

JULIET TURNER, PERSONAL REPRESENTATIVE OF THE ESTATE OF JULIAN TURNER

v.

RED BRICK ROAD, LLC, WOODMEISTER MASTER BUILDERS, INC., ROBERT A MORGENSTERN

Norfolk Superior Court Action No. 2182-CV-00743

**Decision and Order on Defendant Red Brick Road, LLC's
Motion for Entry of Separate and Final Judgment [Dkt. 64]**

RECEIVED & FILED 3/17/05
CLERK OF THE COURTS
NORFOLK COUNTY

Defendant Red Brick Road, LLC ("RBR") has moved pursuant to Mass. R. Civ. P. 54(b) for entry of an Order for Separate and Final Judgment of dismissal in its favor against the Plaintiff as well as dismissal of all cross-claims asserted against RBR by Defendants Woodmeister Master Builders, Inc. ("Woodmeister") and Robert Morgenstern ("Morgenstern"), based on claims of contribution and common law indemnity. For the reasons stated herein, the Motion is **DENIED WITHOUT PREJUDICE.**

RBR states that a settlement agreement and release it negotiated with and entered into with the plaintiff resolves all of plaintiff's claims against RBR. It further argues that pursuant to MGL c. 231B § 4, that settlement extinguishes Woodmeister's and Morgenstern's contribution claims as a matter of law against RBR, because under the statute "claims for negligence are extinguished against joint tortfeasors based on a good faith settlement between the parties." RBR argues that it is only required to produce evidence of the resolution of the claims with the plaintiff and "the amount of the settlement" to take advantage of the statute's provisions.

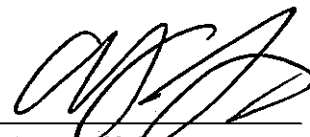
Citing Noyes v. Raymond, 28 Mass.App.Ct. 186 (1990) Woodmeister and Morgenstern argue that to avail itself of the statute's provision allowing extinguishment of the Defendant's cross-claims, RBR has the initial burden to produce evidence relative to the good faith of the settling parties including the "nature and terms" of any settlement. They argue that because RBR has thus far refused to share the settlement agreement or its terms (beyond the actual amount) with Woodmeister and Morgenstern, RBR has failed to meet its initial burden under the statute, and dismissal of the cross-claims and entry of separate and final judgment is premature at best, and at worst, not warranted under the circumstances. The Court agrees with Woodmeister and Morgenstern on this point.

As an initial matter, the Noyes Court made clear that a determination of "good faith" requires more than just disclosure of a settlement amount, noting "[a] rule whereby a determination of lack of good faith could be based only on the amount of a settlement would 'require trial courts to apply an unworkable standard to every settlement.'" Noyes, *supra* at 190. The court added, (in contemplating the respective parties' burdens): [t]he party relying upon a settlement in seeking to be discharged certainly has the initial burden of establishing that a settlement has been agreed upon and its nature and terms." Id. at 191 (emphasis added).

Here, given that RBR has not produced nor disclosed the nature and terms of the settlement agreement and release it entered into with the Plaintiff, RBR has not yet met its initial

burden under M.G.L. 231B, §4, and accordingly, the Court may not allow its motion under the circumstances. Rather than Order RBR to produce the agreement, the Court DENIES WITHOUT PREJUDICE the Plaintiff's Motion, which may be renewed in the event that changed circumstances demonstrate that Plaintiff has met its initial burden.

SO ORDERED.



Adam L. Siskitsky
Justice of the Superior Court

Dated: March 17, 2025