

TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, September 20, 2024 at **8:30 a.m.**
Courtroom 18 –Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom.** Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

TO JOIN "ZOOM" ONLINE **Department 18:**
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-268124, M.A. Silva Corks, USA, LLC v. Ursus Development Group, Inc., et al.

Cross-defendant DES Architects' ("DES") unopposed application for determination of good faith settlement is **GRANTED**.

The Court will sign the proposed order lodged by DES.

I. Procedural history

Plaintiff M.A. Silva Corks ("Silva"), a manufacturer of wine packaging, began leasing a warehouse in north Santa Rosa (the "Property") from defendant Ursus Development ("Ursus") in 2014 with an option to buy. Ursus agreed to make improvements to the Property, including modification of the roof and installation of batt insulation under the roof. Ursus contracted with DES to provide architectural plans for the improvements. The improvements involved the installation of new roofing, which was

carried out by defendant Gudge Roofing. In July 2015, Silva assigned its purchase option to plaintiff Foster Properties (“Foster”), who exercised it and purchased the property.

During the winter of 2015, Silva began noticing water coming into the Property through the roof, walls, and window casings. After numerous attempts to fix the leakage had failed, Silva and Foster (collectively “Plaintiffs”) filed the instant construction defect lawsuit on April 1, 2021. DES was not initially a defendant, but was brought into the case by Doe substitution on January 18, 2022.

On September 11, 2024, DES moved ex parte to shorten time on an application for determination of good faith settlement. Following a hearing on September 12, the Court set the hearing for September 20, the day trial is set to begin. DES filed the instant application on September 13, and the matter now comes on calendar for hearing.

II. Governing law

A “plaintiff or other claimant” can settle with one or more joint tortfeasors or co-obligors without releasing others, provided the settlement is in “good faith.” (CCP § 877.6.) A good-faith settlement discharges the settling defendant from liability to other parties for equitable contribution or comparative indemnity.

The amount of the settlement and whether it is grossly disproportionate to potential liability is the “ultimate determinant of good faith.” (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1262; see also *River Garden Farms, Inc. v. Superior Court* (1972) 26 Cal.App.3d 986, 996.) The determination of good faith settlement is in the discretion of the trial court. (*Tech-Bilt Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 502.)

There is no precise standard to determine good faith, but the court must harmonize public policy favoring settlements with public policy favoring equitable sharing of costs among tortfeasors. The settlement be within the “reasonable range of the settling tortfeasor’s proportional share of comparative liability for the plaintiff’s injuries,” taking into consideration the facts and circumstances of the particular case and evaluating the settlement on the basis of information available at the time of settlement. (*Tech-Bilt, supra*, 38 Cal.3d at p. 499) The factors include:

- 1) A rough approximation of the total recovery and settlor’s proportionate liability;
- 2) The amount paid in settlement;
- 3) The allocation of the settlement proceeds among plaintiffs;
- 4) A recognition that a settlor should pay less in settlement than if found liable after trial;
- 5) Settlor’s financial condition and insurance policy limits, if any; and
- 6) Evidence of any collusion, fraud or tortious conduct between the settlor and the plaintiffs aimed at making non-settling parties pay more than their fair share.

(*Ibid.*)

“Although an offer of settlement must bear some relationship to one’s proportionate liability, bad faith is not ‘established by a showing that a settling defendant paid less than his theoretical proportionate or fair share.’ [Citation.]” (*N. Cnty. Contractor’s Assn. v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1090.) “In other words, “a ‘good faith’ settlement does not call for perfect or even nearly perfect apportionment of liability.” [Citation.] All that is necessary is that there be a ‘rough approximation’ between a settling tortfeasor’s offer of settlement and his proportionate liability.” (*Id.* at pp. 1090-1091.) “The challenger must prove ‘the settlement is so far ‘out of the ballpark’ in relation to these factors as to be inconsistent with the equitable objectives of the statute.” (*Id.* at p. 1091.)

III. Analysis

The settlement agreement provides, in summary, that DES will pay \$450,000 to Plaintiffs in exchange for a release of all claims and dismissal of DES from the lawsuit. (Blute Dec., ¶ 2.) DES denies liability. (*Ibid.*) The agreement is contingent on this Court’s finding of good faith pursuant to CCP § 877.6(a)(2), and upon DES agreeing to produce its former employee Craig Ivancovich to testify at trial. (Blute Dec., ¶ 3.) DES states that the settlement “was reached via arms-length negotiations between counsel.” (Blute Dec., ¶ 2.)

DES explains that it was not involved in the construction of the Property; its involvement was limited to providing designs. (Blute Dec., ¶ 4.) DES explicitly advised Plaintiffs against using the batt insulation system they ultimately elected to use “due to the risk of trapped condensation and resultant water damage.” (*Ibid.*) On June 23, 2017, an architectural expert retained by Plaintiffs reported to them that the cracking in the walls of the Property, which was partially responsible for the water intrusion, resulted at least in part from the fact that the wall panels were 6” thick rather than 7” as called for in the plans prepared by DES. (Blute Dec., ¶ 5 and Exh. A at pp. 2-3.) The report did note that “one window at the east wall of the office area” was “*detailed in the architectural drawings* and installed using methods . . . [that are] not consistent with industry standard or good practice.” (Blute Dec., Exh. A at p. 3, emphasis supplied.) However, the expert’s recommendation regarding the window was, in essence, to remove it and re-install it. (*Ibid.*) That process cannot conceivably have incurred expenses anywhere near \$450,000. In light of those points, the amount of the settlement is neither “out of the ballpark” nor “grossly disproportionate.”

A finding of good faith settlement will preclude contribution or indemnity claims by the non-settling parties against DES. (CCP § 877.6(c).) However, DES states that the settlement involves no collusion or fraud aimed at making other cross-defendants pay more than their fair share, and there is no evidence before the Court to the contrary. (MPA at p. 7.) DES’s point is borne out by its counsel’s declaration that on September 11, 2024, the same day he filed his ex parte motion to shorten time, he

emailed counsel for all parties and asked if they intended to contest the instant application, and no party advised that they so intended. (Blute Dec., ¶ 6.)

IV. Conclusion

The settlement appears to the Court to be in line with the *Tech-Bilt* factors listed above. Therefore, the Court finds that the settlement was reached in good faith.