

FIRST DIVISION
December 15, 2014

Nos. 1-13-2188 & 1-13-2314
(Consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KENNETH SMITH,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
)	Cook County
v.)	
)	
CAPITAL FITNESS, INC.; CAPITAL FITNESS)	
LIBERTYVILLE, LLC; XSPORT FITNESS INC.;)	
XSPORT FITNESS MANAGEMENT, LLC;)	
EXECUTIVE CONSTRUCTION SERVICES,)	
INC.; CUSTOM GLOBAL LOGISTICS, LLC;)	
CUSTOM COMPANIES, INC.,)	
Defendants,)	
)	No. 08 L 006459
RETAIL PROJECT MANAGERS, INC.,)	
Defendant/Third-Party Plaintiff/Appellant,)	
)	
RANDAL WOOD DISPLAYS, INC.,)	
Defendant/Third-Party Defendant/Appellee,)	
)	
JAN'S TRANSPORT, INC.,)	
Third-Party Defendant/Appellee,)	
)	
RED ONION INSTALLATION GROUP, LLC,)	Honorable
Defendant/Third-Party Plaintiff/Appellant.)	John P. Kirby,
)	Judge Presiding.

RETAIL PROJECT MANAGERS, INC.,)
Defendant/Third-Party Plaintiff/Appellant,)
)
v.)
)
CAPITAL FITNESS, INC.; CAPITAL FITNESS)
LIBERTYVILLE, LLC; XSPORT FITNESS, INC.;)
XSPORT FITNESS MANAGEMENT, LLC;)
EXECUTIVE CONSTRUCTION SERVICES,)
INC.; CUSTOM COMPANIES, INC.; CUSTOM)
GLOBAL LOGISTICS, LLC,)
Defendant/Third-Party Defendants,)
)
RANDAL WOOD DISPLAYS, INC.,)
Defendant/Third-Party Defendant/Appellee,)
)
JAN'S TRANSPORT, INC.,)
Third-Party Defendant/Appellee,)
)
RED ONION INSTALLATION GROUP, LLC,)
Defendant/Third-Party Plaintiff/Appellant,)
)
LANKFORD CONSTRUCTION CO.,)
Defendant/Third-Party Defendant.)

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in finding that the settlement agreements executed by third-party defendants Jan's and Randal with plaintiff Smith were made in good faith, where the trial court considered the totality of the circumstances surrounding the negotiations, and the agreements did not violate the public policies underlying the contribution statute.

¶ 2 Third-party plaintiffs/appellants, Retail Project Managers, Inc. (RPM), and Red Onion Installation Group, LLC (Red Onion), appeal the order of the circuit court finding that the settlement agreements negotiated by third-party defendants/appellees, Jan's Transport, Inc. (Jan's) and Randal Wood Displays, Inc. (Randal), were made in good faith. On appeal, RPM

and Red Onion contend that the trial court erred because in making its good faith determination, it ignored or did not give due weight and consideration to the public policy of equitable apportionment of damages among tortfeasors, and placed too much emphasis on the policy of encouraging settlements. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered its order finding that the settlements were made in good faith on February 26, 2013. RPM filed a motion to reconsider, which Red Onion joined, on March 25, 2013. The trial court denied the motion on June 21, 2013. RPM and Red Onion each filed a notice of appeal on July 14, 2013. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Plaintiff in the underlying action, Kenneth Smith, was injured while working at a building being remodeled by defendant Xsport Fitness Inc. (Xsport), for use as an exercise facility. Xsport contracted with third-party defendant Randal to construct, deliver, unload and install cabinetry. Randal contracted with defendant Custom Companies, Inc., for delivery to the facility, and Custom Companies, Inc., hired third-party defendant Jan's to perform the actual pick-up and delivery of the cabinetry.

¶ 7 Randal retained third-party plaintiff RPM to install the cabinetry. RPM contracted with third-party plaintiff Red Onion for the installation work, and Red Onion hired defendant Lankford Construction Company (Lankford) to perform the actual installation. Smith worked for Lankford and was at the XSport facility to install the cabinetry when he was injured.

¶ 8 In his deposition, Smith testified that on July 5, 2006, while working at the Xsport facility, he was asked to assist in the unloading of cabinetry from a delivery truck driven by Herbert Halstead, an employee of Jan's. The foreman, Aaron Ratzburg, an employee of Lankford, also helped to unload the cabinetry from the truck. Smith and Halstead started to move a desk from the interior of the truck to the lift gate. They had already moved 6 to 8 similar pieces. As they lifted the desk, Halstead said he could no longer hold his end and he dropped the piece. Smith, who was on the other end, tried to keep the desk from tilting so that it would not sustain damage. In doing so, Smith injured his back.

¶ 9 Halstead, however, testified in his deposition that he and other truck drivers for Jan's were not responsible for loading and unloading their trucks. He stated that he never helped to unload materials while employed by Jan's and he had no recollection of the occurrence at the Xsport facility on July 5, 2006. Halstead stated that he did not touch the merchandise in the truck because it was the customer's responsibility to unload the truck. Michael Scialabba, the owner of Jan's, stated that the company instructed its drivers never to touch a load of freight in the truck.

¶ 10 Since the occurrence, Smith has not worked and he continues to suffer pain. He receives medical treatment and narcotics for the pain. At present, he receives approximately \$1,800 every two weeks in workers compensation. His medical expenses exceed \$583,000 and he alleges that his lost wages and benefits exceed \$2 million. Smith has made a settlement demand of \$6 million.

¶ 11 On June 1, 2008, Smith filed his original negligence complaint. He filed a second amended complaint naming Jan's as a defendant for the first time on December 18, 2009. Jan's filed a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (735

ILCS 5/2-619 (West 2010)), arguing that the two-year statute of limitations applied and therefore, Smith's complaint against Jan's is untimely. The trial court granted Jan's motion on June 8, 2011. On July 28, 2011, RPM filed its contribution claim against Jan's and Randal.

¶ 12 In February of 2012, Jan's and Randal began arms-length negotiations with Smith and they each reached a settlement with him for \$375,000. Defendants Capital Fitness, Inc., Capital Fitness Libertyville LLC, Xsport Fitness, Inc., Xsport Fitness Management, LLC, and Executive Construction Services, Inc., settled with Smith in the amount of \$350,000 and were dismissed with prejudice. Defendants The Custom Companies, Inc., and Custom Global Logistics, LLC, were also dismissed in a settlement with Smith for \$75,000.

¶ 13 Jan's and Randal filed a motion for a good faith finding regarding the settlement. The trial court held a hearing on the motion and determined that "[t]here has been no showing of wrongful conduct, collusion or fraud on any of the parties to the proposed settlement. Based on the totality of the circumstances, the settlements are consistent with the policy [of] the Contribution Act of encouraging settlements." The trial court acknowledged that the settlement must satisfy both policies under the Contribution Act, including the policy favoring equitable apportionment of damages among tortfeasors. It stated that the size of the settlement is not as important as viewing the amount in relation to the probability of recovery, defenses raised, and the settling parties' potential liability. It found that the amount of \$375,000 per defendant was valid consideration, and noted that Smith had received a total of \$1.175 million altogether in settlements from various defendants. RPM acknowledged that at this time, the extent of Smith's injuries and damages is speculative and it is not known whether his claim is actually worth the \$6 million he is requesting. The trial court determined that the settlement agreements made on behalf of Jan's and Randal were in good faith.

¶ 14 RPM filed a motion for a rehearing in which Red Onion joined. The trial court denied the motion on June 21, 2013. RPM and Red Onion filed their timely notices of appeal. The settlements reached by the other defendants are not challenged on appeal.

¶ 15 ANALYSIS

¶ 16 On appeal, RPM and Red Onion challenge the trial court's finding that the settlement agreements Smith entered into with Jan's and Randal were made in good faith. Specifically, they argue that in making its good faith determination, the trial court did not give due weight and consideration to the policy of equitable apportionment of damages among tortfeasors as required by the Joint Tortfeasors Contribution Act (Contribution Act), 740 ILCS 100/1 *et al.* (West 2008).

¶ 17 The Contribution Act provides a statutory right of contribution in claims "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death." 740 ILCS 100/1, 2(a) (West 2008). Relevant to the issues here, the Contribution Act states:

"(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the

settlement." 740 ILCS 100/2(c), (d), (e) (West 2008).

¶ 18 "The 'good faith' of a settlement is the only limitation which the [Contribution Act] places on the right to settle and it is the good faith nature of a settlement that extinguishes the contribution liability of the settling tortfeasor." *Johnson v. United Airlines*, 203 Ill. 2d 121, 128 (2003). Initially, the settling parties are required to make a preliminary showing of good faith by presenting a legally valid settlement agreement. *Id.* at 131. Proof that the settlement is supported by consideration is *prima facie* evidence that the settlement is in good faith. *Id.* Once the trial court finds a preliminary showing of good faith, the party challenging the settlement agreement must prove the absence of good faith by a preponderance of the evidence. *Id.* at 132. Good faith will not be found if the settling parties engaged in wrongful conduct, collusion, or fraud. *Id.* at 134. Also, good faith is absent where the settlement conflicts with the terms of the Contribution Act, or is inconsistent with the Contribution Act's underlying public policies of encouraging settlements and the equitable apportionment of damages among tortfeasors. *Id.* Whether a settlement agreement satisfies the good faith requirement is a determination within the discretion of the trial court based on the totality of the circumstances. *Id.* at 135. The trial court abuses its discretion where its determination is arbitrary, fanciful, or unreasonable, and no reasonable person would adopt its view. *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 227 (2007).

¶ 19 The parties do not dispute that a preliminary showing of good faith was made. Instead, RPM and Red Onion challenge the trial court's finding that they failed to show by a preponderance of the evidence that the settling parties engaged in wrongful conduct, collusion, or fraud, or that the settlements are inconsistent with the public policies underlying the Contribution Act. In making its good faith determination, the trial court here considered the

settlements, Smith's third amended complaint, the pleadings, answers and replies of the parties, the order granting Jan's motion to dismiss based on the statute of limitations, the depositions of Christopher Randazzo (Randal's president), Michael Scialabba (Jan's president), and Halstead, Randal's contract with Xsport, the purchase order for RPM to do installation work, and the settlements of the other defendants.

¶ 20 The parties presented their arguments at a hearing, with Jan's contending that liability in the case "is sharply contested" as is damages, including medical costs and lost wages, and whether Smith was even injured. Smith alleged that he was injured when Halstead, who was holding the other end of a desk Smith was moving off of Jan's truck, could no longer maintain his hold and suddenly dropped his end. Halstead, however, testified that he and other truck drivers for Jan's were not responsible for loading and unloading their trucks. He stated that he never helped to unload materials while employed by Jan's and he had no recollection of the occurrence at the Xsport facility on July 5, 2006. Halstead did not touch the merchandise in the truck because it was the customer's responsibility to unload the truck. Scialabba stated that the company instructed its drivers never to touch a load of freight in the truck.

¶ 21 RPM argued that the trial court should give due weight to the fair apportionment of damages among the tortfeasors, and consider that if the settlement is validated, RPM and Red Onion would be foreclosed from seeking contribution from Jan's and Randal even though they should bear a greater portion of the liability in Smith's accident. RPM, however, acknowledged that at this point, the extent of Smith's injuries and consequent damages is speculative and it is unknown whether his claim is actually worth the \$6 million he is requesting.

¶ 22 The trial court noted that "[t]here has been no showing of wrongful conduct, collusion or fraud on any of the parties to the proposed settlement." It reasoned that although Smith is

requesting damages of \$6 million, the amount of a good faith settlement depends on the probability of recovery, defenses raised, and the settling party's potential liability. The trial court found that the settlement amount of \$375,000 each, combined with the settlement amounts from the other defendants, totaled approximately \$1.2 million for a case where liability and damages are sharply contested. The court acknowledged that it must consider the Contribution Act's public policies of apportionment of damages among tortfeasors and of encouraging settlements. It concluded, based on the totality of the circumstances, that the settlement agreements by Jan's and Randal were made in good faith. The trial court's determination was not arbitrary, fanciful, or unreasonable, and therefore we find that no abuse of discretion occurred.

¶ 23 RPM and Red Onion disagree, arguing that the trial court failed to give proper weight and consideration to the public policy of fair apportionment of damages among tortfeasors. Specifically, they are concerned they will be liable for a future judgment amount that will exceed their proportion of fault if Jan's and Randal settle for \$375,000 each, in a case where Smith is requesting \$6 million in damages. This court gives due deference to the fact that the trial court is familiar with and observed the proceedings below leading to the execution of the settlement agreement. *McDermott v. Metropolitan Sanitary District*, 240 Ill. App. 3d 1, 44 (1992). Furthermore, the relatively small amount of the settlement in comparison to the requested damages does not, by itself, require a finding of bad faith. *Johnson*, 203 Ill. 2d at 137. Rather, the settlement amount "must be viewed in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability." *Id.*

¶ 24 Although RPM and Red Onion argue that according to Smith's version of the facts Jan's and Randal bear a larger portion of the liability, Jan's strongly contests Smith's account of the

occurrence. Jan's driver, Halstead, stated that he did not help to unload any items from his truck because it was the customer's responsibility to unload the truck. Scialabba, president of Jan's, stated that the company instructed its drivers never to touch a load of freight in the truck. Jan's also indicated that it would contest whether Smith even suffered any injuries. The issues of liability and damages are too speculative. We cannot conclude that a settlement amount of \$375,000 from each third-party defendant, in this case where \$6 million in total damages is demanded, indicates bad faith by the parties to the settlement. See *Cellini v. Village of Gurnee*, 403 Ill. App. 3d 26, 40 (2010) (dissatisfaction with the amount of settlement in light of the plaintiff's requested amount of damages is insufficient in itself to establish bad faith).

¶ 25 RPM and Red Onion also complain that if Jan's and Randal are allowed to settle with Smith, there would be no right of contribution should RPM and Red Onion have a substantial judgment entered against them. However, no evidence has been presented that the settlement was motivated by a desire to circumvent a legitimate claim for contribution, or that the settlement was the result of anything other than arms-length negotiations between the parties. Although Jan's and Randal contested the facts of the case, they chose to settle in order to avoid the trouble and expense of further litigation. In agreeing to a settlement, a party "compromises in return for the certainty of a fixed result," rather than risk submitting the case to the jury with the hope of obtaining a more favorable result. *Cleveringa v. J.I. Case Company*, 192 Ill. App. 3d 1081, 1086, (1990). The fact that a settlement is advantageous to a party does not necessarily indicate bad faith. *Johnson*, 203 Ill. 2d at 138.

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.