[Cite as *Hoffman v. Fraser*, 2011-Ohio-2200.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

LINNEA M. HOFFMAN, TRUSTEE, et al.,	:	**O P I N I O N**
Plaintiffs,	:	**CASE NO. 2010-G-2975**
- vs -	:	
WILLIAM D. FRASER,	:	
Defendant/Third Party Plaintiff-Appellant,	:	
- vs -	:	
MIDLAND TITLE SECURITY, INC., et al.,	:	
Third Party Defendants-Appellees.		

Civil Appeal from the Court of Common Pleas, Case No. 09 P 000797.

Judgment: Affirmed.

Stephen J. Futterer, Willoughby Professional Building, 38052 Euclid Avenue, #105, Willoughby, OH 44094 (For Defendant/Third Party Plaintiff-Appellant).

Andrew A. Kabat, Haber, Polk & Kabat, L.L.P., 737 Bolivar Road, #4400, Cleveland, OH 44115; *Charles A. Nemer* and *Kimberly A. Brennan*, McCarthy, Lebit, Crystal & Liffman Co., L.P.A., 1800 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115 (For Third Party Defendants-Appellees).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, William D. Fraser, appeals the judgment of the Geauga County Court of Common Pleas dismissing his third-party complaint against appellees, Midland

Title Security, Inc., First American Title Insurance Co., and Stewart Title & Guaranty Co., for failure to state claims on which relief may be granted. For the reasons that follow, we affirm.

{¶2} The following statement of facts is derived from the first amended complaint filed by plaintiff, Dorothy H. Pona, Trustee; plaintiffs, John N. and Natalina N. Stewart; and plaintiff, Linnea M. Hoffman, Trustee. Plaintiffs are not parties to this appeal. They alleged that appellant was previously the owner of a 65-acre parcel located in Chester Township, Ohio, which he developed into a subdivision containing 12 sublots.

{¶3} Appellant retained LDC, Inc., a surveying firm, which is a third-party defendant but not a party to this appeal, to prepare and submit plans to the Geauga County Planning Commission to secure approval for the subdivision.

{¶4} Plaintiffs alleged in their first amended complaint that in May 1997, appellant submitted a preliminary sketch for the subdivision to the planning commission for approval. Thereafter, the commission required him to identify the exact location of a certain pipeline easement located on the property. Appellant did not notify LDC of this requirement. Consequently, the preliminary plat submitted by LDC to the commission in July 1997 did not comply with this requirement.

{¶5} In May 1998, LDC submitted a final plat to the commission for approval. The final plat also did not identify the exact location of the easement. In June 1998, the commission approved the final plat.

{¶6} Between June and July 1999, appellant sold one sublot to each of the plaintiffs. In August 2007, plaintiffs discovered the existence of the easement when its owner contacted them.

{¶7} On July 7, 2009, plaintiffs filed a complaint against appellant, asserting claims for fraudulent concealment and negligent misrepresentation. They alleged that when appellant sold these sublots to them, he knew of, but failed to disclose, the existence of the easement.

{¶8} Subsequently, appellant moved to dismiss the complaint. Plaintiffs filed a brief in opposition and their first amended complaint. The court denied appellant's motion to dismiss the complaint.

{¶9} Thereafter, appellant moved to dismiss plaintiffs' first amended complaint. Plaintiffs opposed the motion and the trial court denied it.

{¶10} In January 2010, appellant filed his answer to the amended complaint and a third-party complaint against appellees. He alleged that in September 1997, he obtained a commitment for title insurance for the property from First American and its agent Midland Title. Although Midland Title conducted a title search and First American issued a commitment for title insurance, appellant never purchased a policy of title insurance from them. Appellant attached the commitment, which includes the title search, to his third-party complaint, making the commitment part of that pleading, pursuant to Civ.R. 10(C). He alleged that these appellees negligently failed to report the easement to him, and that he reasonably relied on this document in developing the subdivision and selling the sublots to plaintiffs.

{¶11} Appellant also alleged that Midland Title and First American negligently failed to report the easement to plaintiff Linnea Hoffman, Trustee.

{¶12} He further alleged that another title company, appellee, Stewart Title, was negligent in failing to report the easement to plaintiffs in its title search. Significantly, he did *not* allege that Stewart Title was negligent in failing to report anything to him.

{¶13} Appellant prayed for indemnification against Midland Title and First American for the amount of any judgment entered against him in favor of plaintiff Linnea Hoffman, Trustee, and for indemnification against Stewart Title for the amount of any judgment entered against him in favor of plaintiffs Dorothy Pona, Trustee, and the Stewarts. He also asked for contribution from appellees.

{¶14} In February 2010, Midland Title and First American filed a Civ.R. 12(B)(6) motion to dismiss appellant's third-party complaint for failure to state a claim. They argued that, due to the disclaimer provision in the commitment, appellant could not prove justifiable reliance, an element necessary to his claim.

{¶15} Appellant opposed the motion, arguing that he justifiably relied on the title search and that the disclaimer did not apply to his claim for negligent misrepresentation.

{¶16} In March 2010, Stewart Title also filed a separate Civ.R. 12(B)(6) motion to dismiss appellant's claim against it for contribution and indemnification. Appellant also opposed Stewart Title's motion.

{¶17} On May 11, 2010, the trial court entered judgment granting Midland Title and First American's motion to dismiss. The court found that, based on the disclaimer in the commitment, there could be no reliance on the title search or commitment unless and until a policy of title insurance was issued and that appellant had not alleged that

any such policy was issued. The trial court also rejected appellant's position that the disclaimer did not apply to his negligent misrepresentation claim because, the court found, such claim requires justifiable reliance and "the disclaimer is notice to the world that there can be no reliance upon the title search or commitment until a policy is issued. Any reliance upon the title commitment was not justifiable in light of the disclaimer."

{¶18} Also, on May 11, 2010, in a separate judgment entry, the trial court found that appellant had failed to state an arguable claim against Stewart Title for indemnification or contribution.

{¶19} Both entries included the finding that there was no just reason for delay, pursuant to Civ.R. 54(B), thus making both final, appealable orders. Appellant now appeals the court's judgments, asserting two assignments of error. For his first assigned error, appellant alleges:

{¶20} "The trial court erred in granting Appellees' [sic] Midland Title Security, Inc.'s and First American Title Insurance Company's Civil Rule 12(B)(6) Motion to Dismiss Appellant William M. Fraser's Third Party Complaint action in Negligence for failure to state a claim, for it failed to presume that all factual allegations of the Third Party Complaint are true, and failed to make all reasonable inferences in favor of the non-moving party."

{¶21} "'An appellate court's standard of review for a trial court's actions regarding a motion to dismiss is de novo.'" *Bliss v. Chandler*, 11th Dist. No. 2006-G-2742, 2007-Ohio-6161, at ¶91, quoting *State ex rel. Malloy v. Girard*, 11th Dist. No. 2006-T-0019, 2007-Ohio-338, at ¶8. The "'[d]ismissal of a complaint for failure to state

a claim upon which relief can be granted is appropriate if, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in [the nonmoving] party's favor, it appears beyond doubt that [the nonmoving] party can prove no set of facts warranting relief.'" *Bliss*, supra, at ¶92, quoting *Malloy* at ¶9. While a complaint attacked by a Civ.R. 12(B)(6) motion to dismiss does not need detailed factual allegations, the plaintiff's obligation to provide the grounds for his entitlement to relief requires more than conclusions, and a mere recitation of the elements of a cause of action without factual enhancement will not suffice. *Bell Atlantic Corp. v. Twombly* (2007), 550 U.S. 544, 555.

{¶22} While appellant states in his assignment of error that his claim against Midland Title and First American is based on negligence, our review of his third-party complaint reveals that his claim against these appellees is based on negligent misrepresentation. His claim is premised on his alleged reliance; he does not allege the elements of a negligence claim. He argued in the trial court that he brought his claim "under a theory of negligent misrepresentation ***." Moreover, his argument on appeal is limited to negligent misrepresentation and does not address negligence.

{¶23} Appellant argues the trial court erred in finding that, based on the disclaimer in the commitment, he could not have justifiably relied on the commitment or the title search contained therein. We do not agree with appellant's argument.

{¶24} This court has held that the elements of negligent misrepresentation are as follows:

{¶25} "'One, who in the course of his business, profession or employment *** supplies false information for the guidance of others in their business transactions, is

subject to liability for pecuniary loss caused to them by their *justifiable reliance* upon the information, if he fails to exercise reasonable care *** in obtaining or communicating the information.'" (Emphasis sic.) *DiSanto v. Safeco Ins. Of Am*., 168 Ohio App.3d 649, 656, 2006-Ohio-4940, quoting *Delman v. Cleveland Hts*. (1989), 41 Ohio St.3d 1, 4.

{¶26} As the trial court stated, appellant was required to prove justifiable reliance upon appellees' commitment in order to prevail on his claim for negligent misrepresentation. However, according to the disclaimer in the commitment, appellant could not rely on the title search unless he purchased a policy of title insurance. Appellant concedes on appeal that he did not purchase a policy of title insurance from Midland Title and First American.

{¶27} The commitment provides, in pertinent part:

{¶28} "First American *** hereby commits to issue its policy *** of title insurance *** *upon payment of the premiums and charges* ***.

{¶29} "*This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy *** committed for have been inserted in Schedule A* hereof by the Company ***.

{¶30} "*This Commitment is preliminary to the issuance of such policy *** of title insurance* and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy *** committed for shall issue, whichever first occurs ***." (Emphasis added.)

{¶31} Pursuant to the foregoing provisions, the commitment for title insurance was preliminary to and did not constitute a policy of title insurance. The commitment merely gave appellant the right to purchase a policy of title insurance within six months

after the effective date of the commitment. The commitment was issued on September 16, 1997. Therefore, the deadline for appellant to have obtained a policy of title insurance was March 16, 1998. Since appellant never purchased a policy of title insurance, the commitment did not result in an insurance policy.

{¶32} Further, the disclaimer in the commitment conspicuously provided as follows:

{¶33} "THE COMMITMENT FOR TITLE INSURANCE IS ISSUED IN CONTEMPLATION OF THE ISSUANCE OF A POLICY *** OF TITLE INSURANCE AND *** MIDLAND TITLE *** (AGENT) OR FIRST AMERICAN *** SHALL HAVE NO OBLIGATION OUTSIDE THE TERMS OF THIS COMMITMENT. SPECIFICALLY, *ANY TITLE SEARCH OR EXAMINATION CONDUCTED BY MIDLAND TITLE *** AS A BASIS FOR ISSUING THIS COMMITMENT SHALL BE FOR THE BENEFIT OF MIDLAND TITLE *** AND FIRST AMERICAN ONLY*, AND DOES NOT INURE TO THE BENEFIT OF ANY OTHER PARTY, INCLUDING ANY SELLER, PURCHASER OR LENDER. *IN THE EVENT ANY PROPOSED INSURED UNDER THIS COMMITMENT FAILS TO ACQUIRE*, OR ELECTS NOT TO ACQUIRE, *A FINAL POLICY* PRIOR TO THE EXPIRATION DATE OF THE COMMITMENT, *SAID PROPOSED INSURED SHALL HAVE NO CAUSE OF ACTION OR RECOURSE AGAINST MIDLAND TITLE *** OR FIRST AMERICAN* AND IN NO EVENT SHALL ANY PROPOSED INSURED HAVE ANY CLAIM OR CAUSE OF ACTION AGAINST MIDLAND TITLE *** OR FIRST AMERICAN BASED ON THE TITLE SEARCH OR EXAMINATION. BY ACCEPTING THE WITHIN COMMITMENT, THE PROPOSED INSURED, ALONG WITH ANY

OTHER PARTIES TO THE CONTEMPLATED TRANSACTION, CONSENTS TO AND AGREES WITH THE FOREGOING." (Emphasis added.)

{¶34} According to this provision, the title search conducted by Midland Title is performed for the sole benefit of Midland Title and First American. If the proposed insured does not purchase a policy of title insurance prior to the expiration date of this commitment, i.e., by March 16, 1998, he will have no cause of action or recourse against Midland Title or First American. Specifically, he will have no cause of action against them based on the title search or examination.

{¶35} Although appellant alleges in his third-party complaint that he relied on the title search performed by Midland Title in developing his property and in selling the sublots, because he did not purchase a policy of title insurance, his reliance was not justifiable.

{¶36} Appellant's reliance on *Haddon View Invest. Co. v. Coopers & Lybrand* (1982), 70 Ohio St.2d 154, and *Zuber v. Dept. of Ins. of Ohio* (1986), 34 Ohio App.3d 42 is misplaced. First, in *Haddon View*, the Supreme Court of Ohio held:

{¶37} "An accountant may be held liable by a third party for professional negligence when that third party is a member of a limited class whose reliance on the accountant's representation is specifically foreseen." Id. at syllabus.

{¶38} In support of its holding, the court, at 156, fn. 1, cited 3 Restatement of Torts 2d, 126-127 Section 552, which provides in pertinent part:

{¶39} "3 Restatement of Torts 2d, 126-127 Section 552, provides in relevant part:

{¶40} "'(1) One who *** supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their *justifiable reliance* upon the information, if he fails to exercise reasonable care *** in obtaining or communicating the information.

{¶41} "'(2) *** [T]he liability stated in Subsection (1) is limited to loss suffered

{¶42} "'(a) by the person or one of a limited group of persons *for whose benefit he intends to supply the information* ***; and

{¶43} "'(b) through reliance upon it in a transaction that he intends the information to influence ***.'" (Emphasis added.)

{¶44} Here, appellant was not a foreseeable plaintiff because he was not a person or one of a limited group of persons for whose benefit Midland Title and First American intended to supply the title search or examination. To the contrary, they clearly stated in the disclaimer, which is expressly made part of the commitment, that the title search or examination conducted by Midland Title has been performed *solely for the benefit of Midland Title and First American and does not inure to the benefit of any other party, including the seller*. The disclaimer further provides that if the proposed insured does not acquire a policy of title insurance, he shall have no claim or recourse against Midland Title or First American arising from the title search or examination.

{¶45} Next, in *Zuber*, supra, the plaintiff alleged he had purchased annuities from an insurance company. He later learned that the company was having financial difficulty, and he called the state department of insurance to inquire about the company's financial condition. He was advised by a department employee that the company was financially secure. As a result, he left his savings with this company. In

the following year, the company was placed into rehabilitation and its assets were frozen. The plaintiff sued the department claiming negligent misrepresentation. Although immunity did not apply, the trial court granted the department's Civ.R. 12(B)(6) motion. The Tenth District affirmed, holding:

{¶46} "The foregoing is not adequate to state a claim upon which relief can be granted. *Appellant does not allege that he was supplied false information*. Rather, he alleged that it was 'negligently and carelessly' given to him. Further, he does not allege in his complaint that he justifiably relied on the information. These elements, false information and reliance, are necessary for a cause of action in negligent representation. Consequently, appellant has failed to state a claim for negligent representation." (Emphasis added.) Id. at 45-46.

{¶47} Likewise, in the instant case, appellant did not allege that Midland Title or First American provided false information to him. Rather, he alleged that they negligently failed to disclose the easement in their title search. As a result, appellant's third-party complaint failed to state a claim for negligent misrepresentation against Midland Title and First American.

{¶48} The Sixth District in *Baker v. Northwest Hauling*, 6th Dist. No. WD-02-050, 2003-Ohio-3420, considered a claim of justifiable reliance. Although arising in a different context, we find the court's analysis pertinent. In *Baker*, the employer hired the plaintiff, but said the offer was contingent on her passing a physical. After failing the physical, the employer told the employee he could not hire her. The Sixth District held:

{¶49} "As the trial court stated, appellant was required to prove justifiable reliance upon appellee's statements in order to prevail on a claim of negligent ***

misrepresentation. At best, appellant was offered a job contingent on the satisfactory completion of her physical examination. *** We are therefore unable to find that appellant justifiably relied on any of [the employer's] statements and, therefore, her claim[] of negligent *** misrepresentation must fail. ***" Id. at ¶17.

{¶50} Next, appellant argues the disclaimer is invalid because it is ambiguous. However, appellant failed to make such argument in the trial court. The issue is therefore waived on appeal. *State v. Awan* (1986), 22 Ohio St.3d 120, syllabus. In any event, we note that appellant presents no reasons or pertinent authority in support of his position. The argument thus additionally lacks merit pursuant to App.R. 16(A)(7).

{¶51} Appellant next argues that, although he did not purchase a policy of title insurance, the disclaimer does not eliminate the "possibility of a contract" or claim based on the title search alone. Again, because appellant failed to assert this argument below, it is waived on appeal. *Awan*, supra. In any event, the clear and unambiguous language of the disclaimer jettisons such argument. The disclaimer provides: "IN THE EVENT ANY PROPOSED INSURED *** FAILS TO ACQUIRE *** A FINAL POLICY ***, SAID PROPOSED INSURED SHALL HAVE NO CAUSE OF ACTION OR RECOURSE AGAINST MIDLAND TITLE *** OR FIRST AMERICAN AND IN NO EVENT SHALL ANY PROPOSED INSURED HAVE ANY CLAIM OR CAUSE OF ACTION AGAINST MIDLAND TITLE *** OR FIRST AMERICAN BASED ON THE TITLE SEARCH OR EXAMINATION." In light of appellant's failure to purchase a policy of title insurance, we fail to see how this provision could give rise to a cause of action based on the title search.

{¶52} Next, appellant argues the trial court erred in finding that Civ.R. 19(A) does not provide sufficient grounds to survive a motion to dismiss. Again, we do not agree with appellant's argument. Civ.R. 19(A) provides:

{¶53} "A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subroger, or subrogee."

{¶54} First, we note that appellant has failed to present any authority in support of this argument. Moreover, he has failed to make any showing that, if these parties were not joined, complete relief could not be accorded among those already parties, or that Midland Title or First American claims an interest relating to the subject of the action and are so situated that the disposition of the action in its absence may impede its ability to protect that interest. As a result, the argument fails. App.R. 16(A)(7).

{¶55} Appellant argues that he joined Midland Title and First American in this action based on their negligence in providing title examination services to plaintiffs. However, he has no standing to join them on plaintiffs' behalf. This court in *Countrywide Home Loans, Inc. v. Huff*, 11th Dist. No. 2009-T-0044, 2010-Ohio-1164, held: ""An action against an abstracter to recover damages for negligence in making or certifying an abstract of title does not sound in tort, but must be founded on contract;

and the general rule is that an abstracter can be held liable for such negligence only to the person who employed him." *Thomas v. Guarantee Title & Trust Co.* (1910), 81 Ohio St. 432, [ ] paragraph one of the syllabus.' *Cedar Dev., Inc. v. Exchange Place Title Agency, Inc*., 149 Ohio App.3d 588, 2002-Ohio-5545, at ¶13-14." *Countrywide Home Loans, Inc*., supra, at ¶53. Since appellant does not allege he was a party to any contract with Midland Title or First American, he had no standing to join them on plaintiffs' behalf pursuant to Civ.R. 19(A).

{¶56} We therefore hold the trial court did not err in finding that the disclaimer precluded any claim of justifiable reliance and in dismissing appellant's claim against Midland Title and First American.

{¶57} Appellant's first assignment of error is overruled.

{¶58} For his second assigned error, appellant contends:

{¶59} "The trial court erred in granting Appellee Stewart Title Guaranty Co.'s Civil Rule 12(B)(6) Motion to Dismiss Appellant William M. Fraser's Third Party Complaint actions for negligence, contribution and indemnification for failure to state a claim, for the court failed to preserve [sic] the truth of the factual allegations of the Third Party Complaint and failed to make all reasonable inferences in favor of Appellant non-moving party."

{¶60} Appellant argues the trial court erred in dismissing his claims against Stewart Title because, he argues, he properly asserted a claim for negligent misrepresentation on behalf of plaintiffs and he properly asserted claims for indemnification and contribution in his favor against Stewart Title. Again, we do not agree.

{¶61} As noted above, a claim alleging negligence in performing a title search sounds in contract, rather than tort, and requires privity of contract between the title examiner and the plaintiff. *Countrywide Homes*, supra. Here, appellant does not allege he was a party to any contract with Stewart Title. He therefore had no standing to sue Stewart Title on plaintiffs' behalf.

{¶62} Moreover, appellant failed to properly allege entitlement to contribution and/or indemnification against Stewart Title. A party's right to contribution is determined by R.C. 2307.25. That section provides in pertinent part:

{¶63} "(A) *** [I]f one or more persons are *jointly and severally liable in tort* for the same injury or loss to person or property ***, there may be a right of contribution even though judgment has not been recovered against all or any of them. The right of contribution exists *only in favor of a tortfeasor who has paid more than that tortfeasor's proportionate share of the common liability*, and that tortfeasor's total recovery is limited to the amount paid by that tortfeasor in excess of that tortfeasor's proportionate share. *** There is no right of contribution in favor of any tortfeasor against whom *an intentional tort claim* has been alleged and established." (Emphasis added.)

{¶64} Based upon the foregoing statute, appellant is not entitled to contribution from Stewart Title. First, the right to contribution requires the existence of joint tortfeasors. Appellant has not alleged or argued on appeal that he is a joint tortfeasor with Stewart Title. Moreover, as noted above, a claim against a title examiner for negligence in preparing an abstract of title does not sound in tort, but rather, is based on contract. *Countrywide Home Loans*, supra. Thus, Stewart Title could not be a joint *tortfeasor* with appellant. Second, the right of contribution exists only in favor of a

tortfeasor who has paid more than his proportionate share of common liability. Appellant has not alleged that he has paid such amount, or any amount for that matter. Third, to the extent that plaintiffs' claims against appellant allege intentional tort (fraudulent concealment), he has no right to contribution from Stewart Title with respect to such claim.

{¶65} Appellant concedes in his brief that, because he has not paid more than his proportionate share of liability or any amount to plaintiffs, his claim for contribution is not ripe. However, he argues that the trial court, instead of dismissing his claim against Stewart Title, "should at a minimum have provided Appellant leave to file the Third Party Complaint against Appellant at a later time when and if the claim becomes 'ripe for adjudication.'" Again, we do not agree.

{¶66} Section 4(B), Article IV of the Ohio Constitution provides that "[t]he courts of common pleas *** shall have such original jurisdiction over all justiciable matters *** as may be provided by law." "For a cause to be justiciable, there must exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and immediate impact on the parties." *State v. Stambaugh* (1987), 34 Ohio St.3d 34, 38 (Douglas, J., concurring in part and dissenting in part), citing *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97-98. Parties are not entitled to litigate questions that may never affect them, and jurisdiction cannot be conferred upon the court by consent of the parties. 35 Ohio Jurisprudence 3d, Declaratory Judgments and Related Proceedings, Section 7. "The court is required to raise justiciability issues sua sponte." *Stewart v. Stewart* (1999), 134 Ohio App.3d 556, 558.

{¶67} Because appellant admits his claim for contribution against Stewart Title is not ripe, the trial court was not obligated to enter an advisory ruling to the effect that if in the future appellant should pay more than his share of common liability, he would then be granted leave to join Stewart Title. Appellant has failed to reference any pertinent authority in support of such position. Because appellant's claim is not ripe for review, he filed it at his peril.

{¶68} Further, appellant is not entitled to indemnification from Stewart Title. We note that appellant has not presented any argument in favor of his claim for indemnification against Stewart Title. For this reason alone, this portion of his assigned error lacks merit. App.R. 16(A)(7).

{¶69} In any event, appellant's claim fails. In order to be entitled to indemnity, there must be an allegation of some express or implied contract creating a duty by one party to indemnify the other. *Reynolds v. Physicians Ins. Co. of Ohio*, 68 Ohio St.3d 14, 16, 1993-Ohio-57. This court has held that "'[i]ndemnity arises from contract, *** and is the right of a person, who has been compelled to pay what another should have paid to require complete reimbursement.'" *Casto v. Sanders*, 11th Dist. No. 2004-P-0060, 2005-Ohio-6150, at ¶30, quoting *Worth v. Aetna Cas. and Sur. Co*. (1987), 32 Ohio St.3d 238, 240. Further, an implied contract of indemnity may be recognized in situations involving related tortfeasors, where the one committing the wrong (the primarily liable party) is so related to a secondary party as to make the secondary party liable for the wrongs committed solely by the other. *Losito v. Kruse* (1940), 136 Ohio St. 183.

{¶70} It is undisputed that appellant never had a contract providing for indemnification with Stewart Title. Moreover, he has not alleged any relationship with Stewart Title that could make it "liable over" to him.

{¶71} We therefore hold the trial court did not err in dismissing appellant's claims against Stewart Title.

{¶72} Appellant's second assignment of error is overruled.

{¶73} For the reasons stated in the opinion of this court, appellant's assignments of error are overruled. It is the judgment and order of this court that the judgment of the Geauga County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.