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FILED
San Francisco Court

APR 19 2001

General
BY: _____

13 Attorneys for Defendants, JOE
14 CASSIDY and JOE CASSIDY
15 CONSTRUCTION, INC.

23-
5/11/74

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**
13 **UNLIMITED CIVIL JURISDICTION**

14 ASHFORD PLACE OWNERS'
15 ASSOCIATION, individually and in its
16 representative capacity,

17 Plaintiff,

18 v.

19 BAY BUCHANAN CORPORATION;
20 JOE CASSIDY; DOES 1 through 200,

21 Defendants.

Case No. 301748

JOINT APPLICATION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT

22 AND RELATED CROSS ACTIONS

23 **I. INTRODUCTION**

24 Pursuant to Code of Civil Procedure Section 877.6(A)(2), Defendants herein apply to the court
25 for an order (1) that the settlement between Plaintiff ASHFORD PLACE OWNERS'
26 ASSOCIATION, a non-profit mutual benefit corporation, on the one hand, and BAY BUCHANAN
27 CORPORATION, a dissolved California corporation, together with its former principals Sergio
28 Iantorno and Joe Cassidy; JOE CASSIDY CONSTRUCTION, INC., a California corporation, and
JOE CASSIDY, an individual; MARTIN HARTY, in his individual capacity and d.b.a. HARTY

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1 CARPENTRY; JOHN MCLAUGHLIN d.b.a. JOHN MCLAUGHLIN'S WINDOW AND GLASS
2 SERVICE d.b.a. EMERALD GLASS, INC., a California corporation; STATE SHEET METAL
3 WORKS, INC., a California corporation; DOMINIC DONNELLY, in his individual capacity and
4 d.b.a. DONNELLY PLASTERING; LAWRENCE & SONS MECHANICAL, INC., a California
5 corporation; JAMES CHARLES BAISS, in his individual capacity and d.b.a. BAISS ELECTRIC;
6 SOZZI DEL BIANCO, INC., a California corporation; and RAYMOND GUARAGLIA, an
7 individual, (collectively referred to herein as "Defendants") was reached in good faith; (2) that the
8 settlement bars any pending or future claims by alleged joint tortfeasors or co-obligors for equitable
9 contribution, or partial, or comparative or implied indemnity; and (3) that any and all complaints and
10 cross-complaints are dismissed with prejudice as they only assert barred claims.

11 **II. SETTLEMENT WAS MADE IN GOOD FAITH AS IT SATISFIES THE**
12 **"REASONABLE RANGE" TEST UNDER TECH-BUILT**

13 In Tech-Bilt, Inc. v. Woodward-Clyde & Associates, the California Supreme Court established
14 a "reasonable range" test for determining when a settlement constitutes a "good faith settlement",
15 barring claims against the settler for contribution and indemnity. Tech-Built, Inc. v. Woodward-
16 Clyde & Associates (1985) 38 Cal.3d 488, 499. The Settlement Agreement has been entered into
17 in good faith and pursuant to Code of Civil Procedure §877.6.

18 Evaluated in terms of the Tech-Built test, this settlement is clearly in good faith. The settlement
19 negotiated contemplates release of any and all claims and filing of a dismissal with prejudice by
20 Plaintiff, Defendants, and the named Cross-Defendants herein, in exchange for payment of the total
21 sum of Three Hundred Thousand dollars (\$300,000), to be paid to Plaintiff as follows:

22	Bay Buchanan Corporation	\$ 35,750
23	Joe Cassidy Construction, Inc. and Joe Cassidy	\$107,250
24	Martin Harty	\$ 82,500
25	State Sheet Metal Works, Inc.	\$ 20,000
26	Donnelly Plastering	\$ 20,000
27	Emerald Glass	\$ 15,000
28	Lawrence & Sons Mechanical, Inc.	\$ 10,000

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1	Baiss Electric	\$ 5,000
2	Sozzi Del Bianco, Inc.	\$ 2,500
3	Raymond Guaraglia	\$ <u>2,000</u>
4	TOTAL	<u>\$300,000</u>

5 Plaintiff filed a Complaint against certain Defendants in the San Francisco County Superior
6 Court, Case No. 301748, on March 4, 1999, entitled Ashford Place Owners' Association v. Bay
7 Buchanan Corporation, et al., and the Defendants cross-complained against each other, (hereinafter
8 referred to as "the Litigation"). Plaintiff has alleged in the Litigation causes of action for breach of
9 implied warranty, strict liability, negligence, breach of surety bond, negligence of real estate broker,
10 breach of fiduciary duty, conspiracy to breach fiduciary duty, breach of contract, breach of implied
11 covenant of good faith and fair dealing, breach of express warranty, misrepresentation, negligent
12 misrepresentation, and breach of contract on faithful performance bond to construct real property.
13 Defendants deny Plaintiff's allegations.

14 The Parties hereto have agreed, following extensive litigation, several mediation sessions with
15 Special Master Thomas Castle, and negotiations, that it would be desirable to compromise and settle
16 the disagreements between and among them relating to the Litigation. The settlement is therefore
17 presumed to be in good faith, and the interests of justice dictate that the Plaintiff and Defendants
18 should not be forced to incur further costs in this Litigation.

19 This Application is based upon the attached Declaration of Cameron C. Ward, the Notice of
20 Settlement filed and served herewith, and the Proposed Order confirming the good faith of settlement
21 filed and served herewith.

22 Respectfully Submitted,

23 Dated: 3/29/01

DALE, BRADEN & HINCHCLIFFE

By: Kristin N. Springer
Counsel for Joe Cassidy Construction, Inc.

24
25
26 Dated: _____

THARPE & HOWELL

By: _____
Counsel for Joe Cassidy Construction, Inc.