IN THE IOWA SUPREME COURT
No. 16-1265

ALEXANDER SHCHARANSKY And TATIANA SHCHARANSKY, (Plaintiffs-Appellants)	v.	VADIM SHAPIRO, BORIS PUSIN, ILYA MARKEVICH, ALEX KOMM and DMITRY KHOTS, (Defendants-Appellees).

ALEX KOMM, ILYA MARKEVICH, BORIS G. PUSIN, VADIM SHAPIRO, and DMITRY KHOTS, (Counterclaim Plaintiffs),	v.	ALEXANDER, SHCHARANKSY, (Counterclaim Defendant).

ALEX KOMM, ILYA MARKEVICH, BORIS PUSIN, VADIM SHAPIRO, and DMITRY KHOTS, (Cross-Petition Plaintiffs),	v.	BORIS SHCHARANSKY, ZOYA STAROSELSKY, LEONID SHCHARASNKY, and SLAVA STAROSELSKY, (Cross-Petition Defendants).

ALEX KOMM, ILYA MARKEVICH, BORIS G. PUSIN, VADIM SHAPIRO, and DMITRY KHOTS, (Third-Party Petition Plaintiffs),	v.	CONTINUOUS CONTROL SOLUTIONS, LLC., (Third-Party Defendants).

APPEAL FROM THE DISTRICT COURT OF POLK COUNTY
HON. DAVID PORTER

APPELLANTS' AMENDED AND SUBSTITUTED – AMENDED PROOF BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE ISSUES

I. THE COURT ERRED IN CONCLUDING THAT THE MONIES TRANSFERRED WERE NEITHER LOANS OR GIFTS.

Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764, 772-73 (Iowa 2009)

State ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142, 149 (Iowa 2001)

II. THE COURT ERRED IN CONCLUDING THAT IF THE TRANSFERS WERE NOT GIFTS NOR LOANS, NO CONTRIBUTION ACTION COULD LIE.

Allison v. L.E. Allison Estate, 560 N.W.2d 333 (Iowa 1997)

Blair v. Werner Enterprises, 675 N.W.2d 533 (Iowa 2004)

Hansen v. Lanes, 695 N.W.2d 333 (Table), 2004 WL 2947947 (Iowa Ct. App. 2004)

Hills Bank & Trust Co. v. Converse, 772 N.W.2d 764, 772–73 (Iowa 2009)

Shcharansky v. Shapiro, 2013 WL 6116883, at *5 (Iowa Ct. App. 2013)

San Joaquin Valley Bank v. Gate City Oil Co., 173 P. 781 (Cal. Dist. Ct. App. 1918)

ROUTING STATEMENT

This appeal presents the application of existing legal principles and thus should be transferred to the Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

In this action, Plaintiffs Alexander and Tatiana Shcharansky (the "Shcharanskys") sought contribution from the Shapiro Group Defendants[1] for payments the Shcharanskys made on a debt owed to Wells Fargo Bank ("Wells Fargo"). The primary obligor on the debt was Continuous Control Solutions, Inc. ("CCS"). Certain members of the Shcharansky Group[2] and members of the Shapiro Group personally guaranteed that debt. The debt was incurred while CCS was under the control of the Shapiro Group Defendants. In 2007, control of CCS passed from the Shapiro Group to members of the Shcharansky Group.

In 2009, Wells Fargo obtained a judgment on its loans against CCS as well as against the personal guarantors of the loans, including the Shapiro Group Defendants. Following that judgment, CCS entered into a

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[1] The Shapiro Group Defendants are comprised of Defendants Vadim Shapiro, Boris Pusin, Ilya Markevich, Alex Komm, and Dmitry Khots.

[2] The Shcharansky Group is comprised of Plaintiffs Alexander and Tatiana Shcharansky and related parties not involved in this litigation.

forbearance agreement with Wells Fargo, which required it to make a large lump sum payment to Wells Fargo and quarterly payments thereafter. CCS at all times used its best efforts to make those payments but nonetheless was unable to make those payments beginning in June of 2010.

Rather than allow Wells Fargo to enforce its judgment against the guarantors individually – including the Shapiro Group guarantors – the Plaintiffs discharged the remaining debt obligation from their personal accounts. They did so with monies that their parents transferred to them outright. The Plaintiffs brought a claim for equitable contribution from each of the Defendants for the respective share each member owed toward the payments made by Plaintiffs.

This is the Plaintiffs' second appeal in this case. On January 23, 2013, the Plaintiffs appealed the district court's grant of summary judgment in favor of the Shapiro Group Defendants. On November 20, 2013, the Court of Appeals reversed the summary judgment ruling, holding that factual issues existed barring summary judgment in the Shapiro Group's favor, and remanded this case for trial.

On remand from the Court of Appeals, the District Court held a bench trial in this matter on December 7 - 8, 2015.[3] The trial concerned a single claim[4] brought by the Shcharanskys against the five Shapiro Group Defendants for contribution. Following trial, the district court requested and the parties submitted proposed findings and conclusions. On February 29, 2016, the district court entered judgment for Defendants and dismissed the remaining claims. On March 15, 2016, Plaintiffs filed a motion to amend and enlarge under Iowa Rule of Civil Procedure 1.904(2). App. 359-62. Plaintiffs also filed a brief in support of their Motion. App. 363-74) On March 28, 2016, Defendants filed a resistance to Plaintiffs' Motion. App. 375-85. On April 4, 2016, Plaintiffs filed a reply. App. 386-90.

The Plaintiffs' 1.904 Motion requested enlargement, amendment, and/or modification of several areas relating to the Court's findings of fact,[5] including:

- In Part II of the 1.904 motion, the Plaintiffs requested enlargement of the findings to explain whether, *if* the transferred funds were deemed

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[3] For reasons immaterial to this appeal, the trial did not occur until almost two years later.

[4] Prior to trial, the Court bifurcated out a counterclaim, cross-claim, and third-party claim for a later jury trial, if necessary.

[5] The Motion also asked the Court to modify its legal rulings on the basis that the Court's initial ruling reflected a misinterpretation of Iowa law.

to be gifts by the appeals court, the district court *nonetheless* concludes some "legal or factual bar to a contribution recovery of those funds" exists. App. 372. Plaintiffs explained that this enlargement was necessary to facilitate appellate review.

- In Part III of the 1.904 motion, the Plaintiffs requested that the ruling "be modified to state what transaction the court concludes happened between the Plaintiffs and their parents." As explained in its motion and brief, because the court's initial ruling "renders that transfer of funds somehow legally invalid, improper, or inexistent, it is necessary for the court to explain the findings of fact and legal principles that support its conclusion." As the Plaintiffs further pointed out, the court's initial ruling made clear its findings about what these transfers *were not* (e.g., "these monies were neither loaned nor gifted to the Plaintiffs by their parents") yet the ruling did not make explicit any factual findings regarding what the nature of the transfer *was*. App. 372-73. Related to this, the ruling did not provide any factual basis for its determination that the transfers were not "gifts."

- The Court's initial ruling was clear that it had concluded that the Plaintiffs' parents, not the Plaintiffs, actually made the payments in question, but the ruling left unclear what specific factual findings supported that conclusion. Thus, the Plaintiffs sought modification and enlargement of the factual findings to make explicit all factual findings that formed the basis for the court's mixed finding of law and fact that it was the Plaintiffs' parents, not the Plaintiffs, that made the payments on the loans in question.

- In Part IV, the Plaintiffs requested that specific factual findings, which do not appear to bear any relation to the Court's ruling, be deleted. Barring that, the Plaintiffs requested that the ruling be modified to include the related, and undisputed, factual findings pertaining to the financial state of CCS during that time frame. App. 373.

On May 19, 2016, a hearing was held regarding the Plaintiffs' 1.904 Motion.

On July 8, 2016, the Court entered a six-page ruling denying the Plaintiffs'

1.904 Motion. The Plaintiff's timely filed their notice of appeal on July 22, 2016.[6]

STATEMENT OF FACTS

The facts of this case are largely undisputed.[7] The district court's ruling sets forth a detailed recitation of the facts. Only those facts pertinent to the district court's ruling and this appeal are set forth here.

Until September of 2007, Continuous Control Solutions, Inc. ("CCS"), based in Urbandale, was co-owned by members of the Shapiro Group and members of the Shcharansky Group. In 2005 and 2006, CCS borrowed a total of $900,000 from Wells Fargo Bank. Eight CCS shareholders – five from the Shapiro Group and three from the Shcharansky Group – personally guaranteed the debt.[8]

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[6] The Plaintiffs were obligated to make this request in order to preserve their rights and position on appeal, such that no "unstated findings" would be assumed by the appellate court at this juncture. *See Eldridge v. Herman*, 291 N.W. 2d 319, 321 (Iowa 1980) (If "no motion for enlargement of findings was made," appellate court will "assume all unstated findings necessary to support the judgment.") App. 365, 372-73.

[7] This includes facts not relevant to the issue presented in this appeal.

[8] The eight personal guarantees are: Tr. Ex. 7 Commercial Guaranty CCS to Alex Shcharansky, Tr. Ex. 9 Commercial Guaranty CCS to Boris Shcharansky, Tr. Ex. 10 Commercial Guaranty CCS to Vadim Shapiro, Tr. Ex. 11 Commercial Guaranty CCS to Alex Komm, Tr. Ex. 12 Commercial Guaranty CCS to Boris Pusin, Tr. Ex. 13 Commercial Guaranty CCS to Dmitry Khots, Tr. Ex. 14 Commercial Guaranty CCS to Ilya Markevich, and

In September of 2007, the Shcharansky Group bought out the Shapiro Group. CCS was in financial straits and did not make any principal payments to Wells Fargo from September 2007 through May 2009. In October 2008, Wells Fargo filed a petition (Case No. EQCE 60256) seeking to collect roughly $900,000 on two defaulted notes. In April 2009, the district court granted summary judgment in favor of Wells Fargo on its claims against CCS and all of the guarantors in the amount of $909,338.27 plus interest.

In June 2009, Alexander and Tatiana Shcharansky entered into a Forbearance Agreement ("FA") with Wells Fargo and CCS, in which they personally guaranteed the obligations of CCS.[9] Per the FA, CCS paid $400,000 to Wells Fargo and agreed to pay the remaining amount in eight quarterly payments of $76,022.11 beginning September 1, 2009, and ending June 1, 2011.

CCS made quarterly payments to Wells Fargo in September and December 2009 and March 2010. Beginning in June of 2010, the Plaintiffs,

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Tr. Ex. 15 Commercial Guaranty CCS to Zoya Staroselsky. App. 438-42, 451-85.

[9] The additional personal guaranty of Alexander and Tatiana is Tr. Ex. 8. Tatiana's addition brought the total number of guarantors to nine. App. 443-50.

who were two of the nine guarantors, began personally making payments to Wells Fargo on the Well Fargo debt. App. 524-26, 538, 168-69, 174.[10]

The specific amounts paid by the Shcharanskys on the Wells Fargo debt are as follows:

- In June of 2010, when CCS was unable to make the quarterly payment, Alexander made the payment of $76,022.11 from his personal account.[11] App. 174, 350, 353.

- In September of 2010, when CCS was unable to make the quarterly payment, Tatiana made the payment of $76,022.11 from her personal account. App. 168.

- In December of 2010, when CCS was unable to make the quarterly payment, Tatiana made payments from her personal account to cover the quarterly payment as well as pay off the remainder of the debt in the amounts of $190,039.15 and $51,896.77. (Two separate checks were issued because two loans were being paid off.) App. 169.

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[10] CCS's financial problems began long before it was unable to make the Wells Fargo debt payments. In fact, when ownership was transferred to the Shcharanskys in 2007, CCS's financial condition was poor and turned out to be worse than expected. App. 513, 518, 520-22, 421-37. Thus, the Plaintiffs made these payments because CCS itself was unable to make the quarterly payments. App. 515, 524, 545-52, 416, 3-133, 187-207.

[11] The account from which Alex wrote the check for the Wells Fargo payment was a "joint account with [his] parents." App. 524-25, 175, 350. Alex's father transferred funds into that account from his retirement account, and then Alex made the payment from the joint account. App. 528, 174. The district court specifically found that "[t]he monies were sent to Alex" and that the monies were sent for the purpose of "sending those monies on to Wells Fargo as repayments of the loans." App. 356. Further, the district court specifically found that the payments to Wells Fargo were made from "Plaintiffs' bank accounts." App. 353.

Following the final payment by Tatiana, Wells Fargo filed a satisfaction of judgment in favor of CCS and the personal guarantors, thus relieving all of the guarantors from personal liability on the Wells Fargo debt. Alexander and Tatiana subsequently filed this action seeking equitable contribution from each member of the Shapiro Group for each member's share of the Wells Fargo debt the Shcharanskys paid on behalf of all of the guarantors. Because there are five Shapiro Group Defendants, in total the Shcharanskys sought 5/9th of the amount they paid. (The Shcharanskys did not seek contribution from themselves or the two other Shcharansky Group members who had personal guarantees.)

The district court made findings, also undisputed, as to the source of funds that the Shcharanskys used to make the payments to Wells Fargo. As summarized in the district court's 1.904 Ruling:

> In brief, the Court found Alex Shcharansky (Alex) and Tatiana Shcharansky (Tatiana) (collectively Plaintiffs) made several loan payments to Wells Fargo using money they received from their parents. Alex made the June 2010 payment to Wells Fargo out of his checking account, which was co-owned by his father, Lenny Shcharansky (Lenny). Lenny transferred money from his retirement account into the checking account so Alex could make the payment. Tatiana made payments in September and December 2010 from her checking account using funds she received from her parents.

App. 386. While much of the legal argument below relates to the significance, if any, of the source of the funds used by the Shcharanskys,

there is no factual dispute that the funds originated with the Plaintiffs' parents and were transferred into the Plaintiffs' personal accounts.

There also is no factual dispute surrounding the specifics of how and why those monies were transferred from the Plaintiffs' parents to the Plaintiffs. Regarding the monies paid on the joint obligation by Alex that were transferred to his account by his parents, the district court found:

> In June of 2010, Alex made the quarterly payment to Wells Fargo pursuant to the Forbearance Agreement. App. 210. During his judgment debtor exam ("JD exam"), dated August 31, 2010, Alex testified that the money to make the June 2010 payment to Wells Fargo came from Lenny's retirement account. He explained that Lenny transferred the money from his retirement account to a Wells Fargo bank account jointly owned by Lenny, Alex and Raya Shcharansky ("Raya"). Alex did not state in his Judgment Debtor exam that he *borrowed* this money from Lenny. App. 528. Lenny was never a guarantor on the Wells Fargo loans. App. 532. Similarly, in his Judgment Debtor exam dated August 31, 2010, Lenny testified that the money used to make the June 2010 payment to Wells Fargo was transferred directly from his retirement account to his checking account. Lenny did not state in his JD exam that he had *loaned* this money to Alex. App. 510.
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> After Lenny transferred the money from his retirement account to the joint checking account, Alex then simply wrote a check to Wells Fargo out of this co-owned account to make the loan payment. App. 174-185. During trial, Alex initially claimed that he "borrowed" the money from his father to make the June 2010 payment. App. 524. On cross examination, however, Alex acknowledged his deposition testimony was truthful and accurate wherein he stated he not was borrowing money from his father. App. 529. Alex testified there was no written loan agreement, no interest accruing on the purported loan, and no date by which he must pay back the money. He further testified

> that to date—more than five years after the purported loan—he has not paid any of this money back to his father. He also testified that Lenny has not instituted any legal proceedings to collect on this money and will not do so. Likewise, he testified that Lenny has not issued any negative credit reporting as a result of Alex's failure to repay the purported loan and will not do so. App. 529.

App. 350.

Regarding the monies Tatiana paid on the joint obligations that were transferred to her account from her parents, the court found:

> Tatiana wrote a check to Wells Fargo of $76,022.11 in September 2010. App. 210. Tatiana also wrote checks of $190,039.15 and $51,896.77 to pay off the Wells Fargo Judgment in December 2010. App. 210. Tatiana acknowledged that "the funds were provided to me by my parents." App. 412-13. She did not state her parents had loaned her these monies. Tatiana's parents were never guarantors of the Wells Fargo loans. App. 532. The banking records for the transfers of these monies from Tatiana's parents stated in the subject line: "material assistance for daughter." They do not call the transfers a loan. App. 519.
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> Tatiana testified at trial that her parents sent her these monies for the specific purpose of making the September and December 2010 payments to Wells Fargo. She testified that she could not have done whatever she wanted with these monies, and that they were provided to her for the sole purpose of making the payments to Wells Fargo. App. 539. Tatiana initially testified at trial that she considered these monies to be a loan from her parents. App. 538. Upon further questioning by her own attorney, however, she testified: "There was no label for this money. They just give me the money, and I feel the obligation to return." App. 542. Alex clarified that Tatiana said she simply feels a "moral obligation" to return the money to her parents. App. 530. Further, Tatiana admitted there was no writing of any kind that would indicate an obligation to pay her

> parents back, and she testified that there was no date by which she was required to pay the money back.
>
> She further testified that at present – five years after receiving the money from her parents – she has repaid none of this money. App. 540. Alex likewise testified that there was no written loan agreement or promissory note between Tatiana and her parents, that no interest was accumulating on the money, and that Tatiana had no due date by which she was to repay the monies. App. 530. Both Alex and Tatiana further admitted that Tatiana's parents had not filed suit to collect on the monies and would not do so, and that her parents had not filed any negative credit reports and would not do so. App. 530, 541.

App. 351.

ARGUMENT

Standard of Review

"Because [the] claims concerning contribution were tried as equitable claims, [appellate] review is de novo." *Farmers Co-op. Ass'n v. Cooper*, 720 N.W.2d 192 (Table), 2006 WL 1231663, at *5 (Iowa Ct. App. 2006) (citing Iowa R.App. P. 6.4; *Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001)). In its de novo review, the appellate court has "the responsibility to examine the facts as well as the law and decide anew the issues properly preserved." *Kaster*, 637 N.W.2d at 177–78 (citing *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000)). Although the appellate court "give[s] weight to the district court's findings of fact," it is "not bound by

these findings." *Kaster*, 637 N.W.2d at 177–78 (citing *Perkins v. Madison County Livestock & Fair Ass'n*, 613 N.W.2d 264, 267 (Iowa 2000)). *Id.*

Iowa Contribution Law

The Court of Appeals accurately set forth the basics of the law of contribution in Iowa in its prior ruling:

> Iowa recognizes the right of contribution as an equitable claim to prevent unjust enrichment. *See Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 772-73 (Iowa 2009) ("[W]e approve the Restatement's treatment of contribution between cosureties." (citing Restatement (Third) of Suretyship and Guaranty § 55, at 236 (1006))); *see also State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149 (Iowa 2001). Generally speaking, "one party who satisfies a claim can seek reimbursement through contribution." *Hills Bank*, 772 N.W.2d at 772.
>
> "Under the Restatement, each cosurety [to an obligation] has the right of contribution against other cosureties." *See id.* at 772-73. ("It would be inequitable to allow one cosurety to pay the entire debt to the obligee, without an agreement requiring such an obligation."). If there is no agreement between cosureties limiting the amount of contribution, either express or implied, then "each cosurety's contributive share is equal to the 'aggregate liability of the cosureties to the obligee divided by the number of cosureties.'" *Id.* at 773 (quoting Restatement (Third) of Suretyship and Guaranty § 57, at 243). A cosurety is also entitled to "the reasonable costs of performing, including incidental expenses." *See id.*

App. 302.

Based on its above factual findings, the district court ruled that the Plaintiffs had no right of contribution. In its 1.904 Ruling, the court summarized its ruling as follows:

> At trial, Plaintiffs sought contribution from Defendants so they could repay their parents. Neither Alex's nor Tatiana's parents provided any writing, such as a promissory note, that indicated the money was a loan. Further, the principals indicated they had not begun and likely would not begin collection proceedings against Alex and Tatiana, nor would they contact the credit bureaus. Plaintiffs have not repaid any of the money received from their parents. Yet, the principals all agreed the money was to be used to pay Wells Fargo, and Plaintiffs were not free to spend it as they wished. *Based on these facts*, the Court concluded Plaintiffs failed to demonstrate they were indebted to their parents under Iowa law and, therefore, they were not entitled to contribution. The Court also concluded that the transfer of funds did not qualify as either a loan or a gift under Iowa law. Accordingly, the Court entered judgment for Defendants and dismissed the remaining claims.

App. 392 (emphasis supplied).

Broken into its components, the court's findings and conclusions are as follows: (1) the Plaintiffs made payments on the joint obligation with monies from their personal accounts; (2) however, the monies used to make those payments were transferred into Plaintiffs' accounts from their respective parents; (3) *the transfers from their parents did not qualify as"loans or gifts under Iowa law*"; (4) *because the transfers were not "loans or gifts under Iowa law," it was not the Plaintiffs who "actually" made the payments but rather their parents*; (5) thus, plaintiffs did not "satisfy the

[Wells Fargo] claim" on behalf of themselves and the Defendant co-guarantors; and (6) therefore, no contribution claim lies.

There are at least two errors in this chain of logic. They are italicized above. One of them relates to a mixed question of law and fact and the other relates purely to a question of law. Each error provides an independent basis for the judgment be reversed.

I. THE COURT ERRED IN CONCLUDING THAT THE MONIES TRANSFERRED WERE NEITHER LOANS NOR GIFTS.

First, it was error for the district court to conclude that the transfers were not either "loans or gifts." While the transfer had features of both, the undisputed facts show the transfer was one or the other.[12] There was no evidentiary basis in the record to suggest otherwise. While in theory one can imagine a transfer that is the result of coercion or theft or some other bad act that renders the transfer invalid, here there was no evidence of that sort. The undisputed evidence was simply that the Plaintiffs asked their parents for money so they could get rid of the debt and looming guarantees, their parents transferred the monies outright into the Plaintiffs' personal accounts, the Plaintiffs and their parents both expected the monies would be used to

[12] As discussed in Part II. below, whether the transfer was ultimately deemed to be a loan or a gift is irrelevant under the law. What is relevant was that the transfer was made.

repay the Wells Fargo debt, and the Plaintiffs felt obligated to repay their parents but had not yet done so. [13]

Even so, the district court concluded "that the transfer of funds did not qualify as either a loan or a gift under Iowa law." The court summarized its findings and conclusions in its 1.904 Ruling:

> In its original order, the Court examined the legal requirements for a loan in Iowa and found the transactions here failed to meet them. There were no promissory notes or other writings, and there have been no efforts to repay or collect. The Court also

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[13] The district court found that the payments to Wells Fargo were made from "Plaintiffs' bank accounts." App. 353. The account from which Alex wrote the check for the Wells Fargo payment was a "joint account with [his] parents." App. 524-25. Alex's father transferred funds into that account from his retirement account so Alex could make the Wells Fargo payment, and Alex made that payment by check. App. 528, 174-185. The account from which Tatiana wrote the checks for the Wells Fargo payments was in her name only. Her parents transferred the funds to that account so she could make the Wells Fargo payments, and Tatiana made those payments by check. App. 538, 168-73. Thus, as a factual matter, there is no dispute that the "monies were sent to Alex and Tatiana"; that the Plaintiffs physically wrote the checks; that the checks were written from "Plaintiffs' bank accounts"; and that the Plaintiffs made the payments. App. 350. ("In June of 2010, Alex made the quarterly payment to Wells Fargo…."); App. 392. ("In brief, the Court found Alex Shcharansky (Alex) and Tatiana Shcharansky (Tatiana) (collectively Plaintiffs) made several loan payments to Wells Fargo using money they received from their parents. Alex made the June 2010 payment to Wells Fargo out of his checking account, which was co-owned by his father, Lenny Shcharansky (Lenny). Lenny transferred money from his retirement account into the checking account so Alex could make the payment. Tatiana made payments in September and December 2010 from her checking account using funds she received from her parents.").

> examined the legal requirements for gifts in Iowa and found the transactions failed to meet them as well. Plaintiffs were not free to do as they wished with the money, did not submit any evidence that they paid taxes on the transactions as gifts, and none of the parties viewed the transactions as gifts at the time. Under these facts, the Court has a hard time describing exactly that these transactions were.

App. 394-95.

The court's ruling is based on the fallacy that if transferred monies bear any indicia of a "loan" they cannot be a gift, and if transferred monies bear any indicia of a "gift" they cannot be a loan. This faulty logic permitted the court to point to certain facts as conclusively establishing the transfers were not a loan (i.e., nothing was in writing, nothing had been repaid) as well as to point to certain facts as conclusively establishing the monies were not a gift (i.e., the plaintiffs were expected to use the money only to repay the Wells Fargo loan). In essence, that the transfers were "gift-like" made them not loans, and that they were "loan-like" made not a gift. In that no man's land, the transfers were instead left without a name or, more to the point, without legal effect.[14] In denying the Plaintiffs' request that the findings be enlarged to describe what the transfers were if neither loans nor gifts, the court punted, stating that "[u]nder these facts, the

[14] By this logic we would submit that most transfers of monies between family members, like those from Plaintiffs' parents to the Plaintiffs, fall in this gray area.

Court has a hard time describing exactly what these transactions were."[15] App. 395.

Similarly, the Court's ruling is based on a misguided notion of what it means for a transfer to be a gift or a loan under Iowa law. For example, the court references

> In its original order, the Court examined the legal requirements for a loan in Iowa and found the transactions here failed to meet them. There were no promissory notes or other writings, and there have been no efforts to repay or collect. The Court also examined the legal requirements for gifts in Iowa and found the transactions failed to meet them as well. Plaintiffs were not free to do as they wished with the money, did not submit any evidence that they paid taxes on the transactions as gifts, and none of the parties viewed the transactions as gifts at the time.

App. 395.

There is no requirement that a loan between family members be in writing, nor any requirement that a loan have a certain repayment date.[16]

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[15] The Court went on to say it was not, however, required to "label these transactions" because the "burden of showing the nature of these transactions is and was on Plaintiffs." App. 395. The law imposes no such burden on the Plaintiffs. The Plaintiffs' burden is simply to show they paid more than their share on a joint debt. The Plaintiffs easily made that showing through the bank statements, the checks, and their testimony at trial.

[16] Plaintiffs' financial expert, who has expertise in related party loans, testified to this effect and said it would be highly unusual for related party loans to have the loan features ascribed by the district court's ruling. App. 551.

Similarly, there is no requirement that parties must pay taxes on gifts of this nature. (And even if that were the law, that would just mean the recipients might find themselves in trouble with the IRS; it would not mean the transfers were not gifts.) Finally, the district court's conclusion that the transfers were not gifts because the plaintiffs "were not free to do as they wished with the money" is neither supported by the facts or law. The fact that the Plaintiffs, and at least one of the parents, testified they were required to use the monies to repay the Well Fargo loans is simply their perception. The reality is that the monies were transferred to the *unrestricted* bank accounts of Plaintiffs from which the Plaintiffs chose to and did make payments on the joint debt. Had they chosen otherwise, say to spend the monies on a luxurious vacation, they would have been legally free to do so (although perhaps as a practical matter ensuring their parents never loaned them money again). The court's conclusion that the Plaintiffs were somehow legally restricted from doing what they wanted once the money reached their accounts is thus wrong as a legal matter.

II. THE COURT ERRED IN CONCLUDING THAT IF THE TRANSFERS WERE NOT GIFTS OR LOANS, NO CONTRIBUTION ACTION COULD LIE.

Even if the transfers were not "loans or gifts under Iowa law," that does not bar the Plaintiffs from recovery. Yet that was the basis of the

district court's ruling. The Plaintiffs' requested that the Court enlarge its findings and conclusions to explain:

> If these monies were neither loaned nor gifted to the Plaintiffs by their parents, the Ruling should state what precisely was the nature of the transfer of funds. Indisputably, a transfer of funds occurred. Funds left the hands of one person and went to another. Because the Court's Ruling renders that transfer of funds somehow legally invalid, improper, or inexistent, it is necessary for the Court to explain the findings of fact and legal principles that support its conclusion.

App. 373.

The Court in its 1.904 Ruling acknowledged that if neither gifts nor loans, "the Court has a hard time describing exactly what these transactions were. Regardless, the burden of showing the nature of these transactions is and was on Plaintiffs." App. 395. The Court then went on to rule that:

> Based on these facts, the Court concluded Plaintiffs failed to demonstrate they were indebted to their parents under Iowa law and, therefore, they were not entitled to contribution. The Court also concluded that the transfer of funds did not qualify as either a loan or a gift under Iowa law. Accordingly, the Court entered judgment for Defendants and dismissed the remaining claims.

App. 392. The court's ruling, that if the monies were not gifts or loans then it was not the Plaintiffs who "actually" made the payments but their

parents,[17] rests on a faulty interpretation of Iowa law and, in particular, a misreading of *Allison v. L.E. Allison Estate,* 560 N.W.2d 333 (Iowa 1997). Namely, the court in its ruling interpreted *Allison* as stating that in an action for contribution for monies the plaintiff paid, "the source of the funds [i.e., from where the plaintiff originally received those monies] is entirely relevant." App. 393. But *Allison* does not stand for that proposition. Indeed it could not stand for that proposition because it was not a case in which the contribution plaintiff actually made the payments.

Instead, *Allison* dealt with a unique type of contribution case in which the party seeking contribution *had not made the payment,* yet nonetheless sought contribution. In that case, it was undisputed that the rent payments at issue were not paid by plaintiff couple who sought contribution, but were at all times paid by their son-in-law: "The record reveals that Dan Storm [the son-in-law] pays annual cash rent of $8000 to Clela (a widow now in her mid-90s) for the use of the 450 acres." *Id.* at 334. Even so, the plaintiff couple sought contribution from the husband's deceased brother's estate and surviving wife to recover for the payments the couple's son had made. Their

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[17] To be clear, the court's conclusion that it was the Plaintiffs' parents, not the Plaintiffs, who "actually" made the payments was a legal, not factual, conclusion. The undisputed facts were that the monies were in the Plaintiffs' unrestricted personal accounts and the Plaintiffs themselves wrote the checks to pay off the Wells Fargo debts. App. 192, 350, 353, 356.

claim was based on the theory that they "are indebted to their son-in-law for these sums" that he paid. *Id.* at 334. This Court rejected their claim, concluding the couple had no obligation to repay their son-in-law, and that he had made those payments on his own behalf, not theirs.

It was only because the plaintiffs had not actually made the payments that it was necessary for the court to consider whether the plaintiffs were obligated to repay their son-in-law. Only through that obligation could the plaintiffs, not having actually made the payments, be deemed to have "discharged the debt." But that inquiry into any obligation to repay monies on the part of the plaintiff is irrelevant in the typical contribution case, including the present one, in which the plaintiff *actually makes the payments*. The proof that the plaintiff discharged the debt comes from the payment itself, not from any obligation to repay someone who did. Had the plaintiffs in *Allison* made the rent payments themselves—be it with monies they earned, monies borrowed from their son-in-law or monies gifted to them from their son-in-law—there would have been no discussion regarding the source of the funds. *See* 03-26-97 West's Bankr. Newsl. 20 (summarizing *Allison* case and stating "No evidence substantiated the surviving brother's alleged promise to repay his son-in-law for the mortgage

payments, *or showed that he had discharged any portion of this debt*") (emphasis added).

This simple but critical distinction is enough to remove *Allison* from the discussion in the instant case. There is a second important distinction, however, pertaining to the equities of the situation in *Allison*. There the court's "skepticism" stemmed from what overwhelmingly appeared to be an effort by the parties to get something for nothing at the expense of their sister-in-law. Namely, it was the son-in-law, not the couple seeking contribution or their sister-in-law, who operated the farm for which the rent payments were due. Not only that, the son-in-law was getting a sweetheart deal on that farm, making rent payments of only $8,000 per year for a farm that "should cash rent for no less than $42,000 per year." *Alllison* at 335. Perhaps most damningly, the son-in-law made the rent payments with proceeds from the farm's operation. All of these facts led to the inescapable conclusion that the party seeking contribution was not obligated to repay their son-in-law, and that the son-in-law had made the payments on his own behalf, not theirs. *See id.* at 335. ("Rather than assuming, as did the court of appeals, that these transactions indebted the plaintiffs to [their son-in-law] the district court instead observed 'there is something wrong with this picture.'") So suspicious, in fact, were the circumstances that they

"prompted the [district] court to appoint a receiver to protect the [farm] assets." *Id*. at 335.

In this case, no evidence in the record supports a finding that Plaintiffs' parents had any ulterior motive or involvement other than assisting their children. There was further no evidence that the monies Plaintiffs' parents transferred to their children's accounts was derived from the proceeds of CCS. Unlike the son-in-law in *Allison* who was deeply involved in the farm, here the Plaintiffs' parents have nothing to do with CCS. In other words, there is no basis for the sort of skepticism or scrutiny that surrounded the claim in *Allison*.[18]

The legal and factual distinctions between this case and *Allison* are not merely form over substance. A person can only actually make the payment, as the Plaintiffs did in this case, if the money has actually been

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[18] The most generous interpretation that could be said of the district court's findings in this regard is that it found both Alex and Tatiana had been inconsistent in terms of whether they labeled the transfers as loans or gifts. However, that inconsistency in the labels the Plaintiffs provided, when pressed by lawyers to pick one and only one, does not change the fact that their testimonies were consistent in describing the underlying nature of the transfers: that they got the monies for their parents, they felt obligated to use the monies for the reason for which they received it and their parents transferred it, and they felt obligated to pay the monies back although they had not yet done so. The legal label that best fits those the facts of those transactions is surely not something lay people should be expected to know and get right. Even the district court, under these facts, ascribed loan-like features and gift-like features to these transactions.

transferred to them. That transfer is substance – it shows, unequivocally, whose money was used to make the payment. That the money originated from someone else does not matter because title to those funds was transferred. If, as in *Allison*, the funds were never transferred to the party that seeks contribution, the question arises whether the party seeking contribution has or, in that case, will be obligated to "discharge[] the common debt." Because the money has not touched the hands of the party that seeks contribution, the relationship between the paying party, the plaintiff, and the debt obligation is less than clear and subject to manipulation. It is one thing for a person to say someone owes them money, which requires nothing more than words on their part, and another thing entirely for that person to outright transfer funds to someone. That distinction is critical in Iowa contribution law: Had the party seeking contribution in *Allison* actually made the payments, even if they did so with money transferred to them from their "sketchy" and decidedly self-interested son-in-law, *Allison* would have been a different case.

For these reasons, *Allison* cannot be read as carving out a broad exception to contribution doctrine based upon the source of funds used. *Allison* simply has no application in this case. Indeed the two Iowa appellate cases that cite to *Allison* are factually much like *Allison* and much

unlike the instant case: They involve parties seeking contribution who did not make payments but claimed a right to contribution based on their obligation to do so. *See Blair v. Werner Enterprises*, 675 N.W.2d 533 (Iowa 2004) (rejecting contribution claim where party had not made the payment and did not have a joint obligation)*; Hansen v. Lanes*, 695 N.W.2d 333 (Table), 2004 WL 2947947 (Iowa Ct. App. 2004) (rejecting contribution claim where party had not actually made the payment and, as a matter of law, would not be obligated to make any payments on the debt). In all of these cases, there was no actual transfer of money to the party seeking contribution, so that party had the uphill battle of proving that despite not making the payments, it was or would be legally obligated to repay the actual payor (who had impliedly made the payments on its behalf). When, in contrast, the party that seeks contribution personally made the payments, no inquiry into the source of funds is necessary.[19]

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[19] The other case cited in the court's ruling, a 1918 case from California, is inapposite for much the same reasons that *Allison* is. Namely, in *San Joaquin Valley Bank v. Gate City Oil Co.*, 173 P. 781 (Cal. Dist. Ct. App. 1918), the monies used to make the payments did not actually belong to the plaintiff and were not actually transferred to him. Rather, the plaintiff engaged in a scheme, along with others, to make it appear as if the payments were coming from the plaintiff's account when actually the plaintiff did not have control over those monies. *Id.* at 785. The payments came from an account specifically created to make it appear that the plaintiff had control over the monies and was making the payment. In addition, also similar to *Allison*, the person who actually was making the payment was doing so for

Besides misconstruing *Allison*, the district court's ruling also directly contravenes the purpose of contribution law because it permits the Defendants to be unjustly enriched at the expense of the Plaintiffs. "Iowa recognizes the right of contribution as an equitable claim to prevent unjust enrichment." *Shcharansky v. Shapiro*, 842 N.W. 2d 387 (Table), 2013 WL 6116883, at *5 (Iowa Ct. App. 2013) (citing *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 772–73 (Iowa 2009)). The district court's ruling results in the Defendants getting a six-figure windfall by having their portion of the debt paid off.

CONCLUSION

For the foregoing reasons, the Plaintiffs ask this Court to:

(1) Reverse the district court's judgment;

(2) Direct that judgment be entered in the amount of $8,446.90 against each of the Defendants together with interest at the statutory rate from the filing of the claim on January 10, 2011 in favor of Plaintiff Alexander Shcharansky against the Defendants Vadim Shapiro, Boris Pusin, Ilya Markevich, Alex Komm, and Dmitry Khots on Alex's contribution claim;

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his own benefit, not for the benefit of the plaintiff, negating the concept that it was a gift or that plaintiff was the one discharging the debt. *Id.*

(3) Direct that judgment be entered in the amount of $35,328.69 against each of the Defendants together with interest at the statutory rate from the filing of the claim on January 10, 2011 in favor of Plaintiff Tatiana Shcharansky against the Defendants Vadim Shapiro, Boris Pusin, Ilya Markevich, Alex Komm, and Dmitry Khots on Tatiana's contribution claim;

(4) Assess trial court costs and appeal costs jointly and severally to Defendants Vadim Shapiro, Boris Pusin, Ilya Markevich, Alex Komm, and Dmitry Khots; and

(5) Remand this case to the district court for proceedings on the counterclaim, cross-claim, and third-party petition.

REQUEST FOR ORAL ARGUMENT

Plaintiffs-appellants' request to be heard orally on this appeal.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 23, 2017, I electronically filed the foregoing Appellant's Amended and Substituted Amended Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 6,965 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in Times New Roman 14 pt.

Dated: March 23, 2017.

/s/ Michele Baldus