who has satisfied an obligation owed by another to a creditor to be placed in the creditor’s position against the primary obligor.<sup>2</sup>

“Subrogation is granted to the person who is secondarily liable and is designed to allow that party to enforce the creditor’s right of exoneration against one who has been unjustly enriched.” *Id.* (internal quotations omitted). The doctrine of subrogation is necessary because a person who is secondarily liable may otherwise have no cause of action against the unjustly enriched party. *Id.* The rationale is therefore “bottomed on a sensitivity to the comparative equities involved.” *Id.* Where one person is more fundamentally liable for a debt which another person is obligated to pay, the primary obligor shall not be enriched by escaping the obligation. *Id.* “Subrogation only requires that the payment by the

---

<sup>2</sup> A third-party claim based on unjust enrichment only requires that the creditor have a legally recognizable claim against the primary obligor. *Palmer*, 637 N.W.2d at 152. It does not require the creditor to actually assert the claim. *Id.* Furthermore, a third-party claim is not disqualified if the primary obligor’s obligation to the creditor is discharged when the third party also discharges its own secondary liability to the creditor. *Id.* at 156-57.

party seeking subrogation satisfy an obligation for which that party is not primarily liable.” *Id.* at 157.

Upon our review, we find Halligan has satisfied an obligation to Rolfe that was primarily owed by the Shimons. In order to receive financing for the purchase of Halligan’s photography business, the Shimons executed a promissory note in favor of Rolfe. A condition for the financing was a personal guaranty from Halligan; however, the primary obligation to Rolfe under the promissory note was owed by the Shimons. When the Shimons defaulted on the promissory note the second time, Halligan satisfied the outstanding obligation the Shimons owed to Rolfe.

We conclude Halligan was secondarily liable to Rolfe under the guaranty and paid Rolfe in satisfaction of the obligation primarily owed by the Shimons. We affirm the district court’s decision that Halligan has an enforceable claim for restitution based on unjust enrichment against the Shimons. *See id.; Halverson*, 297 N.W.2d at 522. Because we have affirmed the district court under the Iowa common law doctrine of subrogation addressed by the court, we decline to address the parties’ arguments regarding statutory and contractual issues.<sup>3</sup>

#### **B. Waiver Provision.**

The Shimons contend Halligan gave up his right to seek repayment from the Shimons for the defaulted note when he executed the guaranty because the guaranty included a waiver of the rights of subrogation, contribution,

---

<sup>3</sup> Under general guaranty principles, the fact that the creditor may be barred by operation of law or by release of the primary obligor from proceeding against the primary obligor does not necessarily bar recovery by the guarantor against the primary obligor. *See Palmer*, 637 N.W.2d at 152-57; 38 Am. Jur. 2d *Guaranty* § 120, 971-72.

reimbursement, or indemnification. The Shimons also allege that, as third party beneficiaries to the guaranty agreement between Rolfe and Halligan, they had the right to enforce the waiver provisions of the guaranty. Halligan argues, however, that the waiver provisions of the guaranty agreement are completely inconsistent with the intention of the parties and the purpose of the guaranty and are therefore not binding on Halligan. Halligan also alleges the Shimons were not in privity to the guaranty agreement between Rolfe and Halligan and therefore had no right to enforce the waiver provisions of the guaranty.

General rules concerning parties to contracts are applicable for the purpose of resolving questions as to the parties to contracts of guaranty. Therefore, guaranty contracts are to be construed according to the intention of the parties as ascertained from the language used in the contract and the circumstances under which the guaranty is given. *Miller v. Geerlings*, 256 Iowa 569, 576, 128 N.W.2d 207, 211 (1964); *Williams v. Clark*, 417 N.W.2d 247, 251 (Iowa Ct. App. 1987). Unfair or unreasonable results will be avoided if possible. *Miller*, 256 Iowa at 579, 128 N.W.2d at 213.

We conclude the waiver provisions in the guaranty that deprived Halligan of his rights of subrogation, contribution, reimbursement, or indemnification were contrary to the intent of parties to the contract. Upon receiving payment by Halligan in satisfaction of the obligation owed by the Shimons, Rolfe had no interest in Halligan being deprived of any remedies against the Shimons. Furthermore, Halligan had no reason to contract away one of the most basic rules governing guaranty contracts—the entitlement to reimbursement from the primary obligor if the guarantor is required to pay under the guaranty.

We conclude the waiver provision in the guaranty does not affect Halligan's right for restitution based on unjust enrichment against the Shimons.

**AFFIRMED.**

Vaitheswaran, J., concurs; Miller, J., concurs in part and dissents in part.



**MILLER, J.** (concurring in part and dissenting in part)

I concur in part and respectfully dissent in part. I concur in the part of the majority opinion that concludes the district court did not err in concluding Rolfe made a complete transfer to Halligan of Rolfe's rights to the promissory note from the Shimons to Rolfe. I respectfully dissent from the part of the opinion that concludes the waiver provisions in Halligan's personal guaranty to Rolfe are contrary to the intent of the parties to the guaranty and thus unenforceable.

Halligan's guaranty to Rolfe provides, in relevant part:

I also waive and relinquish all present and future claims, rights, and remedies against borrower or any other obligated party arising out of the creation or my performance of this guaranty. My waiver includes, but is not limited to, the right of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy you may have against the borrower, collateral, or other party obligated for borrower's debts, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law.

The district court relied on principles of subrogation to enter judgment in favor of Halligan, and the majority affirms.

Subrogation, being an equity springing from the relation between the parties, and created and enforced for the benefit and protection of the one in whose favor it is originated, may be modified or extinguished by contract, or may be waived, either expressly or by implication. Absent fraud, a waiver will be valid and enforceable. No one may complain if the person entitled to subrogation waives his or her right to this relief, except, possibly, the subrogee's creditors. In accordance with the rule as to waiver generally, waiver of the right of subrogation is a question of intention.

In order to establish a waiver it is necessary to show by clear evidence an intentional relinquishment of a known right. The waiver must be specific and unequivocal. It is not necessary, however, that the subrogee use the word "waive" in releasing his or her rights, but it is sufficient if the understanding and arrangement are plainly expressed by the words used, and the rights and equities of the parties are clearly delineated.

83 C.J.S. *Subrogation* § 21 (2000).

Subrogation, being an equity springing from the relation between the parties and created and enforced for the benefit and protection of one in whose favor it is originated, may be asserted or waived. The waiver may either be express or by implication, either by contract or by conduct or it may be gleaned from the plain language of a contract.

73 Am. Jur. 2d *Subrogation* § 77 (2001).

Halligan, the promissor in the written guaranty, received consideration, the proceeds of Rolfe's loan to the Shimons, for his guaranty. Halligan expressly waived any and all present and future rights against the Shimons arising out of the loan and Halligan's guaranty thereof. The waiver is broad, specific, plainly expressed, and unequivocal. No claim or showing has been made that Halligan's guaranty was procured or induced by fraud, mistake, or any other means that would constitute a defense to the waiver.

Halligan by contract waived his right to subrogation. The district court erred by not enforcing the waiver. I would reverse the judgment of the district court and remand for dismissal of Halligan's petition, and therefore respectfully dissent in part.