STATE OF MICHIGAN

COURT OF APPEALS

CARL EVANGELISTA and LINDA EVANGELISTA,

Plaintiffs-Appellants,

v

SHANNON EVANGELISTA,

Defendant/Third-Party Plaintiff-Appellee,

v

RONALD EVANGELISTA,

Third-Party Defendant-Appellant.

UNPUBLISHED
June 9, 2011

No. 297575
Oakland Circuit Court
LC No. 09-100859-CK

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

In this breach of contract action, plaintiffs Carl and Linda Evangelista and third-party defendant Ronald Evangelista appeal as of right from the trial court's order granting in part and denying in part Ronald's motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion.

Defendant Shannon Evangelista and Ronald executed a promissory note to plaintiffs, who are Ronald's parents; it held Shannon and Ronald jointly and severally liable to plaintiffs for the repayment of a loan for $158,000, secured by real property on which Shannon and Ronald were building a home. At the time of the loan, Shannon and Ronald were married, but they subsequently divorced.

Plaintiffs and Ronald argue that plaintiffs were entitled to a judgment against Shannon for the full amount of the promissory-note debt. We agree. We review the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Ronald brought his motion under MCR 2.116(C)(8) and (C)(10). "In evaluating a motion for summary disposition brought under [MCR 2.116(C)(10)], a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered

evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden*, 461 Mich at 120. "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Maiden*, 461 Mich at 119 (citations omitted).

Because Shannon and Ronald were jointly and severally liable for the debt by the terms of the promissory note, plaintiffs could proceed against Shannon severally for the full amount of the promissory-note debt. See 12 Am Jur 2d, Bills and Notes, § 401, pp 401-402; see also *Markley v Oak Health Care Investors of Coldwater, Inc*, 255 Mich App 245, 253; 660 NW2d 344 (2003). Shannon was jointly and severally liable regardless of whether she was responsible for the default. *Velez v Tuma*, 283 Mich App 396, 409-410; 770 NW2d 89 (2009). Because Shannon was jointly and severally liable, there was no authority for reducing the judgment against her based on the outcome of the third-party action. Therefore, we find that although the trial court properly found that plaintiffs could proceed against Shannon jointly or severally for the full amount of the promissory-note debt, it erred when it entered a judgment against Shannon for only half of the promissory-note debt based on the resolution of the third-party action. On remand, the trial court must enter a judgment against Shannon, jointly and severally, in favor of plaintiffs for the full amount of the debt.[1]

We decline to address whether plaintiffs were entitled to collection costs and fees. Plaintiffs and Ronald abandoned this issue by not including it in the statement of questions presented for appeal and by failing to provide supporting authority. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 404; 628 NW2d 86 (2001); *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003).

Plaintiffs and Ronald next argue that the trial court erred because it should have granted summary disposition to Ronald with respect to Shannon's indemnification claim. "Indemnity relates to the obligation of one person or entity to make good a loss another has incurred while acting for its benefit or at its request." *Langley v Harris Corp*, 413 Mich 592, 596; 321 NW2d 662 (1982). It "shifts the entire loss from the party who has been forced to pay to the party who should properly bear the burden." *Id*. at 597. On the other hand, "[c]ontribution is an equitable remedy based on principles of natural justice." *Tkachik v Mandeville*, 487 Mich 38, 47; 790 NW2d 260 (2010). "Contribution distributes a loss among joint tortfeasors, requiring each to pay its proportionate share . . . ." *Langley*, 413 Mich at 597.

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[1] Although the tort-reform legislation largely abolished joint and several liability in tort actions, it did not affect joint and several liability in contract actions. See *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 642; 734 NW2d 217 (2007), and *Zahn v Kroger Co of Mich*, 483 Mich 34, 40; 764 NW2d 207 (2009).

We find that the trial court should have granted summary disposition to Ronald on the indemnification claim. Shannon did not have a claim for indemnification under any of the three sources that provide a right to indemnification, including an express agreement, an implied agreement, or common law. See *Paul v Bogle*, 193 Mich App 479, 490; 484 NW2d 728 (1992). Defendant did not allege that there was an express indemnification agreement, and there was no evidence in the record that the relationship between Shannon and Ronald entitled Shannon to shift the entire debt to Ronald. See *Langley*, 413 Mich at 597; see also *Isabella County v Michigan*, 181 Mich App 99, 106; 449 NW2d 111 (1989). Furthermore, Shannon did not establish that Ronald's wrongful actions entitled her to restitution because he should have been fully liable to plaintiffs instead of her. See *Skinner v D-M-E Corp*, 124 Mich App 580, 584-585; 335 NW2d 90 (1983) ("[c]ommon law indemnity is based on the equitable principle that where the wrongful act of one results in another being held liable, the latter party is entitled to restitution from the wrongdoer" [internal citation and quotation marks omitted]).

However, Shannon's third-party complaint also sought contribution. There is no dispute that Shannon and Ronald were jointly and severally liable for the promissory-note debt. Thus, Shannon clearly was entitled to contribution from Ronald. See MCL 440.3116, *Kroll v Crest Plastics, Inc*, 142 Mich App 284, 290-291; 369 NW2d 487 (1985), and *Comstock v Potter*, 191 Mich 629, 637; 158 NW 102 (1916). Because we may "enter any judgment or order or grant further or different relief as the case may require," MCR 7.216(A)(7), we remand this case to the trial court to grant summary disposition to Shannon on the contribution claim.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Patrick M. Meter