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Contribution - Methods of Enforcing - O'keefe v. Baltimore Transit Co.

CONTRIBUTION — METHODS OF ENFORCING

O'Keefe v. Baltimore Transit Co.[1]

The original cause of action in this suit arose out of a collision between appellant's taxicab and appellee's streetcar on February 18, 1947, at Dundalk and St. Helena Avenues. Suits were instituted on July 17, 1947, by the cab passengers against appellant and appellee, but before trial the Transit Company obtained, on June 19, 1948, the proper releases whereby the claims against both the defendants were discharged in full. Having paid the total consideration for the general releases, the Transit Company instituted a new and separate action for contribution while the original suits were still open on the docket, the releases not having been filed therein. It obtained a judgment for one-half the price paid for the releases, from which the defendant appeals. *Held:* Affirmed.

The primary[2] argument of the cab company was that the Transit Company could not, without the consent and participation of appellant in the settlement, institute a new and separate proceeding for contribution while the original suit was still pending. In support appellant cited from the

[1] 94 A. 2d 26 (Md., 1953).

[2] Appellant also contended that the evidence was insufficient to show concurrent negligence on its part.

"Procedure and Practice" section of the Uniform Contribution Among Joint Tort Feasors Act.[3]

But the Court pointed out that Section 26 of Article 50 has been expressly superseded by the new Rules,[4] effective January 1, 1948, and the streetcar company's right to contribution did not arise until the releases were obtained on June 19, 1948.[5] Since the new Rules do not obliterate existing substantial rights, but merely affect the procedure for enforcing these rights, the Court applied the new Rules in the present case.[6] The Court said:[7]

> "There is no requirement in these rules that an action for contribution must be brought in the original action and cannot be brought in an independent action. Of course, one purpose of the new Rules is to avoid multiplicity of suits. By bringing this independent action it was not necessary to proceed further with the three pending suits."

It therefore appears that three proceedings are possible whereby a defendant may obtain contribution from a joint tort feasor co-defendant.

1. The defendant may assert a cross-claim against the co-defendant on which a judgment can be obtained upon trial of the whole proceeding, or, if the plaintiff's claim has been settled, still maintain such claim as part of the original proceeding.[8]
2. After a joint judgment has been obtained by the plaintiff, one defendant, by payment of all or more than his pro-rata share, may move, upon fifteen (15) days notice and proof of payment, for a Judgment of Recovery Over, as part of the original proceeding.[9]
3. Where no cross-claim has been asserted and settlement is effected before judgment, the defendant extinguishing the common liability may institute a new proceeding for contribution, on the authority of the present case.

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[3] Md. Code (1951), Art. 50, Sec. 26(c), (formerly Sec. 27).
[4] General Rules of Practice and Procedure, Part 2, III, Joinder Rule 7(4).
[5] Md. Code (1951), Art. 50, Sec. 21(b).
[6] Citing Ireland v. Shipley, 165 Md. 90, 98, 166 A. 593 (1933); Kelch v. Keehn, 183 Md. 140, 144, 36 A. 2d 544 (1944).
[7] *Supra*, n. 1, 28.
[8] Rules, *supra*, n. 4, III, Joinder Rule 3(b), 6(d).
[9] *Ibid*, Rule 6(e).

The Court did not deal in express terms with the appellant's argument that the action could not be maintained because the cab company did not participate in, or consent to, the settlement. It was pointed out in the opinion though, that the evidence was sufficient to show that the settlement figure was not excessive, as brought out by the testimony of claims experts.[10]

However, this argument was raised before the Municipal Court of Appeals for the District of Columbia.[11] After citing the Maryland Code Supplement (1947), Art. 50, Sec. 22(a), (b) and (c) (Sec. 21 of 1951 Code), the Court said:[12]

> "It will be seen at a glance that these sections make no mention of notice. But appellant urges us to rule that notice is required by implication. The case is one of first impression. Neither counsel nor this Court has discovered any decisions under the Uniform Act in which the question of notice was decided or apparently even discussed."

And further:[13]

> "The statute names only two conditions which must be met before a joint tort feasor is entitled to contribution from another following a settlement: (1) Payment of the common liability or more than a pro rata share thereof; and (2) Liability of the second tort feasor to the injured person must be extinguished.
>
> "We know of no principle which would permit us to make notice a third requirement when the statute is silent on the subject."

This is certainly the sound position since the defendant must first be proved jointly liable[14] and he can always try to show that the compromises were not made honestly or in good faith, or that the amounts paid were unreasonable or excessive.[15]

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[10] *Supra*, n. 1, 31; *Cf.* Congressional Country Club v. B. & O. R. Co., 194 Md. 533, 544, 71 A. 2d 696 (1950).

[11] Hodges v. United States Fidelity and Guaranty Co., et al., 91 A. 2d 473 (D. C., 1952).

[12] *Ibid*, 474.

[13] *Ibid*, 475.

[14] East Coast Lines v. M. & C. C. of Balto., 190 Md. 256, 279, 58 A. 2d 290 (1948).

[15] Consolidated Coach Corp. v. Burge, 245 Ky. 631, 54 S. W. 2d 16, 85 A. L. R. 1086, 1090 (1932).