

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

JASON SNOW, )  
 )  
Plaintiff, )

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

v. )

**ORDER**

WILLIAM ALEXANDER, )  
 )  
Defendant. )

**RECEIVED**  
**Dec 15 2022**  
**SC Court of Appeals**

This matter was tried before a jury which returned a verdict in favor of the Plaintiff for \$445,000.00. Following the verdict, the Defendant moved to have the verdict set aside because all evidence of damages was speculative and the matter was not appropriate to submit to a jury for determination. The Court treated this Motion as a Motion for JNOV under Rule 50 and was one of the grounds that supported Defendant’s Motion for Directed Verdict at the close of all the evidence. The Standard for JNOV is found in Rule 50(b):

Whenever a motion for a directed verdict made at the close of all 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. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict...

The South Carolina Supreme Court has ruled, “[i]n deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. If only one reasonable inference can be drawn from the evidence, the motion must be granted.” *Brady Dev. Co, Inc. v. Town of Hilton Head Island*, 312

S.C. 73 (1993). See *Sorin Equipment v. The Firm*, 323 S.C. 359 474 S.E.2d 819 (Ct. App. 1996). (“View the evidence and its inferences in the light most favorable to the non-moving party. The jury’s verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict.”) see also *Garrison v. Target*, 429 S.C. 324 838 S.E.2d 18 (Ct. App. 2020). (requiring the Court to “determine the existence of evidence to support the award and not its weight”.)

The issue for the Court to consider is whether sufficient evidence was presented for the jury to calculate lost profits with reasonable certainty. In his case, the Plaintiff sought damages for the Defendant’s breach of contract in the sale of a restaurant known as Pumpkintown Café which consisted only for future lost profits from the operation of the business. The evidence presented in this regard consisted of the following exhibits: (1) a 1 page faint copy of cash register receipt as of January 2, 2019 (Plaintiff’s Ex. 2); (2) 2 pages of a 2018 U.S. Income Tax Return for an S Corporation for Pumpkintown Café, LLC with no schedules (Plaintiff’s Ex. 3); (3) copies of cash register receipts for the period Jan-July, 2019 (Plaintiff’s Ex. 4); and (4) a Summary of gross receipts from January to July (presumably 2019) which had a multiplier of “times two” (Plaintiff’s Ex. 5). Plaintiff argued that from these documents or “data”, the jury could calculate the lost profits for some indefinite period in the future if the Defendant had not breached the contract. The problem with this is that the jury was not provided with any method for calculating net profits, what expenses that the Plaintiff would incur if he took over the business, what income could be expected with reasonable certainty, how long the Plaintiff could expect such profits with consideration for market trends and potential disruptions caused by such things as labor shortage, supply chain issues and COVID, all of which have occurred since the contract was executed. Even though a portion of a prior tax return was introduced as evidence,

there was no testimony on where these numbers came from or how net profits were determined. As to the length of time to calculate the lost profits, the Plaintiff argued for an arbitrary duration based on the time since the contract was entered or the length of the loan which the Plaintiff had acquired to purchase the business. The Plaintiff introduced cash register receipts for January-July 2019, but there was no information about corresponding expenses which Plaintiff argued should be similar to the previous year which would be entirely speculative. All of these factors would require expert testimony to provide sufficient information for a jury to be able to calculate the lost profits with reasonable certainty. Additionally, the Plaintiff had not established that the Plaintiff would be able to secure an appropriate lease of the premises even though there had been negotiations with the landlord.

In *Drews Co., Inc v. Ledwith-Wolfe Associates, Inc*, 296 S.C. 207 (S. C. Supreme Court 1988), the South Carolina Supreme Court found that profits in the breach of a restaurant purchase should not have been submitted to the jury based on the evidence presented in the case:

We find that the Owner's proof failed to clear the "reasonable certainty" hurdle. ... Owner's expectations, unsupported by any particular standard or fixed method for establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty. *Drews* at 214.

In this matter, the "data" as Plaintiff's counsel identified the evidence would be factors to determine lost profits but without more is not sufficient evidence for the jury to calculate the lost profits "with reasonable certainty". Therefore, the Court grants these Defendant's Motion to set aside the verdict under Rule 50 (b) and enters judgment in favor of Defendant.<sup>1</sup>

***E-signature of Judge Gravely to Follow***

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<sup>1</sup> The Court incorrectly stated that alternatively the determination was based on the 13<sup>th</sup> Juror doctrine which would not apply since this doctrine applies to an Order for a New Trial and this Court did not intend to grant a New Trial.



Greenville Common Pleas

**Case Caption:** Jason Snow vs. William Alexander

**Case Number:** 2019CP2305514

**Type:** Order/JNOV

So Ordered

s/ Honorable Perry H. Gravely, #2755