

NOTICE
Decision filed 04/25/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 160426-U

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).

NO. 5-16-0426

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney General of)
the State of Illinois, and THOMAS D.)
GIBBONS, Madison County State's Attorney,)
)
Plaintiffs-Appellees,)

Appeal from the
Circuit Court of
Madison County.

v.)

No. 03-CH-459

THE PREMCOR REFINING GROUP, INC.,)
a Foreign Corporation, and APEX OIL)
COMPANY, INC., a Foreign)
Corporation,)
)
Defendants)

(The Premcor Refining Group, Inc.,)
Defendant-Appellant; Apex Oil Company,)
Inc., Defendant-Appellee).)

Honorable
Barbara L. Crowder,
Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in finding that the settlement between the State and Apex Oil Company (Apex) was made in good faith under the meaning of the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2016)).

¶ 2 This appeal arises from the good-faith finding by the Madison County circuit court regarding a settlement between the State and Apex. The Premcor Refining Group (Premcor), a nonsettling third-party defendant, appeals the trial court's finding that the settlement was made in good faith within the meaning of the Joint Tortfeasor Contribution Act (Act) (740 ILCS 100/2 (West 2016)). Premcor asserts that the court abused its discretion because the settlement violated one of the underlying policies of the Act by not equitably apportioning damages among the joint tortfeasors.

¶ 3 For the following reasons, we find that the trial court did not abuse its discretion and affirm its finding that the settlement was made in good faith within the meaning of the Act.

¶ 4 **BACKGROUND**

¶ 5 Premcor is the current owner of an oil refinery located in the Village of Hartford, Illinois. Apex is the successor by merger to companies that owned and operated the refinery from 1967 to 1988. In 1988, Clark Oil-Apex, a predecessor of Apex, sold the refinery to Premcor in a sale approved in bankruptcy court.

¶ 6 On May 29, 2003, the State filed a lawsuit against Premcor and Apex, alleging various violations of the Environmental Protection Agency Act (415 ILCS 5/1 *et seq.* (West 2012)) and the Oil Spill Responders Liability Act (740 ILCS 113/1 *et seq.* (West 2012)). On May 30, 2013, 10 years after the initial filing, the State filed a third amended complaint seeking injunctive and other relief. On July 31, 2013, Premcor filed a fourth amended third-party complaint and crossclaim for injunctive and other relief, which included a crossclaim against Apex for contribution. On August 22, 2013, Apex filed a

motion to dismiss the third amended complaint. On May 8, 2014, the trial court entered an order striking the portions of the State's complaint seeking injunctive relief against Apex. At the end of its order, the trial court also made a special mention about potential bankruptcy defenses that could be asserted by Apex and suggested that Apex invoke the jurisdiction of the bankruptcy court to make a determination as to whether the State's claim violated the bankruptcy discharge. Thereafter, without having the bankruptcy issue adjudicated, the State and Apex negotiated a settlement.

¶ 7 On April 21, 2016, the State and Apex filed a joint motion for a good-faith finding with the trial court and submitted the proposed settlement to the court for approval. On August 12, 2016, the court held a hearing on the motion. At the hearing, Premcor made extensive arguments regarding its position that the settlement was not made in good faith because it did not equitably apportion damages. Premcor cited *Cianci v. Safeco Insurance Co. of Illinois*, 356 Ill. App. 3d 767 (2005), *Associated Aviation Underwriters, Inc. v. Aon Corp.*, 344 Ill. App. 3d 163 (2003), and *In re Guardianship of Babb*, 162 Ill. 2d 153 (1994), in support of its argument that a settlement should be rejected when it does not "in fact protect other people from paying more than their *pro rata* share." Premcor argued that, under the terms of the settlement, Apex would not be paying its fair share of abatement costs and the settlement should therefore be rejected. Premcor cited to affidavits from experts and made extensive argument to the court about the type and scope of contamination caused by Apex during the 20 years it operated the refinery. Premcor also explained the method used by the experts in determining that the contamination was caused by Apex during the 1960s and 1970s. Premcor further argued

that the terms of settlement would release Apex of its share of liability for five cents on the dollar. Premcor's calculation was based on an expert affidavit claiming that total costs of abatement at the refinery would exceed \$200 million. Premcor pointed out to the court that at the time of the hearing, it had already spent \$51.6 million on abatement. Premcor argued that not only was Apex primarily liable but that, because a federal court had already found Apex liable and imposed injunctive relief, its defense against a legal claim in state court would be ineffective.

¶ 8 Premcor additionally argued that the previous bankruptcy orders allocated responsibility for clean-up of contamination released prior to 1988 to Apex because, under the terms of the Asset Purchase Agreement, Premcor did not assume any liabilities for "whatever Apex did and whatever they put in that ground" prior to the date of sale. In summation, Premcor argued that the settlement would release Apex from liability imposed on it by both the bankruptcy court and the federal court. After Premcor's argument, the court allowed other objecting parties the opportunity to clarify the terms of the settlement with counsel from the State.

¶ 9 The State responded to Premcor's objection by asserting that the settlement amount was fair and reasonable considering Apex's potential legal defenses, the fact that the State was well aware of all the information regarding Apex's liability presented by Premcor prior to the settlement, the cost of future complex litigation with Apex, and that the settlement would provide immediately available funds for clean-up at the refinery.¹

¹In the State's brief to this court, as well as at oral argument, the State informed this court that the immediate availability of over \$10 million for clean-up at this location was a significant factor because,

¶ 10 On September 6, 2016, the trial court issued a written order approving the settlement between the State and Apex and denying Premcor's motion for partial summary judgment as to the State's claims. In its order, the court explained that "[t]he public policy behind the Contribution Act is to encourage settlements and to equitably apportion damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121 (2003)." The court then ruled that based on a careful consideration of all the factors and arguments made by counsel, the settlement was made in good faith. The good-faith finding by the court released Apex from all claims arising from its activities and ownership of the Hartford refinery by any joint tortfeasor in a claim for contribution under the Act. However, under the Act, any nonsettling defendant who would otherwise have a claim for contribution against Apex would be entitled to a right to set-off in the amount of the settlement.

¶ 11 On September 7, 2016, the trial court entered a consent order, settlement, and final dismissal order as to Apex. In relevant part, the terms of the consent order required Apex to pay consideration in the amount of \$10.015 million into a trust to be used by the State in conducting environmental clean-up at the Hartford refinery. In exchange for Apex's consideration, the State resolved and covenanted not to sue Apex and released Apex from "any and all liability, claims, orders, damages, costs, or penalties *** arising under any

absent the settlement, the Hazardous Waste Fund, which contained most of the State's \$8.1 million total available clean-up funds, prohibits the Illinois Environmental Protection Agency from spending more than \$1 million on any single incident absent a specific legislative appropriation. Even with an additional appropriation, the maximum amount of money the State had available to it to spend was \$8.1 million; therefore, the settlement would more than double the State's total available funds for environmental clean-up and the terms of the settlement would ensure that the full amount would only be spent abating contamination at the Hartford refinery.

Environmental Laws relating to each Release of Substances, threatened Release of Substances, and resulting conditions existing at, under, from, on or upon the Refinery, including as alleged in the Third Amended Complaint." The consent order expressly stated that the federal action and the Hartford Unilateral Administrative Order would not be affected by the terms of the order and that any issues related to the federal action are expressly excluded. The consent order also found that there was no just reason to delay either enforcement or appeal under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 12 On September 30, 2016, Premcor filed a notice of appeal from the September 7, 2016, order under Rule 304(a). On November 14, 2016, the trial court entered an order clarifying that it found no just reason to delay enforcement or appeal under Rule 304(a) as to both the September 6 and September 7 orders with regard to its good-faith finding. On November 22, 2016, Premcor amended its notice of appeal to include the September 6 order and the cases were consolidated.

¶ 13

ARGUMENT

¶ 14 On appeal, Premcor argues that the trial court abused its discretion in finding that the settlement between the State and Apex, which released Apex from liability for contribution claims brought by joint tortfeasors pursuant to the Act, was made in good faith. "A good-faith determination is reviewed on appeal for an abuse of discretion." *Johnson*, 203 Ill. 2d at 135 (citing *Dubina v. Mesirow Realty Development, Inc.*, 197 Ill. 2d 185, 191-92 (2001); *Babb*, 162 Ill. 2d at 162).

¶ 15 Under the Act, a joint tortfeasor has a statutory right to contribution where (a) two or more persons are subject to liability in tort arising out of the same injury to a person or property, and (b) that tortfeasor has paid more than his *pro rata* share of damages (740 ILCS 100/2(a)-(b) (West 2016)). A tortfeasor who enters a good-faith settlement is discharged from all liability for contribution to other joint tortfeasors; however, recovery on any claim against a nonsettling joint tortfeasor is reduced by either the amount stated in the release or covenant not to sue between the settling parties, or the amount of consideration actually received, whichever is greater (*id.* § 2(c)-(d)).

¶ 16 The only limitation imposed on the right to settle under the terms of the Act is that the settlement be made in good faith. *Johnson*, 203 Ill. 2d at 128. The good-faith nature of the settlement extinguishes contribution liability for the settling tortfeasor. *Id.* However, the Act does not define good faith, nor is there any one precise formula for determining what constitutes good faith that is applicable to every case. *Id.* at 134. The decision as to whether a settlement satisfies the good-faith requirement is a matter left to the discretion of the trial court based upon the court's consideration of the totality of the circumstances. *Id.* at 135. A court will not make a finding of good faith if it is shown that the settling parties engaged in wrongful conduct, collusion, or fraud. *Id.* at 134. Additionally, a settlement will not satisfy the good-faith requirement if it conflicts with the terms of the Act, or if it is inconsistent with the Act's two underlying policies of encouraging settlements and equitably apportioning damages among tortfeasors. *Id.* at 133.

¶ 17 The trial court is in the best position to decide the type of hearing necessary to fully adjudicate the issue of good faith. *Id.* at 136. The settling parties have the initial burden to make a preliminary showing of good faith. *Id.* at 132. In meeting this burden, the settling parties must show, at a minimum, the existence of a legally valid settlement agreement. *Id.* In determining whether a settlement is fair and reasonable, a court may require factual evidence, in addition to the settlement agreement itself, before determining, as an initial matter, whether the settlement is fair and reasonable in light of the policies underlying the Act. *Id.* Once the settling parties make a preliminary showing of good faith, the burden shifts to the challenging party to show the absence of good faith by a preponderance of the evidence. *Id.* The trial court then considers the totality of the circumstances in making its decision. *Id.* at 135.

¶ 18 In the case at bar, Premcor argues that the trial court abused its discretion in finding the settlement was made in good faith because the State failed to meet its initial burden that the settlement was within a reasonable range of Apex's equitable apportionment of liability. This court relies on the reasoning in *Johnson* in reaching its conclusion.

¶ 19 In *Johnson*, the Illinois Supreme Court considered whether a nominal settlement between plaintiffs and one joint tortfeasor was made in good faith. *Id.* at 127. The case arose from a fatal airplane crash between a United Express flight and a private aircraft, which resulted in the deaths of everyone aboard both aircraft. *Id.* at 124. Representatives from the eight passengers aboard the United Express flight filed wrongful death and survivor suits against several defendants including Raytheon Aircraft Company,

successor to the corporation that manufactured the United Express aircraft. *Id.* Raytheon then filed a third-party contribution claim against the city of Quincy, Illinois, the location of the airport where the crash occurred. *Id.* at 124-25. Quincy settled with each of the plaintiffs for \$1000 conditioned on the plaintiffs' release of Quincy for all claims. *Id.* at 125-26.

¶ 20 The settlement was brought before two different circuit courts on motions for a good-faith finding. *Id.* at 126. Both circuit judges conducted independent hearings. *Id.* Thereafter, both judges ruled that "the settling parties had established that the settlements were made in good faith and that Raytheon had not presented any evidence to overcome the presumption of good faith." *Id.* In its preliminary showing of good faith, Quincy informed the court that, though it believed it had complete immunity from tort claims, the nominal amount of the settlements would avoid the time and expense of additional litigation. *Id.* at 135. Plaintiffs' counsel then advised the court that at the time of settlement, the plaintiffs recognized that Quincy had a viable absolute immunity defense against tort claims under the Local Governmental and Governmental Employees Tort Immunity Act. *Id.* at 137. Based on extensive research indicating little likelihood of success in a claim against Quincy, the plaintiffs settled based on the decision that "the limited amount of litigation dollars were better spent pursuing other sources." *Id.* at 135. Additionally, the settlement money would be put toward the ongoing litigation. *Id.* Raytheon failed to show any evidence of bad faith. *Id.*

¶ 21 Based on the totality of the circumstances, the trial court found that the settlements were made in good faith and Raytheon's claims against Quincy were dismissed. *Id.*

Raytheon appealed, arguing that the settlements constituted bad faith because the settlement amount of \$1000 was grossly disproportionate to the overall damages claimed by the plaintiffs. *Id.* at 136.

¶ 22 The Illinois Supreme Court disagreed with Raytheon, ruling that "the disparity between the settlement amount and the *ad damnum* in the complaint is not an accurate measure of the good faith of a settlement. *** 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. [Citations.]" *Id.* at 136-37.

¶ 23 The supreme court also explained that "[a] court is capable of ruling on 'good faith' without a precise determination of the overall damages suffered by the plaintiff and the settling tortfeasor's proportionate liability." *Id.* at 139. In affirming the trial court, the supreme court ruled that the preliminary showing of good faith was sufficient and that Raytheon had failed to meet its burden in proving the absence of good faith by a preponderance of the evidence. *Id.* at 140.

¶ 24 In the case at bar, Apex and the State made a sufficient preliminary showing of good faith. At the hearing on the motion, the State explained to the court that it believed that Apex had defenses available to it that would potentially release it from all liability for contamination at the refinery. The State was also driven by a desire to resolve at least a portion of litigation that had been ongoing for over 10 years. Lastly, the State would have immediate access to funds for abatement at the refinery in an amount that exceeded all funding available to the State for clean-up. Apex stated that it believed it had effective defenses against any claim for damages due to the bankruptcy discharge and

settled to avoid future complex litigation. The settling parties also submitted the terms of the settlement to the court for its review. The court found that based on the totality of the circumstances, the settlement was made in good faith.

¶ 25 In addition to the arguments of the settling parties on this matter, as discussed above, the trial court had substantial information presented by Premcor as to the extent, effect, and cause of contamination at the refinery, including charts, photographs, and affidavits from experts. The court considered all the motions, memoranda, arguments, and information provided by the State, Apex, and Premcor in making its decision.

¶ 26 Premcor does not argue, nor does the record indicate, that it met its burden of proof in showing the absence of good faith by a preponderance of the evidence. Additionally, we disagree with Premcor's assertion that the trial court failed to consider as a factor the equitable apportionment of damages because the court explicitly stated in its order that "[t]he public policy behind the Contribution Act is to encourage settlements and to equitably apportion damages among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121 (2003)." In applying the totality of the circumstances to the facts of this case, we find that the trial court did not abuse its discretion in finding the settlement between the State and Apex satisfied the good-faith requirement of the Act.

¶ 27 For these reasons, we affirm the circuit court of Madison County.

¶ 28 Affirmed.