

IN THE COURT OF APPEALS OF IOWA

No. 0-138 / 89-619

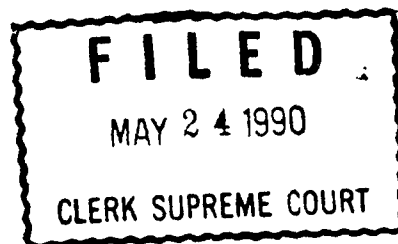
BRITT-TECH CORPORATION, A Corporation,

Plaintiff-Appellant,

vs.

AMERICAN MAGNETICS CORPORATION, A Corporation;
and RIVER CITY DEVELOPMENT CO., LTD., A Corporation,

Defendants-Appellees.



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Appeal from the Iowa District Court for Cerro Gordo
County, Gilbert K. Bovard, Judge.

Plaintiff appeals from motion granting defendants
summary judgment. **AFFIRMED IN PART AND REVERSED IN PART
AND REMANDED.**

Larry J. Cohrt of Swisher & Cohrt, Waterloo, for
appellant.

Jeffrey A. Boehlert of Patterson, Lorentzen, Duffield,
Timmons, Irish, Becker & Ordway, Des Moines, for appellee
American Magnetics Corporation.

David J. Dutton and Cheryl L. Weber of Mosier, Thomas,
Beatty, Dutton, Braun & Staack, Waterloo, for appellee
River City Development Co., Ltd.

Considered by Oxberger, C.J., and Hayden and Sackett,
JJ.

SACKETT, J.

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Plaintiff Britt-Tech Corporation seeks indemnity or contribution from defendants American Magnetics Corporation and River City Development Co., Ltd. The trial court granted summary judgment. We reverse and remand as to defendant American Magnetics Corporation. We affirm as to defendant River City Development Co., Ltd.

Duane Hardy was electrocuted on June 7, 1982, while using a power washer manufactured in March of 1972 by Britt-Tech Corporation. Britt-Tech settled a wrongful death action with the estate of Duane Hardy on July 28, 1986.

That settlement followed an appeal to this court that was determined by the trial court on February 10, 1986, to have fixed liability as to Britt-Tech on the date of the jury verdict, January 13, 1984, but left unresolved the issue of damages. See Hardy v. Britt-Tech Corp., 378 N.W.2d 307 (Iowa App. 1985).

On July 24, 1987, Britt-Tech filed this petition, seeking common law indemnity or contribution against defendant American Magnetics Corporation, the manufacturer of an alleged faulty transformer used as a component part in the power washer, and defendant River City Development Co., Ltd., the original purchaser and owner of the power washer, who sold the used unit to Duane Hardy. Both defendants filed motions for summary judgment. The trial court sustained both motions.

I.

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The trial court found that to succeed in this action plaintiff must comply with Iowa Code chapter 668 (1989). Plaintiff's first argument is that chapter 668 does not apply because the incident occurred, and the jury verdict establishing liability was rendered, prior to the effective date of chapter 668. The heading to chapter 668 provides:

Sections 668.1 through 668.10, except 668.4, apply to all cases filed on or after July 1, 1984. Section 668.4 applies to all cases tried on or after July 1, 1984. . . . (emphasis added)

The term "all cases" in the heading has been interpreted to include contribution claims filed after July 1, 1984, the effective date of the chapter, even though the claims arose before the effective of the chapter. See Iowa Nat'l Mut. Ins. Co. v. Granneman, 438 N.W.2d 840, 842 (Iowa 1989). We affirm the trial court on this issue.

II.

Plaintiff next contends the trial court erred in finding it failed to meet the requirements of chapter 668 necessary to maintain its action. Defendants contend the identical issue was decided in AID Insurance Co. v. Davis County, 426 N.W.2d 631 (Iowa 1988). Defendants contend the holding in AID is dispositive and dictates the affirmance of the trial court's decision.

Chapter 668 provides in applicable part:

668.5 Right of contribution

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death,

or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

* * *

668.6 Enforcement of contribution

* * *

2. If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:

a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.

Under the statute, a plaintiff seeking contribution must establish that a defendant's liability to the injured party has been discharged. AID Ins. Co. v. Davis County, 426 N.W.2d 631, 632 (Iowa 1988). In AID, the plaintiff did so by relying on a release of liability, which the court found did not release the defendant. Id. In this case the plaintiff argues the defendants are discharged from

liability because the statute of limitations has run on any claims Hardy may have had against the defendants. The running of the statute of limitations on the injured party's claim against the defendants was not raised in AID.

Contribution is rooted in equity and requires common liability and payment or satisfaction by the person seeking contribution of the entire share or a share greater than his or her own. See 18 Am. Jur. 2d Contribution §§ 9-10 (1985). The doctrine of contribution rests on principles of equity and natural justice. Mailliard v. Heffernen, 418 N.W.2d 85, 86 (Iowa App. 1987). As a practical matter, Hardy's ability to obtain damages from either of the defendants has been extinguished because the applicable statute of limitations has run on both claims. See United States Fidelity & Guar. Co. v. Liberty Mut. Ins. Co., 127 Mich. App. 365, 339 N.W.2d 185, 189 (1983). The main requirement for a postjudgment agreement to be considered a satisfaction is that it terminates the litigation. See Raleigh v. Peterson, 165 F. Supp. 47, 52 (M.D. Pa. 1958); Criterion Ins. Co. v. Laitala, 658 P.2d 112, 116 (Alaska 1983).

The question is, does the statute require some affirmative, active participation, and not simply passive operation of law? Plaintiff contends it does not and directs us to Criterion Insurance Company v. Laitala, 658 P.2d 112 (Alaska 1983), in support of its position. In

Criterion, the plaintiff, who had settled a verdict during the pendency of an appeal, sued Laitala for contribution. The release given in settlement did not name Laitala, but the statute of limitations had run on the injured party's claim against Laitala. The question on appeal was whether the settling agreement was a satisfaction of the judgment that released the other tortfeasors. Criterion, 658 P.2d at 115. In holding the functional purpose of the agreement viewed as a whole was to discharge all parties' joint responsibility to the injured parties, the court considered the purpose of the Uniform Contribution Among Tortfeasors Act was to assure that all joint tortfeasors pay their fair share of the damages, rather than having only one pay all the damages. Criterion, 658 P.2d at 115. It considered the injured party could not have intended further proceedings against others, id. at 116, and it considered a satisfaction is consistent with the equitable purpose of the act. Id. at 117.

The court further noted the settlement reflected a compromise of the jury's assessment of all damages resulting from the accident. Id. at 116. The court appeared to give some weight to the fact Laitala admitted he was negligent, contributing to the injured party's injuries. Id. at 117. The court determined it would be inequitable to discharge him. Id. Even if we are to adopt the general reasoning of Criterion, it is necessary to

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affirm dismissal of the claim against River City Development Co., Ltd.

Plaintiff's allegations against defendant River City are based on misuse and abuse of the machine, a basis for liability we determined was rejected by the jury in the Hardy v. Britt-Tech case. See Hardy, 307 N.W.2d at 310.

We therefore find the trial court was correct in granting summary judgment to defendant River City Development Co., Ltd.

For its cause of action against defendant American Magnetics Corporation, plaintiff contends the transformer was manufactured by defendant American Magnetics and installed without change or alteration. As we said in Hardy, 378 N.W.2d at 310, Hardy's action against plaintiff was predicated on an alleged defect in one component part: "the transformer." Therefore, there is a basis for plaintiff to contend this defendant had some responsibility for the incident. The record is clear the statute has run, and from the nature of the settlement, we find Hardy could not have intended to proceed against others. To allow plaintiff to proceed against American Magnetics Corporation is consistent with the equitable purpose of the act.

We reverse and remand the summary judgment entered in favor of American Magnetics Corporation.

AFFIRMED IN PART AND REVERSED IN PART AND REMANDED.