

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER SAMPSON, JR.,  
Appellant,  
vs.  
TYREE CARR AND DAVID ROSS,  
Respondents.

No. 41466

**FILED**

APR 19 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in favor of defendants Tyree Carr and David Ross rejecting Peter Sampson's claim for contribution based on the parties' involvement in the Nevada Casket Corporation (NCC), a business that manufactured, distributed, and sold burial caskets. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

PROCEDURAL HISTORY AND FACTS

Sampson, Carr, Ross, and William Dougan<sup>1</sup> joined NCC as the financial board of directors. Initially, the four directors made equal contributions of \$35,000 in February and June 1993. In May 1994, the financial board voted to approve entering into the casket manufacturing business, and each of the four directors agreed to invest an additional \$33,000 to cover the down payment on the necessary equipment and supplies. The total start-up costs for the manufacturing business were \$350,000.

Sampson signed a financial agreement with Iron City Stamping (Iron City) to provide the equipment and supplies needed, but no copy of that agreement was entered into evidence. Iron City installed

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<sup>1</sup>Dougan is not a party to this appeal.

the equipment between August and October 1994. In September 1994, it became evident that Dougan was unable or unwilling to meet the \$33,000 obligation, and the directors began discussing the dissolution of NCC. Dougan and Carr withdrew from the corporation, but the dissolution agreement was not signed until December 30, 1994. Sampson and Ross continued to fund NCC, infusing additional capital to continue operations and pay down the corporate debt. Following the dissolution of NCC, Sampson and Ross formed Sampson and Ross, Inc. (S&R) to continue with the manufacturing phase of the business.

In 1995, Carr, Dougan, and Ross filed suit seeking contribution from Sampson on a Bank of America loan personally guaranteed by the four directors, forcing S&R into receivership and bankrupting NCC. Sampson counterclaimed for contribution on the secured and unsecured debts of NCC. In 1996, Carr, Dougan, and Ross filed a second complaint based largely on the same claims except for the addition of Geraldine Kirk-Hughes, Sampson's counsel, as a co-defendant. Following an agreement to dismiss the 1995 case, the district court granted a motion for partial summary judgment in favor of Carr, Dougan, and Ross, leaving only Sampson's claim for contribution before the court. The court dismissed Sampson's claim without prejudice to be reasserted in the 1996 case. However, because Sampson failed to raise the claim for seven more months, the district court denied Sampson's motion for leave to amend and the case proceeded to trial.

Following a bench trial, the district court dismissed all claims against Kirk-Hughes and found in favor of Carr, Dougan, and Ross. Sampson appealed the judgment and challenged the district court's order denying his motion to amend. To preserve his contribution claim pending

appeal, Sampson filed a third case that was dismissed on a summary judgment motion. Sampson also appealed that decision, and this court consolidated the two appeals, resulting in an order affirming in part and reversing in part Docket Number 32913 (Carr, Dougan, and Ross' bank note contribution claim) and reversing Docket Number 34348 (Sampson's claim for equitable contribution). This court affirmed the district court's judgment in favor of Carr, Dougan, and Ross, on the bank note contribution claim but reversed the award of attorney fees in that case. In Docket Number 34348, this court held that the cause of action was not a compulsory counterclaim to the bank note contribution claim, and remanded the case to the district court for resolution of issues that had not yet been litigated before any court.

Subsequently, Sampson settled with Dougan, but Carr and Ross proceeded to trial. Following a bench trial, the district court ruled that Sampson failed to prove the existence of an agreement between the parties to share equally the cost of Sampson's payments on NCC's debt. Finding that the debt of the corporation was not the individual indebtedness of the parties, the district court entered judgment in favor of Carr and Ross. Sampson appeals.

#### DISCUSSION

This court reviews questions of law de novo and without deference to the conclusions of the district court.<sup>2</sup> Sampson argues that the equitable right of contribution entitles him to contribution from the other members of NCC's board of directors because the four parties agreed

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<sup>2</sup>SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

to join NCC and make the initial payments to finance its expansion. The common law doctrine of contribution holds that each party to a common obligation may recover from the other parties any amounts paid by the claimant to satisfy the common debt.<sup>3</sup> However, to make out such a claim, a party must show (1) the existence of a common obligation or burden and (2) the compulsory discharge of the debt by him or that he or she paid more than his fair share of the obligation.<sup>4</sup>

Sampson's argument that the directors of NCC were under a common obligation is unconvincing. We conclude that no enforceable agreement existed stating that the parties would be personally bound for the debts of the corporation. We further conclude that Sampson was not required to pay or advance funds to settle the outstanding corporate debt. A party's status as an officer and director provides no compulsion for that party to pay the debts of the corporation.<sup>5</sup> The indebtedness of the corporation is not the individual indebtedness of the parties.

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<sup>3</sup>18 Am. Jur. 2d Contribution § 1 (2004).

<sup>4</sup>18 Am. Jur. 2d Contribution § 9, 10 (2004); e.g., Carpenter v. Sisti, 360 N.Y.S.2d 13, 15-16 (App. Div. 1974) (holding that it is a valid affirmative defense to a contribution claim that no unsatisfied judgment existed prior to the payment of a corporate debt by the claimant); Gordner v. Connor, 77 N.W. 383, 383-84 (Neb. 1898) (holding that voluntary payment of a corporate debt by one stockholder did not make other shareholders personally liable and therefore no right of contribution exists).

<sup>5</sup>Pursuant to NRS 78.747 corporate directors and shareholders are not individually liable for the debts or liabilities of the corporation.

Moreover, Sampson's reliance on Medallion Development v. Converse Consultants<sup>6</sup> is misplaced. As the district court noted, Medallion is inapplicable here because that case deals with the Uniform Contribution Among Tortfeasors Act,<sup>7</sup> not the common law right of equitable contribution. Furthermore, Sampson's argument that this court's order in the prior appeal implies that Nevada law recognizes his equitable claim for contribution is equally without merit. The portion of this court's order cited by Sampson refers to the bank note contribution case and not Sampson's claim for equitable contribution.<sup>8</sup> McCormack applies in the context of the bank note contribution case because, like the directors in McCormack, NCC's four directors personally signed the bank documents guaranteeing the debt, making them co-sureties on the note.<sup>9</sup> Such is not the case in regard to Sampson's claim here.

Finally, because Sampson was under no compulsion to pay down NCC's debt, we conclude that the district court did not err in determining that his intent in infusing additional capital was to own a greater stake in S&R. Ross's and Sampson's testimony differed as to why Sampson paid down the corporate debt in preparation for NCC's transition to S&R, Inc. Ross testified that he believed the purpose of Sampson's capital infusion was to facilitate operations and obtain a higher equity position in the company; however, Sampson denied making payments for

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<sup>6</sup>113 Nev. 27, 32, 930 P.2d 115, 118-19 (1997).

<sup>7</sup>NRS 17.225, et seq.


<sup>8</sup>See Sup. Ct. Order 32913/34348 (citing Stephens v. McCormack, 50 Nev. 383, 389, 263 P. 774, 776 (1928)).


<sup>9</sup>Id. at 386, 263 P. at 775.

that reason. The district court, as the trier of fact, evaluates the weight and credibility of witness testimony, and this court will not set aside a district court's findings of fact unless they are clearly erroneous or not supported by substantial evidence.<sup>10</sup> We believe the record adequately supports the district court's decision.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Mark R. Denton, District Judge  
Kirk-Hughes & Associates  
Robert K. Dorsey  
Clark County Clerk

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<sup>10</sup>Douglas Spencer v. Las Vegas Sun, 84 Nev. 279, 282, 439 P.2d 473, 475 (1968); Sandy Valley Assoc. v. Sky Ranch Estates, 117 Nev. 948, 954, 35 P.3d 964, 968 (2001).