

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Mark Conard and Intercoastal Endo, P.C., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Wade Nichols, Wade Nichols D.M.D. P.A., )  
and Nichols Holdings, LLC, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-26-01626

**ORDER DENYING DEFENDANTS'  
POST TRIAL AND NEW TRIAL  
MOTIONS PURSUANT TO SCRPC  
54, 59 AND 60**

**RECEIVED**

JAN 12 2024

SC Court of Appeals

Judge: The Honorable Clifton Newman  
Date of Hearing: March 14, 2023  
Plaintiffs' Appearances: Natasha M. Hanna, Esq.  
Defendants' Appearances: Gene Connell, Esq.

This matter came before the Court on March 14, 2023, on Defendants' Wade Nichols, Wade Nichols D.M.D P.A., and Nichols Holdings, LLC's post-trial and new trial motions pursuant to SCRPC 54, 59 and 60.

Present at said hearing were Natasha M. Hanna, Esq. on behalf of the Plaintiffs and Gene Connel, Esq. on behalf of Defendants.

On June 4, 2021, the jury returned a verdict in favor of the Plaintiffs for their breach of contract claims in the amount of \$409,000.00. The Jury also returned a verdict in favor of the Defendant Nichols Holdings, LLC for its breach of lease claim in the amount of \$48,000.00. Defendants then filed a Post-Trial and New Trial Motions Pursuant to SCRPC 54, 59, and 60.

After hearing arguments, reading the memoranda prepared by counsel, and considering the merits, I make the following findings of law and fact:

**That** there were no prejudicial errors by the Court and therefore no grounds for a new trial. Under Rule 59 a court may grant a new trial for prejudicial errors. Rule 59, SCRPC; See Rule 61

SCRCP. The error must be objected to at the time of trial. See Varnadore v. Nationwide Mutual Ins. Co., 289 S.C. 155, 345 S.E. 2d 711 (1977). Further, no error by the court or any party is grounds for a new trial or modifying a judgment unless refusal to do so appears “inconsistent with substantial justice” and errors must be disregarded if they do not “affect the substantial right of the parties.” Rule 61, SCRCP. Harmless error cannot sustain a motion for a new trial. See Varnadore at 159.

**That** the Court properly excluded the Defendants’ Expert’s Exhibit. During the Defendants’ Expert’s testimony, Defendants’ counsel attempted to submit a document into evidence. The document, which the Defendants attached to their Motion, is a chart with numerous statements on the bottom and back. Plaintiffs’ counsel promptly objected on the basis of hearsay and the failure of Defendants to produce the document, or any expert report, to the Plaintiffs before the trial. Out of Court statements made to prove the truth of the matter are hearsay. Further, failure to admit a document is harmless error when the author of the report testifies to its contents. Varnadore v. Nationwide Mutual Ins. Co., 289 S.C. 155, 159, 345 S.E. 2d 711, 715 (1977).

(a) There is no question that the document offered into evidence at trial contained hearsay.

It contained out of Court statements made to prove the truth of the matter stated. Further, Plaintiffs’ counsel requested a copy of the expert Collier’s file several times prior to trial and even had to file a Motion to Compel to receive documents from Collier. Plaintiffs’ counsel was repeatedly told that the expert’s opinion had not changed, that she had not written a report and that they had produced a complete copy of her file. However, for the first time at trial, the Defendant’s expert produced a report detailing her financial analysis of Plaintiff’s income. This report was never produced or shown to the Plaintiffs prior to Collier’s testimony at Trial.

(b) As the exhibit contained hearsay and was never produced to the Plaintiffs, the exhibit was properly excluded. However, the Court did allow Collier to present the report to the jury on screen and testify directly from it about its contents. Therefore, even if the exhibit was improperly excluded, there was no error as Collier was allowed to testify to the contents of the exhibit.

**That** the Court did not err in refusing to charge the jury on Attorney's Fees after statements made in Plaintiffs' closing argument. Errors must be objected to or a motion made at trial for a New Trial to be granted on the basis of an error. The Defendants did not include a charge on attorney's fees in their proposed jury charges.

**That** the Court did not err as it did not allow commentary and it instructed the jury on arguments of counsel. Again, the Defendants' argument regarding a curative instruction is waived as the Defendants never moved for a curative instruction after objecting to commentary during Trial. Further, parties are allowed to use leading questions in cross-examination and counsel is allowed to impeach testimony with prior statements such as statements made in a Deposition.

**That** the Court did not err in not offering a curative instruction related to Plaintiffs' counsel's remarks during cross of Defendant's expert witness.

**That** there were no prejudicial errors by the Plaintiffs.

**That** there was sufficient evidence to support the verdict and no prejudicial error. The Defendants failed to make a timely motion for a directed verdict or renew that motion with a motion for Judgment Notwithstanding the Verdict. As such, these arguments are waived by the Defendants. Despite having failed to make or renew the Direct Verdict issues, Defendants requested the Judge invade the purview of the jury and act as the Thirteenth Juror on the issue.

Under the Thirteenth Juror Doctrine, a trial judge may grant a new trial if the judge believes the verdict is unsupported by the evidence. Folkens v. Hunt, 300 S.C. 251, 387 S.E. 2d 265 (1990). The Court “*must* respect the verdict of the jury in fact as well as in pretense or theory...” Rush v. Blanchard, 310 S.C. 375, 380, 426 S.E2d 802, 805 (1993)(emphasis added). The Court must not interfere or substitute its own judgment for that of the jurors. Id. A party is entitled to the constitutional privilege of the fair judgment of a jury and a Court will not interfere with the verdict “simply because it is greater than its own estimate.” Id. Only where a verdict is “so grossly excessive as to shock the conscience” and clearly shows that the verdict was a result of “caprice, passion, partiality, prejudice, corruption or other improper motives” will a Court intervene. Id.

**That** the amount of damage awarded was not excessive and is supported by the evidence. The question of whether a verdict is excessive must be considered in the light of the evidence and if there is substantial evidence for the verdict, it will not be disturbed. Rush v. Blanchard, 310 S.C. 375, 380, 426 S.E2d 802, 805 (1993). The Court “*must* respect the verdict of the jury in fact as well as in pretense or theory...” Id. (emphasis added). The Court must not interfere or substitute its own judgment for that of the jurors. Id. A party is entitled to the constitutional privilege of the fair judgment of a jury and a Court will not interfere with the verdict “simply because it is greater than its own estimate.” Id. Only where a verdict is “so grossly excessive as to shock the conscience” and clearly shows that the verdict was a result of “caprice, passion, partiality, prejudice, corruption or other improper motives” will a Court intervene. Id.

First, the verdict was not excessive and was reasonable based on the evidence presented at trial. Both parties agreed and admitted to the Jury that the contracts were fair, reasonable and valid.

**That** any violation of the civility rules by Plaintiffs' counsel during cross-examination was properly addressed by the Court.

**That** the jury was properly polled and the jury verdict was unanimous. Under Rule 59 a court may grant a new trial for prejudicial errors. Rule 59, SCRPC; See Rule 61 SCRPC. The error must be objected to at the time of trial. See Varnadore v. Nationwide Mutual Ins. Co., 289 S.C. 155, 345 S.E. 2d 711 (1977). The right to poll the jury is not a constitutional right but a procedural safeguard of the right to a unanimous verdict. State v. Wright, 432 S.C. 365, 369, 852 S.E. 2d 468, 470 (Ct. App. 2020). If the poll reveals the jury's announced verdict is not unanimous a trial court may direct further deliberation. Id.

THEREFORE, Defendants Post-Trial and New Trial Motions pursuant to SCRPC 54, 59, and 60 are therefore denied.

**AND IT IS SO ORDERED**

---

**Clifton Newman**  
**Presiding Judge**



Horry Common Pleas

**Case Caption:** Mark Conard , plaintiff, et al VS Wade Nichols , defendant, et al  
**Case Number:** 2018CP2601626  
**Type:** Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2023-12-28 16:27:22 page 6 of 6