

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
JASON SNOW,)
)
Plaintiff,)
)
v.)
)
WILLIAM ALEXANDER,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. **2019-CP-23-05514**

**ORDER ON PLAINTIFF’S MOTION
TO RECONSIDER**

RECEIVED
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SC Court of Appeals

This matter comes before the Court upon Plaintiff’s Motion to Alter or Amend Judgment under Rule 59(e), SCRCPC filed on October 3, 2022. The Motion is directed at the JNOV granted following a jury verdict in favor of the Plaintiff. A hearing is not necessary to address the Plaintiff’s Motion.

Plaintiff filed an action against the Defendant for breach of contract and specific performance arising out of the sale of a restaurant known as the Pumpkintown Café. For damages, Plaintiff sought future lost profits. At the close of the trial, the jury returned a verdict on September 20, 2022 in favor of the Plaintiff for \$445,000. Following the verdict, Defendant moved to have the verdict set aside because the Plaintiff’s evidence was insufficient for the jury to consider damages without conjecture and speculation. After consideration of the evidence and argument of counsel, the Court granted Defendant’s Motion for a Judgment Notwithstanding the Verdict or JNOV under Rule 50(b), SCRCPC.¹

As stated in Rule 50(b), “whenever a motion for directed verdict made at the close of all

¹ In addressing the Defendant’s post trial Motion, the Court incorrectly cited the 13th Juror Doctrine which relates to a granting of a new trial; but the Court’s intent and Defendant’s Motion was to set aside the verdict and not Order a new trial.

the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.”

The Defendant had moved for a directed verdict on the grounds that the evidence regarding the Plaintiff’s damages were speculative and did not provide a basis for the jury to return a verdict in the Plaintiff’s favor. When considering a Motion for JNOV, “the trial court must view all evidence in the light most favorable to the non-moving party; and if the evidence is susceptible of more than one reasonable inference, the motion must be denied.” Ludlam v. School Dist of Greenville County, 317 S.C. 509 (Ct App 1995).

In this action, the Plaintiff sought damages for the Defendant’s breach of the contract to sell the Pumpkintown Café. In his claim for damages, Plaintiff sought future lost profits for an undetermined amount of time in the future and the Plaintiff introduced very limited records without providing any testimony, lay or expert, to explain the basis for the lost profits. The only evidence presented by the Plaintiff to prove his damages or lost future profits consisted of the following Exhibits: (a) Plaintiff’s Ex 2- a faded copy of a summary of Cash Register receipts dated 1-2-19; (b) Plaintiff’s Ex 3-2 pages of the 2018 Income Tax Return for an S Corporation for Pumpkintown Café LLC (Form 1120S); (c) Plaintiff’s Ex 4-copies of numerous individual cash register receipts from 1-4-19 to 7-1-19; and (d) Plaintiff’s Ex 5- summary of purported receipts from January to July (no year indicated). In introducing these documents, the Plaintiff did not provide any explanation or testimony to show the basis for the cash register receipts, or the breakdown of expenses incurred by the Defendant as reported on his tax return. There was no evidence, expert or otherwise, showing that the Plaintiff would have had the same or similar income, nor whether the Plaintiff would have the same or similar expenses upon assuming control of the Café. The Plaintiff also failed to provide any evidence of how far in the future that

the Plaintiff could reasonably expect to earn the profits that he claimed to have lost. The Plaintiff's claim for lost profits was further complicated by 2 crucial factors: (1) the COVID pandemic which would have hit during the first few years of Plaintiff's operation if the business deal went through and (2) the Plaintiff had not secured a written lease for the building where the café operated and therefore was at the mercy of the landlord on a month-to-month lease. The Plaintiff provided no testimony of how this would impact the future profits. Clearly, the Plaintiff's claim required expert testimony of some fashion to explain what was being presented and whether it was evidence of profits that Plaintiff could reasonably expect. Based on these issues, the Court found that the Plaintiff failed to provide proof of damages with "reasonable certainty".

In Drew Co, Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207 (1988), the South Carolina Supreme Court set aside a jury verdict in favor of a plaintiff because the Plaintiff's claim for lost profits was "unsupported by any particular standard or fixed method of establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty." In Drew Co, the Court found that, as a matter of law, the Plaintiff's "proof was insufficient to merit submission to the jury" and the Court set aside the jury verdict based on the "speculative" damages. In the matter before this Court, the Court finds that the Plaintiff's proof was insufficient to merit submission to the jury and any verdict was based on speculation or conjecture.

In his Motion, the Plaintiff also requests that the Court reverse its previous Order denying the Plaintiff's Motion for a Directed Verdict for specific performance of the contract in question. In order to assert a proper claim for specific performance, a party must show that there is no adequate remedy at law. King v. Oxford, 282 S.C. 307 (Ct. App. 1984). The Court found that

the Plaintiff had adequate remedy at law—damages for the breach; even though the Plaintiff failed to present sufficient evidence to establish those damages.

Thus, the Court denies Plaintiff's Motion to Alter or Amend the Judgment.

E-signature of Judge Gravely to follow.



Greenville Common Pleas

Case Caption: Jason Snow vs. William Alexander

Case Number: 2019CP2305514

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755