

STATE OF MICHIGAN  
COURT OF APPEALS

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ABN AMRO MORTGAGE GROUP, INC.,

Plaintiff-Appellant,

v

CHARTER ONE BANK, N.A.,

Defendant-Appellee.

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UNPUBLISHED

July 6, 2006

No. 258865

Oakland Circuit Court

LC No. 2003-053396-CH

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Appellate review of a summary disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The application of the doctrine of equitable subrogation as a remedy also presents a question of law that is reviewed de novo. *Auto-Owners Insurance Co v Amoco Production Co*, 468 Mich 53, 57; 658 NW2d 460 (2003). Equitable subrogation is a legal fiction that arises when a person pays a debt for which another is primarily responsible. *Id.* at 59. The person who pays the debt is substituted or subrogated to all the rights and remedies of the party originally responsible for payment of the debt. *Id.* The doctrine provides that the subrogee acquires no greater rights than those held by the subrogor, and the subrogee may not be a mere volunteer. *Id.* That is, the person paying the debt stands in the position of surety where he has been compelled to pay the debt of another to protect his own rights. *Michigan Hospital Service v Sharpe*, 339 Mich 357, 374; 63 NW2d 638 (1954). “[S]ubrogation is allowed only in favor of one who under some duty or compulsion, legal or moral, pays the debt of another; and not in favor of him who pays a debt in performance of his own covenants, for the right of subrogation never follows an actual primary liability.” *Id.* quoting *Machined Parts Corp v Schneider*, 289 Mich 567, 575; 286 NW 831 (1939). The discharge of a primary liability has no right of subrogation against another because payment is an extinguishment of the liability. *Id.*

In the present case, the trial court correctly concluded that plaintiff was acting as a volunteer.<sup>1</sup> There was no evidence that plaintiff was compelled to enter into the transaction with the fee simple owner. Accordingly, the trial court properly granted the defense motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Patrick M. Meter

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<sup>1</sup> Plaintiff alleges that it loaned money to the fee simple owner of the property, who in turn utilized the funds to pay off two mortgages from Standard Federal Bank, both mortgages senior to the interest of defendant. Plaintiff presented documentation to indicate that it purchased Standard Federal Bank in 1997, which was made a subsidiary of plaintiff. Plaintiff therefore alleges that its subsequent loan to the fee simple owner merely constituted a “refinancing,” and it is entitled to equitable subrogation from its subsidiary, the senior mortgage holder *prior* to discharge. However, the documentation submitted in the trial court does not evidence a “refinancing” but rather, plaintiff entered into an agreement with the fee owner which contains covenants that it was required to perform. Therefore, the discharge of the primary liability precludes the application of equitable subrogation. *Michigan Hospital Service, supra*. Plaintiff’s reliance on the dicta from intermediate appellate decisions, both published and unpublished, does not override the *Michigan Hospital Service* decision.