FOURTH DIVISION
January 28, 2016

No. 1-14-2531

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADGOOROO, LLC, Plaintiff, v. JIM HECHTMAN and THE HECHTMAN GROUP, LTD., Defendants/Third Party Plaintiffs-Appellants, v. BANK OF AMERICA, N.A., a North Carolina Corporation, Third Party Defendants-Appellees, (Gary Allen and Nino Papava, Defendants).	)	Appeal from the Circuit Court of Cook County No. 11 CH 30842 Honorable Kathleen M. Pantle, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court did not abuse its discretion in approving settlement between plaintiff and third-party defendant bank, where settlement was supported by consideration and trial court found no evidence of fraud, collusion, or improper attempt to deny third-party plaintiff its contribution rights. Trial court did not abuse its discretion in denying third-party plaintiff leave to file an amended third-party complaint in light of third-party defendant's settlement with plaintiff.

¶ 2 Plaintiff, AdGooroo, LLC (AdGooroo) sued its accountant, Jim Hechtman and The Hechtman Group, Ltd. (collectively, Hechtman) for failing to discover an embezzlement scheme involving two of AdGooroo's employees, third-party defendants Gary Allen and Nino Papava. The complaint alleged that Allen, assisted by Papava, transferred almost $1 million from AdGooroo's corporate account to Allen's personal account and used the funds for personal purposes unrelated to AdGooroo's business. Both accounts were with third-party defendant, Bank of America, N.A. (Bank of America). Hechtman filed a third-party complaint for contribution against Allen and Papava. Hechtman also filed a third-party action against Bank of America, alleging, among other things, Bank of America's failure to promptly discover Allen's improper withdrawals of AdGooroo's funds.

¶ 3 AdGooroo and Bank of America then entered into a settlement and moved the trial court for a good-faith finding. The trial court granted that motion and dismissed Hechtman's third-party complaint against Bank of America. The court denied Hechtman's motion to reconsider and its motion for leave to file an amended third-party complaint, purporting to raise additional claims against Bank of America. Before this court, Hechtman challenges both the trial court's finding of good faith in the AdGooroo/Bank of America settlement and its denial of Hechtman's motion for leave to file an amended third-party complaint against Bank of America.

¶ 4 We hold that the circuit court did not abuse its discretion in finding that the settlement was made in good faith. We also conclude that the court correctly denied Hechtman leave to file its amended third-party complaint. We thus affirm the trial court's judgment in all respects.

¶ 5 I. BACKGROUND

¶ 6 At all relevant times, Plaintiff AdGooroo had a single corporate bank account with Bank of America. The account with Bank of America was subject to certain agreements, including a

Deposit Agreement and "Limited Liability Company Resolutions and Certificate" (Corporate Resolutions).

¶ 7 The Deposit Agreement, referring to Bank of America as "we" and to AdGooroo as "you," provided that "We may act on the oral or written instructions of any one signer on the account" and authorized Bank of America to "pay out funds from your account if the check, item, or other withdrawal or transfer instruction is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this." The Deposit Agreement also provided that "[a]ll payments we make from an account at the request of any signer *** in accordance with the terms of this Agreement will constitute a complete release and discharge of the Bank from all claims regarding the amounts so paid."

¶ 8 The Corporate Resolutions provided that Bank of America was authorized to honor any and all checks and other orders signed by any authorized signatory, "including those drawn to the individual order of any such person or persons signing the same, without further inquiry or regard to the authority of said person or persons or the use of the checks, drafts or orders, or the proceeds thereof."

¶ 9 Of particular relevance, the Corporate Resolutions included indemnification language protecting Bank of America for honoring transactions conducted by authorized signatories. AdGooroo agreed to "indemnify the Bank and save it free and harmless from any and all claims, demands, expenses (including court costs and reasonable attorneys' fees), losses or damages it may suffer resulting from or growing out of or in connection with any action taken by the Bank as a result of, or its failure to act under or [*sic*] all the foregoing resolutions, or its failure not to conform in all respects to the authorization specified hereunder, except in the case of the Bank's gross negligence or willful misconduct."

¶ 10 AdGooroo hired Gary Allen as its chief executive officer (CEO) in 2004. Allen then hired Hechtman to perform accounting and tax services for the company and regularly communicated with Hechtman from mid-2005 to 2009. Allen was one of only two signatories to AdGooroo's corporate bank account with Bank of America.

¶ 11 The complaint alleges that, between 2005 and 2009, Allen embezzled approximately $1 million from AdGooroo, assisted by Papava. Allen, among other things, transferred funds from AdGooroo's corporate account to his own personal account, which was also with Bank of America.

¶ 12 AdGooroo terminated Allen in 2009. AdGooroo sued Hechtman for failing to discover the embezzlement scheme. AdGooroo alleged that Hechtman reviewed the monthly bank statements and prepared bank reconciliations. AdGooroo additionally claimed that, not only was Hechtman aware of Allen's embezzlement scheme, but it actively sought to conceal the scheme. In a third amended verified complaint, filed October 23, 2012, AdGooroo alleged breach of contract, professional negligence, common law fraud, breach of fiduciary duty, and civil conspiracy.

¶ 13 On August 2, 2013, Hechtman filed a 16-count verified third-party complaint against Allen, Papava and Bank of America. Hechtman sought contribution from Bank of America for allowing Allen to make the illegal transfers of funds. Hechtman alleged that Bank of America was aware of Allen's and Papava's inappropriate and unauthorized misuse of AdGooroo's corporate funds, because Bank of America reviewed and authorized Allen's inappropriate co-mingling of AdGooroo's corporate account with his personal account. Hechtman claimed Bank of America was negligent in failing to monitor AdGooroo's account, failing to promptly discover or identify Allen's withdrawals or the purpose of the withdrawals of AdGooroo's funds, failing to

submit accurate reports to AdGooroo, failing to take steps to ensure all account statements were received and reviewed by Bank of America, failing to verify reports and information submitted to Bank of America by Allen and Papava, and allowing Allen to transfer funds from AdGooroo's corporate account to Allen's personal account without requesting or requiring proper documentation.

¶ 14 On September 23, 2013, Bank of America moved to dismiss the third-party complaint. The court did not rule on the motion but granted Hechtman leave to file an amended third-party complaint. Hechtman then filed a motion to excuse verification and for leave to file an amended third-party complaint. The proposed complaint contained additional allegations and claims against Bank of America. Hechtman alleged that Allen's personal accounts, from 2004 to 2009, revealed hundreds of transactions related to gambling (casino ATMs, poker tournaments, and online poker websites) that regularly caused Allen to overdraw his personal account. The proposed amended third-party complaint further alleged that Bank of America, from 2004 to 2009, actively monitored Allen's accounts, notified him when his personal account reached a negative balance, and encouraged him to transfer funds from AdGooroo's corporate account to his personal account to satisfy Allen's personal debts to Bank of America. Attached to the proposed complaint were copies of emails that Hechtman claimed supported these allegations.

¶ 15 On November 21, 2013, Bank of America and AdGooroo reached a settlement agreement. The parties agreed to mutual covenants not to sue each other for any claims against each other "arising out of the Third Amended Complaint and the Corporate Resolutions signed and provided to [Bank of America] by AdGooroo."

¶ 16 On December 18, 2013, Bank of America filed a motion for a good-faith finding and dismissal of Hechtman's third-party complaint against Bank of America. Hechtman opposed the

motion, contending that the settlement was based on inadequate consideration, was entered into through collusion, and would deprive Hechtman of a setoff. Hechtman requested an evidentiary hearing and further argued that, even if the court found that the settlement was made in good faith, Hechtman's proposed amended third-party complaint contained claims that should not be dismissed.

¶ 17 On May 23, 2014, the circuit court granted Bank of America's motion for a good-faith finding, dismissed Hechtman's third-party complaint against Bank of America, and denied Hechtman's motion for leave to file an amended third-party complaint. Hechtman appealed, arguing that the trial court erred both in its good-faith finding and in denying Hechtman leave to file an amended third-party complaint.

¶ 18 II. ANALYSIS

¶ 19 A. The Good-Faith Finding

¶ 20 We begin with the good-faith finding entered by the trial court. The Joint Tortfeasor Contribution Act (740 ILCS 100/1 *et seq*. (West 2010)) (Contribution Act) seeks to promote two important public policies: encouraging settlements and ensuring the equitable apportionment of damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003); *BHI Corp. v. Litgen Concrete Cutting & Coring Co*., 214 Ill. 2d 356, 365 (2005). The Contribution Act creates a right of contribution in actions "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, to the extent that a tortfeasor pays more than his *pro rata* share of the common liability." (Citations omitted.) *Johnson*, 203 Ill. 2d at 128. The Contribution Act also provides that a tortfeasor who settles in good faith with the injured party is discharged from contribution liability. 740 ILCS 100/2(c), (d).

¶ 21 Specifically, section 2 of the Contribution Act states, in pertinent part, provides as follows:

> "(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 the 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." 740 ILCS 100/2(c), (d) (West 2010).

¶ 22 The only limitation the Contribution Act places on the settlement is that it be in "good faith." *Johnson*, 203 Ill. 2d at 128. But the Act does not define that term, and there is no "single, precise formula" to determine whether a settlement has been made in good faith. *Id*. at 128, 134. The determination of whether a settlement has been made in good faith must strike a balance between the two important public policies of promoting the encouragement of settlements and the equitable apportionment of damages among tortfeasors. *Id*. at 133.

¶ 23 A settlement is not in good faith if the settling parties engaged in wrongful conduct, collusion, or fraud. *Id*. at 134. But a disparity between the settlement amount and the amount of damages sought in the complaint is not an accurate measure of the good faith of a settlement. *Johnson*, 203 Ill. 2d at 136-37; *Miranda*, 2013 IL App (1st) 122674, ¶ 10; see also *Mallaney v. Dunaway*, 178 Ill. App. 3d 827, 833 (1988) ("Obviously, there are cases where the plaintiff is

willing to settle for far less than the amount of actual damages sustained where factors such as plaintiff's unwillingness to sue a potential defendant, *** plaintiff's unwillingness to go to trial, plaintiff's comparative negligence, time-barring or other potential defenses merit consideration during settlement negotiations. Compromise under such circumstances is neither collusive nor fraudulent, but entirely compatible with the policy underlying the Contribution Act."). Nor does a relatively small amount of a settlement, by itself, necessarily require a finding of bad faith. *Johnson*, 203 Ill. 2d at 137; *Miranda*, 2013 IL App (1st) 122674, ¶ 10. Settlements may be substantially different from the results of litigation, as damages are often speculative and the probability of liability uncertain. *Ziarko v. Soo Line R.R.*, 161 Ill. 2d 267, 284 (1994); *Cellini v. Village of Gurnee*, 403 Ill. App. 3d 26, 39-40 (2010). Thus, the amount of a settlement must be viewed in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability. *Johnson*, 203 Ill. 2d at 137; *Miranda*, 2013 IL App (1st) 122674, ¶ 10.

¶ 24 This court has also noted that "[s]ettlements are not designed to benefit non-settling third parties." *Muro v. Abel Freight Lines, Inc.*, 283 Ill. App. 3d 416, 420 (1996). "They are instead created by the settling parties in the interests of these parties." *Id.* "If the position of a non-settling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle." *Id.*

¶ 25 We review the circuit court's decision to approve the settlement between AdGooroo and Bank of America for an abuse of discretion. *Johnson*, 203 Ill. 2d at 135; *Miranda*, 2013 IL App (1st) 122674, ¶ 10. This standard "is the most deferential standard of review—next to no review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial." *In re D.T.*, 212 Ill. 2d 347, 356 (2004). This standard affords "due regard for the court's familiarity with and observation of the

course of the proceedings prior to the execution of the settlement agreement." *McDermott v. Metropolitan Sanitary District*, 240 Ill. App. 3d 1, 44 (1992). The question is not whether this court would have resolved the good-faith issue as the trial court did, or whether the court exercised its discretion wisely. *Miranda*, 2013 IL App (1st) 122674, ¶ 16. Rather, a trial court abuses its discretion where its ruling is so arbitrary or illogical that no reasonable person would adopt it. *Id.*; *1515 N. Wells, L.P. v. 1513 N. Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (2009).

¶ 26 With these general principles and our standard of review in mind, we turn to the specific arguments before us.

¶ 27 1. The Preliminary Showing of Good Faith

¶ 28 Hechtman first raises what is essentially a procedural objection, albeit an important one. It claims that the trial court conducted a "flawed analysis" by prematurely shifting the burden to Hechtman to prove that the settlement agreement was *not* made in good faith.

¶ 29 Our supreme court has described "the basic scheme employed by courts of this state when deciding the issue of good faith." *Johnson v. United Airlines*, 203 Ill. 2d 121, 129 (2003). The settling parties seeking discharge from contribution liability bear the initial burden of making a "preliminary showing" of good faith. *Id.* at 132. “At a minimum,” to carry this burden, “the settling parties must show the existence of a legally valid settlement agreement,” but “other factual evidence may be necessary” in the appropriate circumstance. *Id*. This court has observed that the preliminary showing is a low threshold. *Chicago Province of Society of Jesus v. Clark & Dickens, L.L.C.*, 383 Ill. App. 3d 435, 444 (2008). Once this preliminary showing has been made, the burden shifts to the objecting party to demonstrate, by a preponderance of the evidence, the absence of good faith. *Johnson*, 203 Ill. 2d at 132. Ultimately, the determination of whether a settlement has been made in good faith is a matter left to the discretion of the trial

court, based on the court's consideration of the totality of the circumstances. *Id*. at 135; *Miranda*, 2013 IL App (1st) 122674, ¶ 10. The "totality-of-the-circumstances" approach encourages the peaceful settlement of claims while protecting against wrongful conduct or unfair dealing. *In re Guardianship of Babb*, 162 Ill. 2d 153, 162 (1994)*; Palacios v. Mlot*, 2013 IL App (1st) 121416, ¶ 22.

¶ 30 In its written ruling, the trial court specifically recognized the burden-shifting scheme called for in *Johnson*. It found that the settlement between AdGooroo and Bank of America was supported by consideration (the substance of which we will take up later). Thus, the trial court found that Bank of America had met its initial burden of making a preliminary showing of good faith, and the burden then shifted to Hechtman to prove the lack thereof.

¶ 31 Hechtman claims that the trial court was required to do more than simply find consideration to be present, noting *Johnson*'s admonition that other evidence "may be necessary" in the appropriate case, beyond a mere finding of consideration, in satisfying the preliminary showing. *Johnson*, 203 Ill. 2d at 132. Hechtman has identified several objections to the settlement, but we do not read *Johnson* as requiring the settling parties to disprove every objection offered by the non-settling party in order to satisfy the preliminary showing; doing so would keep the burden of proof on the settling parties throughout the analysis, distinctly contrary to the burden-shifting scheme described in *Johnson*. The trial court did not abuse its discretion in finding that, once it had determined that the settlement was supported by consideration, the preliminary showing was made in this case.

¶ 32 2. Consideration of the Totality of the Circumstances

¶ 33 As to the merits of the trial court's ruling, Hechtman claims that the trial court failed to consider the totality of the circumstances in its good-faith finding. Our review of the trial court's

order demonstrates that the trial court considered every argument raised by Hechtman and rejected each of them. We will review the merits of these arguments in turn.

¶ 34 First and foremost, Hechtman claims that the settlement agreement lacked consideration. Consideration is a bargained-for exchange that may consist of a promise, an act or a forbearance. *Carter v. SSC Odin Operating Co*., LLC, 2012 IL 113204, ¶¶ 22-23. A bargained-for exchange exists if one party's promise induces the other party's promise or performance. *Ross v. May Co.*, 377 Ill. App. 3d 387, 391 (2007).

¶ 35 The settlement consisted solely of mutual covenants not to sue; no money exchanged hands. But we agree with the trial court that the settlement was supported by consideration. Mutual and concurrent promises provide sufficient legal consideration to support each other. *Solimini v. Thomas*, 293 Ill. App. 3d 430, 437 (1997). The compromise of a disputed claim, or a promise to forego pursuit of a potential claim, is sufficient consideration for a settlement agreement. *Kalis v. Colgate-Palmolive Co*., 337 Ill. App. 3d 898, 900-01 (2003); *F.H. Prince & Co. v. Towers Financial Corp*., 275 Ill. App. 3d 792, 799 (1995); *In re Estate of Herwig*, 237 Ill. App. 3d 737, 741 (1992). It is not necessary that a person waiving a cause of action receive satisfaction in money. See, *e.g., Wilson v. Hoffman Group, Inc.*, 131 Ill. 2d 308, 321 (1989) (waiver of worker's compensation lien was held to constitute consideration); *Stacy v. Ametek, Inc*., 205 Ill. App. 3d 58, 61 (1990) (same).

¶ 36 Each side to the settlement received a benefit. While Bank of America did not provide any cash payment to AdGooroo, AdGooroo received valuable consideration from Bank of America's covenant not to sue. The trial court correctly noted that Bank of America's Corporate Resolutions contained indemnification language that required AdGooroo to cover any costs or judgments against Bank of America for honoring transactions conducted by authorized

signatories on the account (see *supra*, ¶ 9), which included Gary Allen, the CEO accused of embezzlement. Thus, AdGooroo was quite likely on the hook, at a minimum, for all attorneys' fees and costs incurred by Bank of America as it defended itself against this third-party action. Bank of America had clearly already incurred some fees, and the longer the third-party claim continued, the more exposure AdGooroo faced. Thus, while no cash technically exchanged hands, AdGooroo unquestionably obtained a financial benefit from this settlement.

¶ 37 Bank of America, for its part, received a benefit as well. While it appeared to have a strong defense against any liability to plaintiff, based on the language in the Deposit Account that insulated it from liability for honoring transactions by one of AdGooroo's authorized signatories (see *supra*, ¶¶ 7-8), that issue had not yet been fully litigated, and in any event, the language in the Deposit Account provided that Bank of America was not immune from liability for gross negligence or intentional acts. By settling with AdGooroo, Bank of America eliminated any possible exposure in the third-party action. A settlement agreement between a defendant and plaintiff does not lack good faith merely because one of defendant's purposes may be to purchase protection against a claim for contribution. *Simpson v. Matthews*, 339 Ill. App. 3d 322, 330 (2003); *McDermott*, 240 Ill. App. 3d at 47.

¶ 38 Hechtman also claims that the settlement was not in good faith because the zero dollar settlement is not in a reasonable range of Bank of America's fair share of liability, as alleged in Hechtman's proposed amended third-party complaint, in which Hechtman alleged that Bank of America bears the "primary" responsibility for the damages alleged in AdGooroo's claims against Hechtman. We have already explained that, given the uncertain nature of litigation, courts in Illinois have typically rejected challenges to good-faith settlements based on perceived disparities between the value of the settlement and the relative culpability of the defendants. See

Johnson, 203 Ill. 2d at 136-37; *Miranda*, 2013 IL App (1st) 122674, ¶ 10; *Mallaney*, 178 Ill. App. 3d at 833 (1988); *Smith v. Texaco, Inc.*, 232 Ill. App. 3d 463, 470 (1992).

¶ 39 In any event, we reject the premise of this argument. In its written order below, the trial court noted that it "ha[d] before it numerous pleadings, memoranda, and other filings, as well as the briefs" from which it could "make a reasoned determination about relative culpability and the causes of action which [Bank of America and AdGooroo had] against one another." Based on its review of those papers, the trial court rejected the notion that Bank of America appeared to be the primary tortfeasor here, and we find no abuse of discretion in that estimation. In light of the corporate documents we have discussed above, it is far from certain, to say the least, that Bank of America was more culpable than Hechtman for the alleged embezzlement that took place. Bank of America was simply the depository institution, authorized by its agreement with AdGooroo to honor any transaction by an authorized signatory and not obligated to inquire into the wisdom or propriety of the transactions. Hechtman, on the other hand, was AdGooroo's accountant, who presumably would have paid far more attention to the specific activity in AdGooroo's corporate account. The trial court did not abuse its discretion in estimating that Hechtman appeared to be the more culpable tortfeasor.

¶ 40 We find applicable the supreme court's decision in *Johnson*, 203 Ill. 2d 121, where the court affirmed a finding of good-faith despite the claimed "nominal" value of the settlement. In the case, two airplanes had collided at an airport owned and operated by the City of Quincy, killing everyone in both aircrafts. *Id*. at 124. Plaintiffs, representatives of eight of the deceased passengers' estates, sued several defendants, including the manufacturer of one of the planes. *Id*. None of the plaintiffs filed suit against the City of Quincy (Quincy), but the plane manufacturer sought contribution from Quincy, generally alleging that it "negligently failed to discharge its

duty to business invitees to use ordinary care to provide reasonably safe ingress and egress from the airport." *Id*. at 125. Quincy settled with the plaintiffs and, in making the preliminary showing of good faith, represented to the court that it believed itself immune from all tort liability but settled "for the nominal amount of $1,000 per plaintiff so that it could avoid the time and expense of additional litigation." *Id*. at 135. Plaintiffs' counsel informed the court that it had determined that the likelihood of success against Quincy was marginal, and plaintiffs had decided that the limited amount of litigation dollars were better spent pursuing other sources and the settlement money would be used for the ongoing litigation. *Id*.

¶ 41 The supreme court ultimately held that the trial court did not abuse its discretion when it found that the settlement satisfied the good-faith requirement of Contribution Act. *Id*. The court was "unpersuaded that the amount of the settlement here [was] an indication of bad faith," given that the likelihood of recovery against the municipal defendant was slight, and plaintiffs themselves had forgone suit against Quincy for that very reason. *Id*. at 137.

¶ 42 Similarly, in this case, Bank of America had a strong defense to liability, and plaintiffs had an even bigger incentive to settle. Whereas in *Johnson*, plaintiffs used the nominal settlement amounts as seed money for their continued litigation, AdGooroo saved itself the potential exposure of what could be hundreds of thousands of dollars in defense costs. *Johnson* further convinces us that the settlement was in good faith.

¶ 43 Hechtman lodges one further objection regarding the lack of a monetary transfer—that it deprives it of any statutory set-off, in the event that Hechtman is ultimately held liable to AdGooroo in this case. Hechtman relies heavily on the case of *Stickler v. American Augers, Inc*., 303 Ill. App. 3d 689, 693 (1999). In *Stickler*, the plaintiff sued four defendants after plaintiff's decedent was injured and killed at a work on a construction project. *Id*. at 691. The four

defendants filed third-party complaints for contribution against the plaintiff's employer. *Id*. The plaintiff settled with three of the defendants and the employer (all of whom were insured by the same carrier). *Id.* The only issue before the appellate court was the settlement between the employer and the plaintiff, by which the plaintiff released the employer from liability in exchange for a waiver of its workers-compensation lien of $149,143, plus $150,000 in cash. *Id*.

¶ 44 This court held that the trial court's good-faith finding was an abuse of discretion. *Id*. We noted that the plaintiff was statutorily entitled to workers' compensation payments for the rest of her life, and that the present value of these payments was over $1 million. *Id*. at 693-694. The settlement thus allowed the employer to escape from "undisputed" workers-compensation liability in excess of $1 million for just $300,000. *Id*. at 693.

¶ 45 We find *Stickler* inapposite. The instant case involves no similar undisputed amount of liability. Bank of America's liability, as we have explained, is dubious at best, and clearly disputed.

¶ 46 It is true that a plaintiff and a settling defendant cannot *manipulate* the settlement terms to deprive the nonsettling defendant of its set-off rights. See *Babb*, 162 Ill. 2d at 163. In *Babb*, the settlement involved a loan-receipt agreement. Such agreements were employed prior to the Contribution Act "[a]s a method of mitigating the harsh effects that resulted from the inflexible and inequitable application of the common law bar to contribution." *Babb*, 162 Ill. 2d at 168. In the typical loan receipt agreement, "the plaintiff received an interest-free loan (settlement monies) from the settling tortfeasor, who was then dismissed from the plaintiff's tort action." *Id.* But the plaintiff "was obligated to repay the settlement monies received pursuant to the loan-receipt agreement to the settling tortfeasor out of any judgment or settlement that the plaintiff obtained from the other nonsettling tortfeasors." *Id*.

¶ 47 The loan-receipt agreement in *Babb* deprived the nonsettling tortfeasors of a full set-off, because the plaintiff would use damages recovered from the nonsettling tortfeasor to repay a loan to the settling tortfeasor. *Id*. at 172. And it would allow the settling tortfeasor to do what it could not do under the Contribution Act, *i.e.*, indirectly recover contribution from the nonsettling tortfeasor. *Id*. at 172. Thus, the settlement agreement in *Babb* actually deprived the nonsettling tortfeasors of their right to a statutory set-off. *Id*. Although the settling tortfeasor paid the plaintiff $400,000, the settlement agreement provided that the plaintiff would repay $350,000 to the settling tortfeasor out of any amount that the plaintiff might recover from the nonsettling tortfeasors. *Id*. at 173. As a result, any nonsettling tortfeasor would be entitled to only a $50,000 set-off instead of the $400,000 set-off.

¶ 48 But *Babb* is distinguishable. While it is true that there was no exchange of money in the subject settlement agreement, we agree with Bank of America that the issue of whether Hechtman is entitled to a setoff would be relevant had Bank of America and AdGooroo structured their settlement in such a way to purposely deny Hechtman a set-off. The trial court found no indication of such a scheme or any collusion on the part of the settling parties to somehow deprive Hechtman of a set-off. It was not collusion or bad faith but, rather, the unique nature of the third-party defendant's indemnification claim against plaintiff that prompted a settlement that did not involve a monetary transfer. We find no abuse of discretion in the trial court's decision.

¶ 49 We find that the trial court properly weighed the totality of the circumstances in determining that the settlement was in good faith.[1]

[1] On appeal, Hechtman also claims that the settlement agreement provided no net consideration to AdGooroo because it was "unexecuted by [Bank of America]." But Hechtman never raised this argument before the trial court and thus forfeited it. See, *e.g.*, *Haudrich v.*

¶ 50 3. Lack of an Evidentiary Hearing

¶ 51 Hechtman finally argues that the trial court's decision was an abuse of discretion because the trial court rejected Hechtman's request for an evidentiary hearing. Hechtman argues the hearing was required to place a dollar figure on the respective claims released by AdGooroo and Bank of America to "affix the value of Hechtman's set-off" and determine whether the amounts represented a fair share of Bank of America's relative culpability. A similar argument was made in *Johnson*. But as our supreme court noted, the premise for this argument is faulty. *Johnson*, 203 Ill. 2d at 136. The fact that a trial court did not conduct an evidentiary hearing, as requested by the nonsettling defendant, does not mean that the trial court did not consider whether the settlement amount bore a reasonable relationship to the settling party's relative culpability. *Id*. As in *Johnson*, the trial court here heard extensive argument by counsel for AdGooroo, Bank of America and Hechtman, and, as noted in the court's order, had before it numerous pleadings, memoranda, and other filings, as well as the parties' briefs. Here, too, there is no reason to believe that the court was incorrect when it stated it could "make a reasoned determination about relative culpability and the causes of action" which Bank of America and AdGooroo had against one another. The court determined that there was no issue of material fact that required resolution through an evidentiary hearing. "The trial court is in the best position to decide what type of hearing is necessary to fully adjudicate the issue of good faith." *Johnson*, 203 Ill. 2d at 136. We find no abuse of discretion.

¶ 52 We affirm the trial court’s finding of good faith.

¶ 53 B. Hechtman's Proposed Second Amended Third-Party Complaint

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Howmedica, 169 Ill. 2d 525, 536 (1996); *ING Bank, FSB v. Tanev*, 2014 IL App (2d) 131225, ¶ 24.

¶ 54 We next consider the trial court's denial of Hechtman's request for leave to amend its third-party complaint against Bank of America. This ruling is also reviewed for an abuse of discretion. *Sheffler v. Commonwealth Edison Co*., 2011 IL 110166, ¶ 69.

¶ 55 In its proposed second amended complaint, Hechtman sought to allege claims for intentional torts and vicarious liability. Hechtman claims that the trial court abused its discretion in denying Hechtman leave to file its proposed second amended complaint, because contribution is not available for such claims. We agree with Bank of America that Hechtman "has it backwards."

¶ 56 It is true that intentional tortfeasors cannot seek contribution from other alleged tortfeasors. *Ziarko*, 161 Ill. 2d at 272; *Gerill Corp. v. Jack L. Hargrove Builders, Inc*., 128 Ill. 2d 179, 206 (1989). And there is no dispute that an allegedly negligent tortfeasor can seek contribution from an allegedly intentional tortfeasor. See *Long Beach Mortgage Co. v. White*, 918 F. Supp. 252, 254 n.3 (N.D. Ill. 1996) ("it would be totally bizarre to preclude a tortfeasor who is even less at fault (negligent rather than wilful and wanton) from obtaining contribution from a tortfeasor who is even more at fault (an intentional rather than merely negligent wrongdoer)"). But the salient point is that any claims for contribution against the settling tortfeasor, regardless of their nature, do not survive a good-faith finding. The language of section 2(d) of the Contribution Act is clear and unambiguous: "The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from *all liability* for *any contribution* to any other tortfeasor." (Emphasis added.) 740 ILCS 100/2(d) (West 2010).

¶ 57 Moreover, as the trial court noted, if Hechtman had direct causes of action against Bank of America, they cannot be part of a third-party complaint. Under Illinois law, a party cannot maintain a claim for its own losses in a third-party complaint. *Scott & Fetzer Co. v. Montgomery*

Ward & Co., 129 Ill. App. 3d 1011, 1021 (1984), *aff'd*, 112 Ill. 2d 378 (1986); *Filipponio v. Bailitz*, 73 Ill. App. 3d 389, 392 (1979). "Third-party litigation 'cannot be used to maintain an entirely separate and independent claim against a third party, even if it arises out of the same general set of facts as the main claim.' " *Scott & Fetzer*, 129 Ill. App. 3d at 1021 (quoting *Filipponio*, 73 Ill. App. 3d at 392). If, as Hechtman insists, these new causes of action were direct claims and not derivative, then they would have been properly barred by the trial court for that reason alone.

¶ 58 In any event, as the trial court noted, its review of Hechtman's proposed amended third-party complaint showed that it was not a direct action against Bank of America but, rather, was a claim premised on Bank of America's alleged liability to AdGooroo—it was, in other words, a claim for contribution. Accordingly, it could not be maintained following the good-faith settlement between AdGooroo and Bank of America. The trial court's decision to deny Hechtman leave to file its proposed amended third-party complaint was not an abuse of discretion.

¶ 59 III. CONCLUSION

¶ 60 The trial court did not abuse its discretion in ruling that Bank of America and AdGooroo entered into a good faith settlement. Because a settling tortfeasor is discharged from all liability for any contribution to any other tortfeasor, the trial court did not abuse its discretion in denying Hechtman leave to file its proposed amended third-party complaint for contribution against Bank of America. We affirm the trial court’s judgment in all respects.

¶ 61 Affirmed.