

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: September 11, 2015)

RHODE ISLAND ECONOMIC
DEVELOPMENT CORPORATION

VS.

WELLS FARGO SECURITIES, LLC,
ET AL.

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C.A. No. PB 12-5616

DECISION

SILVERSTEIN, J. Before the Court for decision is the Joint Petition to Approve Settlement Among Plaintiff and Defendants, Adler, Pollock & Sheehan, P.C., Robert I. Stolzman, Keith Stokes and J. Michael Saul. Several of the non-settling defendants, including First Southwest Company (First Southwest) and Wells Fargo Securities, LLC (Wells Fargo), object to the proposed settlement which pends before the Court pursuant to the provisions of G.L. 1956 § 42-64-40, the 38 Studios Settlement Act, so-called (the Act).

Pursuant to the Act, this Court heretofore approved a settlement among Plaintiff and other Defendants by Order dated July 25, 2014 following the issuance of a written decision on July 22, 2014, see 2014 WL 3709683 R.I. Super. July 22, 2014. Under the terms of this proposed settlement, the settling Defendants jointly will pay \$12.5 million to Plaintiff and the Plaintiff and the settling Defendants will receive releases as provided in the settlement agreement and in the forms attached as exhibits to the settlement agreement. Certain insurance carriers also will receive releases as indicated.

Subsection (a) of the Act, as further explicated in the July 2014 Decision, provides that a defendant “. . . who has resolved its liability to the Rhode Island Commerce Corporation

(Plaintiff) in a judicially approved good faith settlement is not liable for claims for contribution or equitable indemnity regarding matters addressed in the settlement” (Emphasis added).

Further, subsection (c) of the Act in its entirety provides the following:

“For purposes of this section, a good faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors’ proportioned share of liability.”

The specific basis asserted by certain of the non-settling defendants for the objections to court approval are:

- (1) the constitutional objections raised by certain Defendants which were the subject of this Court’s prior Decision dated July 22, 2014¹;
- (2) a so-called fairness argument made by Defendant First Southwest and joined in by a number of the other non-settling defendants; and
- (3) the failure by the settling parties (both Plaintiff and settling Defendants) to comply with the good faith provisions of the Act asserted by Defendant Wells Fargo.

Taking the objections in the order set forth above, the Court quickly will dispose of the first objection by incorporating herein and making part hereof its July 22, 2014 Decision. Accordingly, again, “. . . The Court finds that the 38 Studios Settlement Act is constitutional.” Turning now to the objection advanced by First Southwest, the fairness or perhaps more appropriately the lack of fairness objection referred to above. First Southwest argues that Great American Insurance Company (Plaintiff’s insurer) (Great American), which under certain circumstances might be required to tender a defense to Defendants Saul and Stokes (former officers of Plaintiff and/or to pay judgments against them or either of them) by virtue of the

¹ By Order dated October 10, 2014 the Rhode Island Supreme Court denied certiorari sought by certain of the Defendants. (See Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, SU-14-0230.)

settlement is shielded from liability to the non-settling defendants if approved. The Great American policy in favor of Plaintiff is attached as Exhibit A to First Southwest's memorandum of law in support of its objection, etc. dated August 21, 2005. Not only does First Southwest contend that Great American will be shielded from liability to non-settling defendants, it also contends that Great American has not resolved its liability to Plaintiff and that Great American specifically is liable to First Southwest, Wells Fargo and the other non-settling defendants for contribution claims as against Saul and Stokes. The Court notes that Great American is neither a party to the litigation pending before it nor a party to the settlement agreement. The Court is aware of the provisions of Plaintiff's policy issued by Great American which precludes coverage for claims by the named insured (the Plaintiff) against other insureds (in this case Saul and/or Stokes). The Court further notes that the policy would not provide coverage for intentional torts such as fraud which here is one of the specific causes of action asserted by Plaintiff against all of the settling Defendants (including Saul and Stokes). A careful review of the Act and the settlement agreement by the Court leads it to conclude that the settling Defendants (all of whom are parties to the settlement agreement) are by the agreement resolving their liabilities to Plaintiff. The settlement contemplates the payment of \$12.5 million to Plaintiff at a time when there are pending before the Court substantial dispositive motions brought on behalf of all of the Defendants. The Court has been made aware of the cannibalizing nature (so-called) of insurance policies which afford coverage to many of the Defendants and believes if the settlement falls within the statutory language it would be inappropriate for the Court not to approve the Settlement. Thus, the determinative issue before the Court is—is this settlement a good faith settlement as defined in subsection (c) of the Act?

Wells Fargo contends that the statutory imperative of a good faith settlement here is lacking and thus, the Court should not affirm the settlement pursuant to the provisions of the Act. Wells Fargo tells the Court (as does First Southwest) that it does not object to a settlement, it objects to a settlement that invokes the provisions of the Act. Wells Fargo's argument primarily is predicated upon its claim that a sworn affidavit (and a so-called verified motion for summary judgment) filed by Defendant Saul are so directly opposite to deposition testimony elicited from him early in the case that Saul's affidavit and memo are perjurious. It is important to set the chronology of the alleged inconsistent statements by Saul and to juxtapose that time frame with the time frame and circumstances generally giving rise to the proposed settlement. Saul was deposed early in the case several years ago. The alleged perjurious affidavit and verified summary judgment motion were filed on or about February 27, 2015. In November and December of 2014, mediation sessions were held in an attempt to resolve the pending litigation. During the course of those mediation attempts, Plaintiff demanded a total of \$12.5 million from Defendants Adler, Pollock & Sheehan, Stolzman, Saul and Stokes. That demand was rebuffed or at least not accepted. As indicated above, Saul's filing his Summary Judgment Motion occurred in February of 2015. In May 2015, this Court ordered mediation before retired Chief Justice Williams. In July 2015, Saul moved to strike certain words from Adler, Pollock & Sheehan and Stolzman's objection to Saul's motion for summary judgment. Specifically, the words were "liar" and "perjury." Adler, Pollock & Sheehan objected to the motion to strike. During the mediation sessions held before retired Chief Justice Williams, the settling parties agreed to the precise settlement demanded during the earlier mediation. Accordingly, the settling parties thereafter entered into the settlement agreement presently pending before this Court. Wells Fargo in its objecting papers and indeed at oral argument strongly attacked the credibility of

Defendant Saul. Indeed, counsel for Plaintiff and for Defendant Saul argued that their credibility was impugned by the allegation by Wells Fargo and its counsel that Saul's affidavit, containing as claimed by them, perjurous testimony, was a *quid pro quo* tendered by Saul for the benefit of Plaintiff and indeed for his own benefit, *i.e.*, Plaintiff would receive \$12.5 million together with the release in his favor contemplated by the settlement agreement and Saul would receive the release provided in the settlement agreement, saving him allegedly from economic ruin.

In its July 22, 2014 Decision, this Court found that the parties objecting to a proposed settlement pursuant to the provisions of the Act bear the burden of proof, that is to say that they or it must establish that the settlement exhibits "collusion, fraud, dishonesty or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasors." Here, Wells Fargo has failed to carry its burden. Indeed, it has failed to show anything other than its suggestion that Saul committed perjury either at his deposition or via his sworn affidavit. That suggestion here is tantamount to speculation which, of course, does not carry the burden of proof that the Court's earlier ruling placed upon Wells Fargo.

Speculation, conjecture, surmise—by Wells Fargo as to previous conduct of a settling party is not enough to cause this Court to order further discovery or to deny judicial approval—particularly here where the surmise, conjecture, speculation all involve alleged acts not implicating the proposed settlement. Wells, in its objection and indeed at oral argument, was unable to articulate any conduct by any of the settling parties which in the Court's view called into question the good faith of the parties in entering into the settlement agreement. Each of the signatory defendants have in fact settled and resolved its or his liability to the Rhode Island Commerce Corporation. The Court finds, consistent with the provisions of subsections (a) and (c) of the Act, that the settlement constitutes a good faith settlement.

For the reasons set forth above, the objections to the proposed settlement are overruled and an Order may enter judicially approving the proposed settlement as a good faith settlement pursuant to the Act.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rhode Island Economic Development Corp. v. Wells Fargo Securities, LLC, et al.

CASE NO: PB 12-5616

COURT: Providence County Superior Court

DATE DECISION FILED: September 11, 2015

JUSTICE/MAGISTRATE: Silverstein, J.

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Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et als.
C.A. No. PB 12-5616

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