SUPREME COURT OF COLORADO

Colantuno v. A. Tenenbaum & Company, Inc.

23 P.3d 708 (Colo. 2001) · No. No. 00SC56 · Decided May 21, 2001

SUMMARY

The Colorado Supreme Court held that, under the Colorado Joint Rights and Obligations Act, a joint debtor's proportionate share of an obligation is calculated on a per capita rather than percentage-interest basis when another debtor settles with the creditor. The court further held that a debtor who settled before the collection suit should not be included in apportioning supplemental attorney fees generated during that suit. The court affirmed the court of appeals, with Justice Coats dissenting.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Rice; Justice Coats
JURISDICTION	Colorado
DECIDED	May 21, 2001
DOCKET	No. 00SC56
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Colorado Supreme Court granted certiorari to review the court of appeals' judgment concerning apportionment of supplemental attorney fees among joint debtors after one debtor settled with the creditor.
STANDARD OF REVIEW	De novo review applies because the issues involve statutory interpretation and are questions of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph F. Colantuno v. A. Tenenbaum & Company, Inc., John P. Dikeou

TOPICS

statutory interpretation · contract interpretation · commercial litigation · appellate procedure · appellate jurisdiction

PRACTICE AREAS

contracts | commercial litigation | remedies | appellate procedure

QUESTIONS PRESENTED

1. Whether a joint debtor's proportionate share under the Colorado Joint Rights and Obligations Act is calculated on a percentage-interest basis or a per-capita basis after another debtor settles with the creditor.
2. Whether a debtor who settled before the collection action and was never a judgment debtor should be included in calculating the shares of supplemental attorney fees incurred during that action.

HOLDINGS

1. Under the Colorado Joint Rights and Obligations Act, a joint debtor's proportionate share is calculated on a per-capita basis by dividing the obligation by the total number of applicable joint debtors, not according to the debtors' percentage interests in the partnership.
2. A debtor who settled before the collection suit and was never a judgment debtor is not included in calculating proportionate shares of attorney fees generated during that suit.
3. A nonsettling debtor who pays more than his or her share may seek contribution from co-debtors.

KEY QUOTATIONS

> *"In summary, we hold that a joint debtor's proportionate share under the Act should be calculated on a per capita and not a percentage interest basis by dividing the obligation by the total number of debtors."* (at 713)

> *"Finally, we conclude that in determining the total number of debtors by which to divide an obligation for attorney fees generated after a suit for collection, a court should not consider a debtor who had previously settled his obligation with the creditor."* (at 714)

FACTUAL BACKGROUND

E & A Associates executed a promissory note imposing joint and several liability on former partners Robert Isham, Joseph Colantuno, and John Dikeou. Robert Silverberg had previously paid his share and was not named as a defendant. After judgment was entered on the note and for attorney fees, Isham settled with Tenenbaum for $450,000 and was released. Tenenbaum then sought supplemental attorney fees incurred after the suit began, and the trial court awarded those fees against Colantuno and Dikeou without apportionment.

PROCEDURAL HISTORY

A trial court entered judgment against Robert Isham, Joseph Colantuno, and John Dikeou on a promissory note and awarded attorney fees. After Isham settled and was released, the trial court awarded supplemental attorney fees against Colantuno and Dikeou without apportioning them. The court of appeals affirmed the fee award but reversed for apportionment under the Colorado Joint Rights and Obligations Act. The Supreme Court affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- Fogg v. Macaluso, 892 P.2d 271 (Colo. 1995)
- Colo. Div. of Employment & Training v. Parkview Episcopal Hosp., 725 P.2d 787 (Colo. 1986)
- Ryals v. St. Mary-Corwin Reg'l Med. Ctr., 10 P.3d 654 (Colo. 2000)
- A. Tenenbaum & Co., Inc. v. Colantuno, 3 P.3d 456 (Colo. App. 1999)
- Bohrer v. DeHart, 961 P.2d 472 (Colo. 1998)
- Simpson v. Morgan, 124 Colo. 441, 238 P.2d 200 (1951)
- Humphrey v. O'Connor, 940 P.2d 1015 (Colo. App. 1996)
- Schiffer v. United Grocers, Inc., 329 Or. 86, 989 P.2d 10 (1999)
- Walsh v. Miller, 51 Ohio St. 462, 38 N.E. 381 (1894)
- Ducey v. Patterson, 37 Colo. 216, 86 P. 109 (1906)