

JUDGMENT – ASSIGNMENT OF JUDGMENT: FORCING CO-DEBTORS TO CONTRIBUTE TO A JUDGMENT WITH ASSIGNMENTS AND CHARGING ORDERS

Open Road Trucking, LLC v. Swanson, 2019 ND 295, 936 N.W.2d. 72

ABSTRACT

In *Open Road Trucking, LLC v. Swanson*, the North Dakota Supreme Court issued an opinion on matters of first impression that impacts debtors who paid more than their share of a judgment and how they may collect the amount due from jointly liable co-debtors. First, the court *held* payment to a judgment creditor does not satisfy the judgment between the debtor paying it and those jointly liable. Second, the court *held* judgment debtors who have paid more than their proportionate share of a judgment should not have to bring a separate action against co-debtors to compel contribution. Finally, the court *held* a debtor or assignee of a judgment debtor may take an assignment of the judgment for the purpose of enforcing contribution against co-debtors. Lund argued that Swanson satisfied the judgment when he paid the full amount to Western State Bank. However, the court explained that the judgment was not satisfied between Swanson and Lund, in part because Western State Bank assigned the judgment to Swanson. The court examined case law and statutes from California, Nebraska, and several other states, finding they were persuasive in deciding the issues of first impression. North Dakota practitioners and their clients can take advantage of the judgment satisfaction and assignment rules, as well as the judicial efficiency improvements. As a case of first impression, *Open Road Trucking, LLC* will provide guidance for North Dakota practitioners handling commercial assignments of judgments.

I.	FACTS	94
II.	LEGAL BACKGROUND	95
	A. JUDGMENTS: SATISFACTION AND ASSIGNMENT	95
	B. RIGHT OF CONTRIBUTION FROM JOINT LIABILITY	97
	C. THE PURPOSE AND USE OF CHARGING ORDERS	98
III.	ANALYSIS	99
	A. ASSIGNMENT AND SATISFACTION OF JUDGMENTS	99
	B. SEPARATE LEGAL ACTION TO COMPEL CONTRIBUTION	101
	C. STATUTORY LAW ANALYSIS	101
IV.	IMPACT	102
	A. FAIRNESS AND JUDICIAL EFFICIENCY	103
	B. POTENTIAL FOR NORTH DAKOTA LEGISLATIVE ACTION	104
V.	CONCLUSION	104

I. FACTS

In *Open Road Trucking, LLC v. Swanson*,¹ Leland Swanson and James Lund owned and operated Fargo Cargo, LLC.² Swanson and Lund executed commercial loan guarantees to ensure payment of Fargo Cargo's business loans from Western State Bank.³ Western State Bank sued Swanson and Lund to enforce the commercial guarantees after Fargo Cargo defaulted on its loan payments.⁴ Swanson and Lund consented to the entry of a judgment in favor of Western State Bank for \$1,334,374.25, which included joint and several liability of the commercial guarantors.⁵

Swanson paid the full amount of the judgment to Western State Bank, who simultaneously assigned the judgment to Swanson.⁶ Swanson next as-

1. 2019 ND 295, 936 N.W.2d 72.

2. Brief of Appellant ¶ 4, *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, 936 N.W.2d 72 (No. 20190091) [hereinafter Appellant's Brief].

3. *Id.*

4. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 2.

5. *Id.*

6. *Id.* ¶ 3.

signed his interest in the judgment to Open Road Trucking, LLC.⁷ He assigned the judgment to Open Road Trucking because it was a local business entity he had an interest in.⁸ Open Road Trucking applied for a charging order in the amount of \$670,952.24, which was one-half of the total judgment amount.⁹ The charging order sought the one-half judgment amount from Lund’s interests in five limited liability companies.¹⁰ The district court denied Open Road Trucking’s application for a charging order.¹¹ It concluded the initial judgment was satisfied when Swanson paid it in full; therefore no amount remained outstanding to justify issuance of a charging order.¹²

Open Road Trucking also began a separate action under North Dakota Century Code section 9-01-08 as an alternative means of extracting contribution from Lund.¹³ The district court issued an execution of judgment against Lund for the entire amount of the judgment; however, Lund applied for and was granted a satisfaction of judgment, cancelling the outstanding execution of judgment.¹⁴ Open Road Trucking appealed the denial of the charging order and the satisfaction of judgment to the North Dakota Supreme Court.¹⁵

II. LEGAL BACKGROUND

It is important to address several legal concepts in order to understand how the judgment passed between individuals and business entities, how the court determined when a satisfaction of judgment occurs, and who owed what amount in *Open Road Trucking, LLC*. The following sections address: (1) the assignment of judgments and how judgments may be satisfied, (2) the right to contribution from jointly liable co-debtors, and (3) the purpose and use of charging orders.

A. JUDGMENTS: SATISFACTION AND ASSIGNMENT

In *Bank of Steel v. Lang*,¹⁶ the North Dakota Supreme Court stated, “Generally, a judgement is assignable.”¹⁷ Assignment allows a new entity or individual to take control of the judgment while “acquir[ing] no greater

7. *Id.*

8. Email Interview with Bruce A. Schoenwald, Attorney, Stefanson Law (Sept. 1, 2020).

9. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 4.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* ¶ 5; N.D. CENT. CODE § 9-01-08 (2020).

14. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 5; Brief of Appellee James B. Lund ¶ 6, *Open Road Trucking, LLC*, 2019 ND 295, 936 N.W.2d 72 (No. 20190091).

15. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 1.

16. 423 N.W.2d 504 (N.D. 1988).

17. *Lang*, 423 N.W.2d at 505.

rights than held by the assignor, [as] the assignee merely stands in the shoes of the assignor.”¹⁸ After an assignment of judgment occurs, it is entered on a judgment docket by the clerk of court.¹⁹ North Dakota Century Code section 28-20-20 states:

[U]pon the presentation of an assignment of any judgment rendered or docketed in the court, signed by the party in whose favor the judgment is rendered . . . and acknowledged in the manner prescribed by law for the acknowledgment of deeds, shall note the fact of the assignment, the date thereof, and the name of the assignee, upon the presentation and filing with that clerk of a certified copy of the original judgment docket with the facts of the assignment noted thereon.²⁰

Judgments may be satisfied by the clerk of court under North Dakota Century Code section 28-20-24.²¹ Judgments docketed under section 28-20-20:

may be canceled or discharged by the clerk . . . upon the filing . . . of an acknowledgement of the satisfaction thereof signed by the party in whose favor the judgment was obtained, or by that party’s attorney . . . acknowledged in the manner required to admit a deed of real property to record.²²

Nothing within section 28-20-24 or section 28-20-20 states that judgments are satisfied by the full payment of a judgment.²³

*Nodak Mutual Insurance Co. v. Stegman*²⁴ emphasizes the strict process of proper judgment satisfaction.²⁵ In *Stegman*, a two-vehicle accident led to the death of a driver.²⁶ After a dispute on the receipt of funds, the insurance company paid the claimants per the district court’s order.²⁷ To assert jurisdiction over the appeal that followed, the North Dakota Supreme Court looked at the issue of judgment satisfaction.²⁸ The court stated the satisfaction of judgment must be signed by the party and “be duly acknowledged in the manner required to record a deed.”²⁹ The manner required to record a deed in this instance is by notarization or otherwise be witnessed

18. *Collection Ctr., Inc. v. Bydal*, 2011 ND 63, ¶ 15, 795 N.W.2d 667.

19. N.D. CENT. CODE § 28-20-20 (2020).

20. *Id.*

21. *Id.* § 28-20-24 (2020).

22. *Id.*

23. *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, ¶ 13, 936 N.W.2d 72.

24. 2002 ND 113, 647 N.W.2d 133.

25. *Stegman*, 2002 ND 113, ¶ 9.

26. *Id.* ¶ 2.

27. *Id.* ¶¶ 3-5.

28. *Id.* ¶¶ 6-7.

29. *Id.* ¶ 9.

and authenticated by a public official.³⁰ An “acknowledgment” of the amounts paid to the claimants was signed but not notarized, witnessed, acknowledged, or authenticated in the manner required by North Dakota Century Code section 28-20-24.³¹ The court held the judgment was not formally satisfied because the “notarization step” was absent.³²

B. RIGHT OF CONTRIBUTION FROM JOINT LIABILITY

North Dakota Century Code section 9-12-03 states, “Performance of an obligation by one of several persons who are liable jointly under it extinguishes the liability of all persons who are liable jointly thereon.”³³ However, the North Dakota Century Code allows a party who has paid more than their fair share of an obligation to collect a contribution from those jointly liable.³⁴ “A party to a joint obligation or to a joint and several obligation who satisfies more than that party’s share of the claim against all obligors may require a proportionate contribution from all the parties joined with that party.”³⁵

North Dakota case law addresses contribution and joint liability, as well. For example, in *Collection Center, Inc. v. Bydal*,³⁶ the North Dakota Supreme Court stated:

When two or more persons have bound themselves as guarantors, they are generally presumed to be equally liable for a proportion of liability . . . and [if] one of them has paid more than [their] share of the amount owed, [they are] entitled to demand contribution from the others.³⁷

However, the court also said, “The presumption of equal liability may be rebutted, and a defendant has the burden of proof regarding an affirmative defense.”³⁸ For example, a rebuttal can be demonstrated “*if it can be shown that the parties have by agreement made a different allocation as to their liability, or one of the comakers has received a disproportionate benefit from the transaction, then disproportionate contribution may be allowed.*”³⁹

30. *Id.*

31. *Id.* ¶ 10.

32. *Id.*

33. N.D. CENT. CODE § 9-12-03 (2020).

34. N.D. CENT. CODE § 9-01-08 (2020).

35. *Id.*

36. 2011 ND 63, 795 N.W.2d 667.

37. *Collection Ctr., Inc.*, 2011 ND 63, ¶ 13.

38. *Id.*

39. *In re Estate of Egeland*, 2007 ND 184, ¶ 9, 741 N.W.2d 724 (citing 12 WILLISTON ON CONTRACTS § 36:15, at 676 (4th ed. 1999)).

C. THE PURPOSE AND USE OF CHARGING ORDERS

A charging order is a way for a creditor to collect an obligation from a debtor's interest in a business entity, while not disturbing any other party's ownership interests in the entity.⁴⁰ Charging orders were first introduced in the United States in the 1914 Uniform Partnership Act, and have been replicated in nearly all United States jurisdictions.⁴¹ North Dakota has established its own statute establishing charging orders.⁴² The first four subsections of North Dakota Century Code section 10-32.1-45 state:

1. On application by a judgment creditor of a member or transferee and following notice to the limited liability company of the application, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.
2. A charging order constitutes a lien on the transferable interest of a judgment debtor and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.
3. The member or transferee whose transferable interest is subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. At any time before extinguishment under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.⁴³

North Dakota Century Code section 10-32.1-45 applies to limited liability companies with one or more members and does not prevent any exemptions the members may be entitled to under applicable laws.⁴⁴ The creditor is only entitled to the debtor's share of profits and distributions, not to assets, management, or administration of the business.⁴⁵ North Dakota Century Code section 10-32.1-02 further clarifies what can be collected from

40. Appellant's Brief, *supra* note 2, ¶ 36.

41. *Id.*

42. N.D. CENT. CODE § 10-32.1-45 (2020).

43. *Id.* § 10-32.1-45(1)-(4).

44. *Id.* § 10-32.1-45(5), (7).

45. *Id.* § 10-32.1-45(6)(b).

the debtor’s interest in a limited liability company by defining transferable interest as “the right . . . to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.”⁴⁶

III. ANALYSIS

Chief Justice VandeWalle authored the opinion in which the North Dakota Supreme Court unanimously held: (1) a payment to the judgment creditor does not satisfy the judgment between the debtor who paid the judgment and those who are jointly liable, (2) no separate action is required to enforce contribution, and (3) a judgment debtor who has paid more than their proportionate share of the judgment may assign the judgment to compel contribution from the other party.⁴⁷ The case presented issues of first impression, requiring the court to look to other states’ statutes and case law to reach a decision.⁴⁸

A. ASSIGNMENT AND SATISFACTION OF JUDGMENTS

The North Dakota Supreme Court concluded that payment to a judgment creditor does not immediately satisfy the judgment between the paying debtor and debtors jointly liable.⁴⁹ Next, the court reasoned that a judgment debtor may take an assignment of the judgment to enforce contributions from co-debtors.⁵⁰ It reached these conclusions by analyzing several cases from California,⁵¹ namely *Duke v. Superior Court*,⁵² *Williams v. Riehl*,⁵³ and *Tucker v. Nicholson*,⁵⁴ the latter of which were cited within *Duke*.⁵⁵

In *Duke*, three guarantors of a commercial lease disputed a judgment entered joint and severally against them.⁵⁶ Two of the guarantors entered an agreement to assign them the judgment and attempted to collect the entire amount from the third guarantor, rather than just their proportionate share.⁵⁷ There, the California Court of Appeals noted three options for enforcing contribution: “statutory contribution, assignment, or an action on implied

46. *Id.* § 10-32.1-02(53).

47. *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, ¶¶ 24-25, 936 N.W.2d 72.

48. *Id.* ¶¶ 17-18, 23.

49. *Id.* ¶ 25.

50. *Id.*

51. *Id.* ¶ 18.

52. 226 Cal.Rptr.3d 807 (Cal. Ct. App. 2017).

53. 59 P. 762 (Cal. 1899).

54. 84 P.2d 1045 (Cal. 1938).

55. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 19.

56. *Duke*, 226 Cal.Rptr.3d at 810.

57. *Id.* at 810-11.

contract for contribution.”⁵⁸ It also noted “a joint judgment debtor may take an assignment of the judgment . . . for purposes of enforcing contribution.”⁵⁹

Next, the North Dakota Supreme Court reviewed *Williams*, the first of two main cases discussing judgment assignments cited in *Duke*.⁶⁰ In *Williams*, several judgment debtors paid a judgment and took an assignment of it to enforce payment from another debtor who had not paid anything.⁶¹ There, the California Supreme Court discussed equity of the parties and how it related to recovery of a debtor’s proportionate share.⁶² It succinctly stated, “[e]quality is equity[.]”⁶³ while further noting co-debtors are obligated to pay their fair share just as if a contract made it binding.⁶⁴ The court further elaborated that having some form of indemnification is not a defense to paying and does not make the burdens of the parties equal.⁶⁵ In the end, the court said the assignment entitled debtors to enforce contribution from co-debtors to protect themselves.⁶⁶

Finally, the North Dakota Supreme Court analyzed *Tucker*, the second of the two cases discussing judgment assignments cited in *Duke*.⁶⁷ In *Tucker*, judgment creditors received payment for a judgment and assigned it to an attorney for the debtors.⁶⁸ They later filed a claim for contribution because they had paid more than their proportionate share.⁶⁹ The issue of whether the contribution claim was properly filed hinged on the judgment’s satisfaction, and was resolved by the court when it explained the process of satisfaction.⁷⁰ It first noted judgments may be assigned to a third party.⁷¹ Regarding satisfaction, the court next said:

[T]he payment to the judgment creditor does not operate as a satisfaction of the judgment as between the debtor paying it and those jointly liable with him. The judgement is kept alive in equity to be used by the debtor paying to recover from his coobligors [sic] the

58. *Id.* at 815.

59. *Id.* at 816 (citing *Williams v. Riehl*, 59 P. 762 (1899)).

60. *Open Road Trucking, LLC*, 2019 ND 295, ¶¶ 19-21.

61. *Williams*, 59 P. at 763.

62. *Id.* at 764.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, ¶ 21, 936 N.W.2d 72.

68. *Tucker v. Nicholson*, 84 P.2d 1045, 1047 (Cal. 1938).

69. *Id.*

70. *Id.*

71. *Id.*

proportions they should pay, and he may have execution against them.⁷²

The court also discussed how principles of equity keep the judgment “alive” and allow debtors to recover the payment that was overpaid.⁷³ Finally, debtors cannot be held liable for more than their proportion of the debt, save some situations where another debtor is insolvent.⁷⁴

B. SEPARATE LEGAL ACTION TO COMPEL CONTRIBUTION

The North Dakota Supreme Court’s remaining holding stated there is no need to begin separate legal action to compel contribution from co-debtors.⁷⁵ The court examined the Supreme Court of Nebraska’s approach in *Exchange Elevator Co. v. Marshall*.⁷⁶

In *Exchange Elevator Co.*, plaintiffs were seeking to reach interests in two deceased family members’ estates to satisfy judgments.⁷⁷ In its opinion, the Supreme Court of Nebraska discussed the guiding principles of equality and equity in the payment of judgments and subsequent contributions from co-debtors.⁷⁸ The Nebraska court also quoted an earlier case, *Nelson v. Webster*,⁷⁹ which held it is unnecessary to reestablish contribution through a second, separate suit.⁸⁰ The Supreme Court of Nebraska stated in *Nelson* that when a co-debtor establishes their debt is paid in full and the judgment has been assigned to them, “there is nothing further necessary to be proved to authorize him to compel payment.”⁸¹ In conclusion, the court in *Exchange Elevator Co.* noted a second suit would not establish anything new and more litigation would be an unnecessary, repetitive exercise.⁸²

C. STATUTORY LAW ANALYSIS

After its analysis of other states’ case law, the North Dakota Supreme Court looked to statutory law in other states.⁸³ Minnesota, North Carolina,

72. *Id.*

73. *Id.*

74. *Id.* at 1048.

75. *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, ¶ 24, 936 N.W.2d 72.

76. 22 N.W.2d 403 (Neb. 1946).

77. *Exchange Elevator Co.*, 22 N.W.2d at 405.

78. *Id.* at 409-10.

79. 100 N.W. 411 (Neb. 1904).

80. *Nelson*, 100 N.W. at 414.

81. *Id.*

82. *Exch. Elevator Co.*, 22 N.W.2d at 413.

83. *Open Road Trucking, LLC v. Swanson*, 2019 ND 295, ¶ 23, 936 N.W.2d 72.

Georgia, and Maryland all have statutes discussing a party's entitlement to contribution if they pay more than their fair share.⁸⁴

Georgia's statute states:

When judgments have been obtained against several persons and one of them has paid more than his just proportion . . . he may . . . hav[e] this payment entered on the execution issued to enforce the judgment, and he shall not be compelled to bring an action against the codebtors⁸⁵

Similarly, Minnesota's statute reads, "When a judgment against two or more persons shall be enforced against or paid by one of them, or one of them shall pay more than a proper share . . . the debtor may continue the judgment in force for the purpose of compelling contribution."⁸⁶ The Maryland and North Carolina statutes also contain language discussing judgments and contributions.⁸⁷

The North Dakota Supreme Court found the case law and statutes persuasive in making its decision.⁸⁸ The court concluded debtors are "already obligated to pay[.]" therefore, "the interests of justice are not served by requiring the paying debtor to obtain another judgment for contribution against a co-debtor."⁸⁹ It also stated a judgment can be assigned from the creditor to enforce contribution against co-debtors because the payment to the creditor does not satisfy the judgment between co-debtors.⁹⁰ Consistent with the court's analysis, the district court's order denying a charging order was reversed because Open Road Trucking could use a charging order to enforce the contribution from Lund based on the assigned judgment.⁹¹

IV. IMPACT

North Dakota practitioners and their clients ordered to pay judgments will be impacted by *Open Road Trucking, LLC v. Swanson*.⁹² Co-owners of businesses often have differing ideas about running a company or paying its debts, which can lead to litigation. *Open Road Trucking, LLC's* holdings

84. See GA. CODE ANN. § 9-13-78 (West 2020); see MD. CODE ANN. CIV. PRO. § 2-614 (West 2020); see MINN. STAT. § 548.19 (2020); see N.C. GEN. STAT. § 1B-7 (2020).

85. GA. CODE ANN. § 9-13-78 (West 2020).

86. MINN. STAT. § 548.19 (2020).

87. See MD. CODE ANN. CIV. PRO. § 2-614 (West 2020) (stating a judgment can be entered against one defendant if another defendant has paid more than their share); see N.C. GEN. STAT. § 1B-7 (2020) (stating if a debtor pays all or more than his share of a judgment, the debtors right to contribution has the effect of a lien and is enforced against non-paying debtors).

88. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 24.

89. *Id.*

90. *Id.* ¶ 25.

91. *Id.* ¶¶ 25, 27.

92. 2019 ND 295, 936 N.W.2d 72.

could be implicated if these commercial disputes go to the North Dakota legal system for determination in court. Practitioners need to have a grasp on the case’s legal concepts and the potential impacts arising from judicial efficiency and equity, as well as the potential for the North Dakota Legislature to act.

A. FAIRNESS AND JUDICIAL EFFICIENCY

The North Dakota Supreme Court had never before addressed whether a separate action for contribution must be brought, or if an assignment from a judgment creditor to a debtor could be used to enforce contribution from co-debtors.⁹³ In *Open Road Trucking, LLC*, principles of efficiency, fairness, and equity drove the court’s decision, and should continue to influence the legal field going forward.

The court stated, “A co-debtor is already obligated to pay under the original judgment[.]”⁹⁴ and “[e]quality is equity.”⁹⁵ Co-debtors cannot get away without paying their proportionate share because “[t]his would not make the burdens of the co-[debtors] equal.”⁹⁶ Next, the court noted “any execution sought against Lund shall only be for his proportionate share.”⁹⁷ The court’s holding makes clear that parties on both sides are held to strict standards of fairness and equity when determining the payment judgments. In the future, North Dakota practitioners must not seek more than their proportionate share in contribution actions.

The court also stated, “A judgment debtor who has paid more than his or her proportionate share of the judgment should not have to bring a separate action against co-debtors to compel contribution from them.”⁹⁸ A paying debtor should not be required to bring a second action because this does not serve the “interests of justice[.]”⁹⁹ It is not judicially efficient to proceed with two legal actions that seek the same outcome.¹⁰⁰ The court’s holding has a clear financial impact on many parties. If only one contribution action is needed, clients will save money on court and attorney fees, and the court’s time and resources will not be wasted on duplicative efforts. Conversely, courts and attorneys will lose out on earning more fees. In the future, North Dakota practitioners should know the rules surrounding contri-

93. *Open Road Trucking, LLC*, 2019 ND 295, ¶ 17 (noting this was a case of first impression).

94. *Id.* ¶ 24.

95. *Id.* ¶ 20 (quoting *Williams v. Riehl*, 59 P. 762, 764 (Cal. 1899)).

96. *Id.* (quoting *Williams*, 59 P. at 764).

97. *Id.* ¶ 26.

98. *Id.* ¶ 24.

99. *Id.*

100. *See generally id.* ¶¶ 24-25.

butions to avoid duplicative legal proceedings and maintain judicial efficiency.

B. POTENTIAL FOR NORTH DAKOTA LEGISLATIVE ACTION

The North Dakota Supreme Court had never before addressed assignments from judgment creditors to judgment debtors, nor had it addressed whether contribution was limited to a proportionate share of the judgment, but it will likely face these issues again in the future.¹⁰¹ *Open Road Trucking, LLC v. Swanson* will provide a framework for maneuvering through future assignment of judgment cases, but the North Dakota Legislature could take further action.

North Dakota now joins states such as California and Nebraska with case law discussing the matters of judgment satisfaction and assignment.¹⁰² Notably, Minnesota, North Carolina, Georgia, and Maryland have found it important enough to enact statutes addressing issues found in *Open Road Trucking, LLC*.¹⁰³ While not discussed by the North Dakota Supreme Court, the issues presented in *Open Road Trucking, LLC* could have been resolved in the district court or earlier if North Dakota had statutes that applied to the issues presented. The North Dakota Legislature could enact a statute like those in Minnesota, North Carolina, Georgia, and Maryland. This new statute could borrow from North Dakota Century Code sections 28-20-20, 28-20-24, 9-01-08, and 9-12-03, as well as other statutes discussing assignments, judgments, and satisfactions.¹⁰⁴ Legislation combining these North Dakota statutes could lead to a more straightforward process for courts handling judgments, assignments, and contributions while simultaneously creating a single resource for legal research on this topic. North Dakota practitioners should be aware there are multiple statutes addressing the topics of judgment assignment and proportionate contribution, currently pieced together by only one case from the North Dakota Supreme Court.¹⁰⁵

V. CONCLUSION

In *Open Road Trucking, LLC v. Swanson*, the North Dakota Supreme Court held: (1) judgments are not always immediately satisfied, (2) debtors

101. *Id.* ¶ 17.

102. *See* Duke v. Superior Court, 226 Cal.Rptr.3d 807 (Cal. Ct. App. 2017); *see also* Exch. Elevator Co. v. Marshall, 22 N.W.2d 403 (Neb. 1946).

103. *See* GA. CODE ANN. § 9-13-78 (West 2020); *see* MD. CODE ANN. CIV. PRO. § 2-614 (West 2020); *see* MINN. STAT. § 548.19 (2020); *see* N.C. GEN. STAT. §1B-7 (2020).

104. N.D. CENT. CODE § 9-01-08 (2020) (Joint obligation-Contribution); N.D. CENT. CODE § 9-12-03 (2020) (Performance of obligation by one person); N.D. CENT. CODE § 28-20-20 (2020) (Assignment of judgment to be entered upon the judgment docket); N.D. CENT. CODE § 28-20-24 (2020) (Satisfaction of judgment).

105. *See Open Road Trucking, LLC*, 2019 ND 295, ¶ 17; *see supra* note 104.

should not have to bring a separate action against co-debtors to compel contribution, and (3) the assignment of judgment can be used to enforce other non-paying debtors to pay their proportionate share to the paying debtor. To reach its holdings, the court looked to the North Dakota Century Code, as well as case law and statutes from other states. The court found the out-of-state case law and statutes persuasive enough to adopt in North Dakota. This decision will lead to increased fairness in business dealings by limiting contributions from non-paying debtors to their proportionate share, as well as increased judicial efficiency by eliminating duplicative contribution lawsuits. The court's ruling opens the door for the North Dakota Legislature to implement a statute like those in other states to consolidate and simplify the process for assignments of judgments and demands for contribution.

*Bennett Lystad**

* 2022 J.D. Candidate at the University of North Dakota School of Law. I would like to give a special thank you to my wife, Alexa, my sons, Oliver and Jonathan, and my parents for their constant love and support throughout law school. You inspire me to be a better husband, father, and son. Also, thank you to the Editors of the North Dakota Law Review for your assistance and support during the writing of this Case Comment.