

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

HC B FINANCIAL CORP., AS SUCCESSOR IN
INTEREST TO FIRST NBC BANK, AS
SUCCESSOR IN INTEREST TO CENTRAL
PROGRESSIVE BANK BY ACQUISITION OF
ASSETS FROM THE FDIC AS RECEIVER
FOR CENTRAL PROGRESSIVE BANK,

Plaintiff,

v.

Case No. 2014-CA-001534

ESTEPHAN D. DAHER, FAYEZ SHAMIEH,
AND AMAL SHAMIEH,

Defendants.

NOTICE OF APPEAL

_____/

FAYEZ SHAMIEH AND AMAL SHAMIEH,
Defendants/Cross-Plaintiffs,

v.

ESTEPHAN D. DAHER,
Cross-Defendant.

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendants/Cross-Plaintiffs, FAYEZ SHAMIEH AND AMAL SHAMIEH, appeal to the First District Court of Appeal the Order of this Court rendered April 30, 2024, titled Final Judgment on Remand Regarding the Cross-Plaintiffs' Cross Claim for Contribution Against Cross-Defendant. A conformed copy of the Order being appealed is attached hereto as **Exhibit "A."**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Shiraz A. Hosein, Esq., Anchors, Smith Grimsley, PL, 909 Mar Walt Drive, Suite 1014,

Fort Walton Beach, Florida 32547 at sahosein@asglegal.com on this 23rd day of May, 2024.

Respectfully submitted,

/s/ David B. Pleat

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PLAINTIFFS, FAYEZ SHAMIEH AND
AMAL SHAMIEH

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA**

HCB FINANCIAL CORP., AS SUCCESSOR IN
INTEREST TO FIRST NC BANK, AS SUCCESSOR
IN INTEREST TO CENTRAL PROGRESSIVE
BANK BY ACQUISITION OF ASSETS FROM
THE FDIC AS RECEIVER FOR CENTRAL
PROGRESSIVE BANK, NA,
Plaintiff,

v.

CASE NO.: 2014-CA-001534

ESTEPHAN D. DAHER, FAYEZ AND
AMAL SHAMIEH,
Defendants.

_____ /

FAYEZ AND AMAL SHAMIEH,
Defendants/Cross-Plaintiffs,

v.

ESTEPHAN D. DAHER,
Cross - Defendant.

_____ /

**FINAL JUDGMENT ON REMAND REGARDING THE CROSS-PLAINTIFFS'
CROSSCLAIM FOR CONTRIBUTION AGAINST CROSS-DEFENDANT**

This matter came on to be heard by this Court for a trial on March 26, 2024, based upon the Opinion and Remand of the First District Court of Appeals dated February 15, 2023 (Plaintiffs' Exhibit 6), and subsequent Mandate dated March 7, 2023 (Plaintiffs' Exhibit 7), relating to the Cross-Plaintiffs' Cross-claim against the Cross-Defendant seeking common law contribution. The

evidence in this case consists of the sworn live testimony of one of the Cross-Plaintiffs, Fayeze Shamieh, the Cross-Defendant, Estephan D. Daher, and the President of HCB financial Corp., Joe Dobson;¹ all exhibits received into evidence; and all facts that were admitted or stipulated to by the parties. In evaluating the believability of the witnesses, the Court considered the demeanor of each witness while testifying; the frankness or lack of frankness of each witness; the intelligence of each witness; any interests a witness may have in the case; the means and opportunity of each to know the facts about which such witness testified; the ability of each witness to remember the matters about which they testified; and the reasonableness of the testimony of each witness, considered in light of all the evidence in the case and in light of common sense.

IDENTIFICATION OF PARTIES AND ISSUES

Parties

1. The Cross Plaintiffs are Fayeze Shamieh and Amal Shamieh, who are married to each other. Cross-Plaintiff, Fayeze Shamieh, will be referred to herein individually as “Fayeze” and Cross-Plaintiff, Amal Shamieh, will be referred to herein individually as “Amal.” Depending on the context, Fayeze and Amal may be referred to herein collectively as the “Shamiehs.” However, this collective reference to them is for convenience only and shall not be construed as a determination by this Court that they should be treated as a single unified entity for the purpose of their contribution claim.
2. Cross-Defendant, Estephan D. Daher, will be referred to herein as “Daher.”
3. HCB Financial Corp., will be referred to herein as “HCB.”
4. The First District Court of Appeals’ Opinion and Remand, and Mandate will be referred to herein collectively as the “DCA’s Opinion.” Also, the First District Court

¹ HCB Financial Corp. was the Plaintiff in the underlying case.

of Appeals will be referred to herein as the “DCA.”

Issues

5. Based on the DCA’s Opinion, Daher does not contest that he is liable to Fayeze and Amal for some amount of contribution. Therefore, there are two issues to be decided by this Court. The first issue is whether Daher is liable for a one-third (1/3rd) or one-half (1/2) share of the joint obligation for which contribution is due. The second issue is the actual amount of contribution that Daher owes Fayeze and Amal.

FINDINGS OF FACT

6. In early 2006 Daher, Fayeze and Amal entered into a business deal whereby the three of them purchased a tract of land (the “Land”) in Okaloosa County, Florida, which they ultimately planned to develop.
7. Fayeze is a medical doctor and he and Amal were (and are currently) residents of Louisiana. Daher was and is a resident of Okaloosa County, Florida.
8. In order to finance the purchase of the Land each of the parties executed a Promissory Note dated April 28, 2006, in the original principal amount of \$832,000.00 (the “Note”) in favor of a Louisiana bank called Central Progressive Bank. (Plaintiffs’ Exhibit 1). The Note was secured by a Mortgage (the “Mortgage”) against the Land that was also executed by each of the Parties. (Plaintiffs’ Exhibit 2). (The Note and Mortgage may be collectively referred to herein as the “Loan”).
9. On the face of the Note, the borrowers are identified as “Estephan D. Daher, Fayeze Shamieh and Amal Shamieh.” Likewise, on the face of the Mortgage, the mortgagors are identified as “Estephan D. Daher, Fayeze Shamieh and Amal Shamieh.” Neither the

Note nor the Mortgage identify the marital status of Fayeze and Amal nor do these instruments address any contribution rights the parties would have against one another regarding this Loan.

10. At some point after this Loan was made, Central Progressive Bank went into FDIC receivership and this Loan was eventually purchased from the FDIC receivership by First NBC Bank Holding Co. ("First NBC").
11. Although the Note was renewed several times, it eventually fell into default and in an extremely aggressive move to avoid the inevitable foreclosure of the Mortgage in Florida, Fayeze and Amal filed an action in state court in Louisiana against First NBC and Daher (the "Louisiana Case") seeking rescission of the Note and Mortgage because they were allegedly the product of fraud and collusion between Daher and employees of Central Progressive Bank. Daher was forced to hire an attorney in Louisiana to defend him in this case. This case rocked on for many years. The Shamiehs lost at the trial court level, the intermediate appellate court level and ultimately at the state supreme court level.
12. In November 2013, while the Louisiana Case was still pending, HCB purchased multiple loans from First NBC including the subject Loan. In January 2014, the Shamiehs amended their complaint in the Louisiana Case to join HCB as a party defendant.
13. Upon being joined as a defendant in the Louisiana Case, HCB had to fully defend the validity of the Note and Mortgage because the validity and enforceability of the Note and Mortgage were at stake. HCB incurred thousands of dollars for attorney's fees and costs in its successful defense against the aggressive legal strategy employed by the

Shamiehs in this case.

14. In April 2014, while the Louisiana Case was still pending, HCB filed the underlying Complaint in Okaloosa County, Florida against Fayez, Amal and Daher seeking to foreclose the Mortgage in Count I, and seeking a declaratory judgment as to the validity of the Note and Mortgage in Count II (the “Florida Case”) (DIN # 3). But for the Shamiehs’ filing of the Louisiana Case and the fact that it was still pending, HCB would not have been forced to include the Declaratory Judgment action (Count II) as an additional count in the Florida Case.
15. Consequently, during the time the Florida Case and Louisiana Case were pending, HCB had no choice but to continue to pour thousands of dollars for attorney’s fees and costs into both cases to defend the validity of the Note and Mortgage. Additionally, because of the overly aggressive litigation strategy adopted by the Shamiehs, which was not joined by Daher, interest and late fees continued to accumulate on the Loan.
16. After being served with process in the Florida Case, Daher did not file any defensive pleadings or motions and a Clerk’s default was entered against Daher on May 27, 2014 (DIN #19).
17. Then in June 2024, HCB filed an involuntary bankruptcy against Daher. This involuntary bankruptcy was subsequently settled by HCB and Daher pursuant to a settlement agreement dated September 28, 2015. (Plaintiffs’ Exhibit 5). Pursuant to this settlement agreement, HCB dismissed the bankruptcy, Daher and HCB mutually released one another from all liability and claims relating to the Louisiana and Florida Cases; Daher agreed to cooperate with HCB regarding its claims and defenses in the Louisiana and Florida Cases; and HCB agreed to pay \$7,500.00 for Daher’s attorney’s

fees in the bankruptcy.

18. Meanwhile, the Shamiehs adopted their same aggressive scorched earth approach in fighting the foreclosure and declaratory judgment actions asserted by HCB in the Florida Case. Since Daher did not assert any defenses in the Florida Case and a default was entered against him early on, the attorney's fees and costs incurred by HCB in this case are not attributable to Daher, nor are the additional interest, late fees and other expenses that accrued during the pendency of this case attributable to Daher.
19. Likewise, since the Shamiehs sued Daher and HCB as co-defendants in the Louisiana Case, none of the attorney's fees or costs incurred by HCB in this case are attributable to Daher, nor are the additional interest, late fees and other expenses that accrued during the pendency of this case be attributable to Daher.
20. On April 8, 2019, after almost 5 years of litigating the Florida Case, Fayez, Amal and HCB entered into a settlement agreement. Pursuant to the terms of the settlement agreement, Fayez and Amal agreed to pay HCB \$1,000,000.00 and to give HCB a deed in lieu of foreclosure for the Land. Also, the parties agreed to release one another from all liability relating to the Loan and to the voluntary dismissal of the Florida Case with prejudice. Daher did not participate in any of the settlement negotiations leading up to the settlement agreement and was not a party to this settlement.
21. The following day, Fayez and Amal filed this equitable contribution claim against Daher seeking to recover \$500,000.00 (one-half of the settlement payment) from Daher.
22. Daher defended this contribution claim on several grounds including on the grounds that the Shamiehs' overly aggressive pursuit of the Louisiana Case and overly

aggressive defense of the Florida Case, Fayez and Amal unnecessarily and recklessly ran up the attorney's fees, costs, interest, and late fees HCB incurred in these cases for which Daher bears no responsibility for equitable contribution to either Fayez or Amal.

23. On May 24, 2021, this court (Judge Flowers) granted summary judgment in favor of Daher finding that he did not owe any amount of contribution to Fayez or Amal. This Final Summary Judgment did not address Daher's defense relating to the Shamiehs running up excessive attorney's fees, costs, interest accrual and late fee accrual because of their aggressive litigation strategy in the Louisiana and Florida Cases.
24. The Shamiehs appealed this Final Summary Judgment and on February 15, 2023, the DCA's Opinion and Remand was issued. (Plaintiffs' Exhibit 6). While the DCA reversed the Final Summary Judgment, it remanded the case to this Court for a factual determination of the amount of contribution Daher is liable for. Specifically, the DCA held that:

Given the nature of the preceding litigation, Daher might not be liable for the portion of the \$1 million HCB allocated to cover these other expenses. (citation omitted). First, the Shamiehs unsuccessfully continued the litigation for years in two different states after Daher settled with HCB. Second the Shamiehs and Daher were adverse in the Louisiana state court suit. Both factors, and possibly others, would affect the amount of the other expenses. And both factors, and possibly others, could affect whether *the portion of the settlement HCB allocated to cover these other expenses could be part of the common obligation.* (emphasis supplied) (Plaintiffs' Exhibit 6, pp. 6-7)

25. Given the express language of the remand, the manner in which HCB allocated the settlement amount is the primary issue this Court must consider in determining the amount of contribution that Daher is obligated to pay.
26. Joe Dobson, President of HCB, is the only witness to offer any testimony regarding this crucial issue. Mr. Dobson's testimony centered primarily around the spreadsheet that details the account payment history of the Loan (the "Loan History Spreadsheet"),

including HCB's allocation of the settlement proceeds it received from Fayeze and Amal. (see Defendant Exhibit A).

27. Mr. Dobson testified that he served as HCB's President long before HCB purchased this Loan and became embroiled in the Louisiana and Florida Cases. He continues to serve as HCB's president to date and he confirmed that he has personal knowledge regarding all aspects of HCB's involvement in these cases. He testified that the Shamiehs, and not Daher, prolonged the litigation in both cases because of their overly aggressive litigation tactics and strategy. Thus, the substantial amount of attorney's fees, costs, interest accrual, and late fee accrual that HCB incurred was caused by Fayeze and Amal.
28. In his testimony, Mr. Dobson further confirmed that the express language in the Note identifies Fayeze, Amal and Daher as the three individual makers of the Note, and also requires any payments received by HCB on the Note "be applied first to any unpaid collection costs; then to any late charges; then to any accrued interest; and then to principal." Regarding the settlement payment, Mr. Dobson testified that HCB allocated it in the manner required by the express terms of the Note.
29. Based on the Loan History Spreadsheet, Mr. Dobson testified that HCB applied the settlement payment to accrued interest in the amount of \$192,845.53, accrued late fees in the amount of \$47,428.37, and to "Other" (attorneys' fees, property taxes, and litigation costs) in the amount of \$591,298.97, for the total sum of \$831,572.87. Therefore, the balance remaining for application to the principal (the common obligation) was only \$168,427.20.
30. This Court finds that Mr. Dobson was credible and unbiased, and that his undisputed testimony is reliable.
31. The parallel nature of the Louisiana and Florida Cases was such that a determination in the Louisiana Case that the Note and Mortgage were invalid would have rendered the Note and Mortgage unenforceable in the Florida Case. Consequently, while these cases are technically separate, their facts and legal arguments were necessarily and inextricably related and intertwined with one another. Therefore, in the face of the overly aggressive litigation strategy employed by the Shamiehs, HCB was compelled to expend substantial sums to defend the dignity and enforceability of the Note and

Mortgage. Consequently, this Court finds that it would be inequitable to disregard the attorney's fees and costs incurred in both cases by HCB totaling \$591,298.97 from the calculation of the amount of contribution owed by Daher in this case. Additionally, in any event, the interest and late fee accrual totaling \$240,273.90, must be considered by this Court in calculation of Daher's contribution amount.

DECISION

Allocation of Contribution Between the Parties

One-Half or One-Third

32. Although Daher does not dispute the that he owes contribution, he does dispute the amount of contribution and the percentage that the Shamielhs' claim he owes. The Shamielhs claim that the starting point for the determination of the amount of contribution owed by Daher is one-half (1/2) the total paid by the Shamielhs to settle with HCB, while Daher claims that the starting point is one-third (1/3rd).
33. Daher's argument is based upon the undisputed fact that the Promissory Note (Plaintiffs' Exhibit 1) is executed by three individuals—Fayez Shamiel, Amal Shamiel and Estephan Daher. On its face, the Promissory Note does not make any reference to the Shamielhs as a single unified borrower such as "husband and wife," nor does it in any way apportion liability to the Shamielhs as a single unified borrower.
34. On the other hand, the Shamielhs assert that they should be treated a single entity for the purpose of their contribution claim against the comaker of the Note, Daher, because of the legal concept of "unity of title" between married couples and they rely on *Dixon v Davis*, 155 So2d 189 (Fla. 2nd DCA 1963); *Connolly v Connolly*, 448 So2d 641 (Fla. 4th DCA 1984); and *Aderhold v Aderhold*, 983 So2d 43 (Fla. 1st DCA 2008) to support this argument.
35. However, the Shamielhs' reliance on this argument and these cases is misplaced. In these cases, the courts delt with unity of title issues between married couples only insofar as title to real property is concerned. Specifically, in *Dixon*, the issued involved whether a devise in a will to several individuals and to "Mr. and Mrs. Roy A. Martin" created a tenancy by the entireties or a tenancy in common in real property regarding

the Martins' share; in *Aderhold*, the court determined that a tenancy by the entireties was created in real property by the express use of the words to "Victor W. Aderhold and Brenda Aderhold, husband and wife..." and in *Connolly* the court simply discusses the concept of married couples owning real property as tenants by the entirety in the context of a divorce case. These cases do not address in any way "unity of title" between married couples regarding promissory notes or any other instruments relating to the payment of a debt.

36. In light of the foregoing, this Court finds and determines that the concept of "unity of title" does not apply to the instant case because the manner in which the parties held title to the Land is not relevant to the determination of the allocation of contribution between the Parties.
37. The Note and Mortgage are clear and unambiguous on their faces. Both instruments identify the makers/mortgagors in their separate individual capacities—Daher, Fayez, and Amal. These instruments do not identify Fayez and Amal as a separate unified unit or entity such as "husband and wife" or "a married couple." Moreover, neither the Note nor the Mortgage address the issue of contribution between the parties in the event of a default. Had the parties intended an allocation other than one-third to each individual, they could have entered into a separate agreement addressing this issue, but they chose not to.
38. Therefore, this Court rules Daher owes one-third (1/3rd) of the total common obligation owed by the parties in this case.

Amount of Contribution owed by Daher

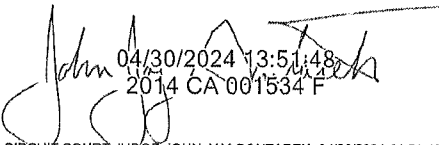
39. The DCA determined that the amount of the common obligation owed by Fayez, Amal and Daher was the unpaid principal sum of \$754,951.54. However, the DCA also recognized that the aggressive stance taken by the Shamihs in both cases likely caused HCB to incur various expenses, for which Daher is not liable, depending on how HCB allocated the settlement payment.
40. Having previously determined above in paragraph 31 that the facts and legal issues in the Louisiana and Florida Cases are inextricably related and intertwined, this court determines that HCB allocated \$831,572.87 of the \$1 million settlement amount to the

expenses incurred by HCB in these two cases because of actions taken only by the Shamiehs. While these are obligations of the Shamiehs, they do not constitute common expenses or obligations between the Shamiehs and Daher. The difference between the \$1 million settlement payment and these extra expenses is \$168,427.20. Consequently, after apportioning the settlement payment to pay for HCB's attorney's fees, costs, accrued interest, and accrued late fees, only \$168,427.20 remained available for allocation to satisfaction of the principal amount owed (the common obligation). One-third of the \$168,427.20 is \$56,142.40, which is the amount of contribution owed by Daher to the Shamiehs.

Final Judgment

Wherefore, Cross-Plaintiffs, Fayeze Shamieh and Amal Shamieh, shall take judgment against Cross-Defendant, Estephan D. Daher, in the amount of \$56,142.40, together with post judgment interest accruing subsequent to the date of this Final Judgment at the applicable statutory rate, for which let execution issue.

Done and Ordered in Okaloosa County, Florida.



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signed by CIRCUIT COURT JUDGE JOHN JAY GONTAREK 04/30/2024 01:51:48 2FuUgMqf