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CPLR 1401, Relating to Contribution Among Joint Tort-Feasors, Not Circumvented by One Defendant's Taking Assignment of Plaintiff's Judgment Against Other Defendant

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ARTICLE 14—ACTIONS BETWEEN JOINT TORT-FEASORS

CPLR 1401, relating to contribution among joint tort-feasors, not circumvented by one defendant's taking assignment of plaintiff's judgment against other defendant.

In a negligence action, plaintiffs had judgment against Central Greyhound Lines, Inc. and Dorp Motors, Inc. Central appealed; Dorp did not. The judgment was reversed as to Central and remanded for a new trial. Before the new trial Central settled with plaintiffs, and plaintiffs assigned to Central their outstanding judgment against Central's co-tort-feasor, Dorp. The Greyhound Corporation succeeded to Central. A judgment of contribution had been procured against Dorp's insurer, and Greyhound brought suit on that judgment; it also brought an action to recover as assignee of plaintiffs' judgment against Dorp. The court of appeals held that neither suit would lie.¹¹⁴

The purported judgment of contribution was invalid. CPLR 1401 is narrow and permits contribution only when there is an outstanding judgment against two (at least) joint tort-feasors. The reversal as to Central meant that, when Central settled before the new trial, there was no joint judgment outstanding against both Central and Dorp. Moreover, the payment Central made to plaintiffs was one in settlement, and not payment of a *judgment* plaintiffs held against Central. In such circumstances prior case law made clear that contribution would not lie under what is now CPLR 1401.¹¹⁵

The assignment to Central (in whose shoes Greyhound now stood as successor) of plaintiffs' judgment against Dorp was held, in effect, to be a subterfuge to avoid the limitations on contribution imposed by CPLR 1401, and hence could give rise to no rights that Central would not have been entitled to under CPLR 1401 itself.

ARTICLE 20—MISTAKES, DEFECTS, IRREGULARITIES AND EXTENSIONS OF TIME

Execution's captioning out of civil court instead of supreme court held jurisdictional defect.

Plaintiff recovered a judgment against defendant on May 28. A transcript of that judgment was filed in the New York County Clerk's office and, via a transcript then issued by the latter, the judgment was docketed in the Suffolk County Clerk's office the

¹¹⁴ Greyhound Corp. v. General Acc. Fire & Life Assur. Corp., 14 N.Y.2d 380, 200 N.E.2d 625, 251 N.Y.S.2d 958 (1964).

¹¹⁵ Baidach v. Togut, 7 N.Y.2d 128, 164 N.E.2d 373, 196 N.Y.S.2d 67 (1959).