PREPARED BY THE COURT

PULTE HOMES OF N.J., LIMTED PARTNERSHIP, Plaintiffs, – against – CUNTIS, INC., ABC COMPANIES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO.: MON-L-3068-19 **Civil Action** ***Consolidated Action*** ***Consolidated with*** SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO.: MON-L-1518-20
WESTON LANDING CONDOMINIUM ASSOCIATION, INC., a New Jersey Not-For-Profit Corporation, Plaintiff, – against – CENTEX n/k/a PULTE HOMES OF NJ, LP; JAMES P. MULLEN; TRACI MARREN; ADAM SCHUEFIAN; PULTE –EAST AREA; CENTEX – NORTHEAST AREA; ARCHER EXTERIORS, INC.; CUNTIS, INC.; BRIGHTON EXTERIORS, INC.; RED LION INSULATION; SCHEIDELER EXCAVATING CO., INC.; JOCAMA CONSTRUCTION CORP.; FAIRWAY BUILDING PRODUCTS, LLC n/k/a FAIRWAY ARCHITECTURAL RAILING SOLUTIONS; ANGEL'S CONSTRUCTION, LLC; JFM CARPENTRY; VILA CONSTRUCTION; HIGH QUALITY BUILDERS, INC.; GKL GENERAL CONTRACTOR CORPORATION; CLT CONSTRUCTION, INC.; R. RODRIQUEZ CONSTRUCTION, INC. QUICK CARPENTRY, INC.; HECTOR'S CONSTRUCTION, LLC; NELLY CONSTRUCTION, INC.; WAVE ASSOCIATES, INC.; DEPAULA CARPENTRY, INC.; AMA CONSTRUCTION, LLC; SONCO	**ORDER**

WORLDWIDE, INC.; IDEAL EXTERIORS, LLC; JOSE CASTILLO CONSTRUCTION; NEW HORIZON CONSTRUCTION CORP.; YUNGA & SON CONSTRUCTION; MAXIMUM GENERAL CONTRACTING, LLC; WVM CONSTRUCTION, INC.; MONTE BELOS CONSTRUCTION, INC.; SIMPLE CONSTRUCTION, INC.; JOE CONSTRUCTION, LLC; STANISLAW SZURLEY, LLC; LEVIS CONSTRUCTION, INC.; JOHN DOE DEVELOPER-APPOINTED BOARD OF TRUSTEE MEMEBERS 1-10, JOHN DOE CONTRACTORS 1-50; JOHN DOE ARCHITECTS 1-25; JOHN DOE ENGINEERS 1-25; AND JOHN DOE SUPPLIERS 1-25,

Defendants.

THIS MATTER having been opened to the Court by attorneys for Defendant Red Lion Insulation ("Red Lion") on Motion to Compel Discovery pursuant to R. 4:23-5(c), and the Court having considered the papers submitted and the arguments of counsel, and for good cause shown, and for the reasons stated on the record;

IT IS on this 16th day of November, 2023;

ORDERED that this motion to compel the terms of the settlement with other defendants is **DENIED WITHOUT PREJUDICE**; and it is

FURTHER ORDERED pursuant to R. 1:5-1(a) that a copy of this Order will be served on all parties not served electronically, nor served personally in court this date, within seven (7) days of the date of this Order.

/s/ MARA ZAZZALI-HOGAN, J.S.C.

Opposed (X)

Unopposed ()

****SEE ATTACHED STATEMENT OF REASONS****

STATEMENT OF REASONS PURSUANT TO R. 1:6-2(f)

WESTON LANDING CONDOMINIUM ASSOCIATION, INC.,

v.

CENTEX ET AL.,

DOCKET #: MON-L-1518-20 (CBL)

DOCKET #: MON-L-3068-19

Introduction

Defendant Red Lion Insulation has filed a motion requesting that plaintiff Weston Landing Condominium Association, Inc. be compelled to provide Red Lion with the terms of settlement with two other defendants. Plaintiff Weston Landing Condominium Association, Inc. opposes the motion, citing to confidentiality concerns and Glassman v. Friedel, 249 N.J. 199 (2021).

Statement of Facts and the Parties' Arguments

Although this litigation arises out of allegations of defective construction work performed by various entities, this motion relates only to the roofing work performed by the three defendants. Only Red Lion remains, because defendants Cuntis, Inc. and Ace Carpentry have settled.

In its motion, Red Lion seeks information about the amount of the settlement because the damages for the repairs, which have already occurred, are for a fixed number of $1.01 million. Red Lion contends that if the two settling defendants paid more than $1.01 million to settle their claims, plaintiff cannot argue that there are any damages insofar as Red Lion is concerned. Otherwise, defendant contends that plaintiff may unfairly benefit from a windfall if Red Lion is

not provided with a post-trial credit. Red Lion also asserts that the evidence will enable it to assess its liability and strategically formulate a plan for settlement.

According to plaintiff, when parties enter into a private settlement agreement, agreed-upon confidentiality must be preserved. Otherwise, the incentive to settle is diminished, and the final settlement agreement itself may be compromised. Although plaintiff would not disclose whether the ultimate settlement with those two parties exceeded $1.01 million, it argued that said issue would not be relevant. Specifically, plaintiff explained that because one or more of defendants settled for other work besides the roofing, it is impossible to quantify the settlement amount allocated to the roofing work for that defendant.

Analysis

For different reasons, both parties cite to Zukerman v. Piper Pools, 256 N.J. Super. 622 (App. Div. 1992) and UMC/Stamford, Inc. v. Allianz Underwriters Ins. Co., 276 N.J. Super. 52 (Law Div. 1994). Zukerman involved a settlement on behalf of a minor, who had suffered a significant brain injury, and the parents declined to provide the terms of the settlement citing to privacy concerns. In Zuckerman, the court noted as a threshold matter that although there is a strong public policy favoring settlements, it does not override the presumption of access to court records. 256 N.J. at 627. Because the settlement had been placed on the record, however, the court concluded it could not be sealed. Here, Zukerman, is distinguishable because the settlement had been placed on the record, which has not occurred here. It was private.

Likewise, in UMC/Stamford, the court concluded that the non-settling defendant in that environmental case was not entitled to disclosure of the terms of settlement with the primary carriers. 276 N.J. Super. at 71. Relying on Zukerman, the court emphasized that because the terms

of the settlement were embodied in a private agreement rather than having been placed on the record in court, the non-settlor had no right to know the terms.

In its motion, Red Lion fails to cite to any case that allows a court in New Jersey to compel the disclosure of confidential settlement terms if those terms were not a matter of public record. Of the six cases relied upon by defendant for that proposition, six of the seven are unpublished decisions, which cannot be relied upon pursuant to R. 1:36-3. The sole published case is from a federal court in Illinois and is not binding on this court.

Meanwhile, plaintiff relies heavily on Glassman, where the Supreme Court established a two-step apportionment procedure in successive tortfeasor cases where the plaintiff has settled with the initial tortfeasor prior to trial. 249 N.J. at 230-32. Glassman involved two successive torts – an injured leg after a fall and then alleged medical malpractice regarding treatment of the leg. In contrast, here the alleged negligence does not involve successive tortfeasors, because all three of the defendants at issue worked on the roof and are giant tortfeasors.

In fact, the recent case of Adams v. Yang, 476 N.J. Super. 1,11 (App. Div. 2023) rejected the notion that the Glassman apportionment process extended to the joint tortfeasor context. In Adams, the court noted that neither the Joint Tortfeasors Contribution Law nor the Comparative Negligence Act addresses the effect of settling joint tortfeasors on non-settling tortfeasors. Id. at 13. There, the court reiterated that even when a party settles and is dismissed from the case, he/she remains a party to the case for the purpose of determining the non-settling defendant's percentage of fault. Id. (quoting Town of Kearny v. Brandt, 214 N.J. 76, 100 (2013)). In Kearny, the Supreme Court emphasized that the "settling defendant does not pay any portion of the judgment; any percentage of fault allocated to the settling defendant operates as a credit to the benefit of the defendants who remain in the case." 214 N.J. at 100. And in Glassman, the court emphasized that

"the credit . . . is based on the factfinder's allocation of fault to the settling defendant at trial, with the non-settling defendant bearing the burden of proving the settling defendant's fault." Glassman, 249 N.J. at 265. Although plaintiff's reliance on Glassman is misplaced, Red Lion's motion to compel the terms of the settlement is not supported by any authority.

Regarding credits, plaintiff takes the position that even after a verdict, it would not be required to disclose the amount of settlement. Plaintiff contends that it is, and will be, impossible to quantify the amount of the settlement that is attributed to the roof by one of the co-defendants because that defendant was settling for construction defects to other parts of the building as well. Ultimately, the issue of credits is not ripe because there has been no verdict.

Conclusion

Because of the strong public policy favoring non-disclosure of confidential settlements and because the issue of credits is not ripe, the court **denies without prejudice** Red Lion's motion to compel disclosure of settlement terms.

Date: November 15, 2023 */s/ MARA ZAZZALI-HOGAN, J.S.C.*