

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 JOSEPH PARKS BROWN,)
)
 PLAINTIFF,)
)
 vs.)
)
)
 CARLTON E. THOMPCKINS,)
)
 TIMOTHY W. THOMPCKINS,)
)
 THOMPCKINS INVESTMENTS, LLC,)
)
 AND THOMPCKINS STORAGE, LLC,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2021-CP-26-02184

**ORDER DENYING DEFENDANTS'
 POST-TRIAL MOTIONS**

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SC Court of Appeals

The above case was tried before a jury during the term of Court beginning March 18, 2024. The Defendant Timothy W. Thompkins was dismissed as a party from Plaintiff's claims and causes of action. Therefore, the jury's verdict, Defendants' motion and the within order are not applicable to Defendant Timothy W. Thompkins.

At the close of evidence, the Court determined that Plaintiff's causes of action for negligence and trespass would be decided by the jury and that the jury would be asked to determine whether Defendants' conduct causing Plaintiff's damages rose to the level of recklessness, willfulness or wantonness, such that punitive damages should be considered. The jury was charged on the consideration of punitive damages. No objections were made to the Court's jury charges by counsel for either Plaintiff or Defendants. After deliberation, the jury on March 21, 2024 awarded Plaintiff actual damages in the amount of Forty-nine Thousand Five Hundred Seventy Nine and 29/100 Collars (\$49,579.29), which damages were attributable to Defendant's negligence, and no damages attributable to Defendant's trespass. The jury did, however, find that Defendants did trespass upon

Plaintiff's property. Further, the jury determined that Plaintiff had proven by clear and convincing evidence that the conduct of Defendant(s) causing Plaintiff's Damages rose to the level of recklessness, willfulness or wantonness, such that punitive damages should be considered. The jury then awarded the Plaintiff Sixty Thousand and no/100 Dollars (\$60,000.00) in punitive damages. The jury's verdict form was filed into the Court's record on March 25, 2024.

On April 01, 2024, Defendants, Carlton E. Thompkins, Thompkins Investments, LLC and Thompkins Storage, LLC timely filed a post-trial motion seeking alternatively to seek a judgment notwithstanding the jury's verdict, for a new trial absolute or a new trial nisi remitter. The Court denied Defendants' motion by Form 4 Order entered April 17, 2024. This Order follows as a more formal Order of the Court.

In their motion Defendants assert that there was no testimony or evidence introduced which establishes that the defendants, Carlton E. Thompkins, Thompkins Investments, LLC and Thompkins Storage, LLC actions or conduct in causing the fire, or for which caused damages alleged by Plaintiff, arising to the level of being "willful, wanton, malicious or reckless" which is necessary to impose punitive damages. In support of their assertion, Defendants argue that Plaintiff acknowledged and testified that the fire spreading to his property was "an accident" and there was no "intentional" or "willful" conduct by the Defendants when they started the fire. Defendants' arguments, while accurate as to Plaintiff's testimony that the spreading of the fire was unintentional, are unavailing. The testimony of Plaintiff and other witnesses clearly established multiple and intentional access of trespass upon Plaintiff's property and damage to Plaintiff's fencing and trees that were independent of the fire.

Pursuant to Rule 50(b), South Carolina Rules of Civil Procedure (SCRCP) a court may grant judgment notwithstanding the verdict (jnov) "if no reasonable jury could have reached the challenged

verdict". RFT Mgmt. Co. vs. Tinsley & Adams, L.L.P., 399 S.C. 322, 732 S.E.2d. 166, 171 (2012) (internal quotations and citation omitted). Defendants' assert the that there was insufficient evidence to support the jury's award of damages and cite the standards set forth in *Baughman v. American Tel. and Etl. Co.*, 306 S.C. 101, 410 S.E.2d 537 (S.C. 1990) (citing *Gray v. Southern Facilities, Inc.* (256 S.C. 558, 183 S.E.2d 438 (1971))). The Court is persuaded that the jury in this case was well vetted, fairly represented a cross section of the community and reasonably could have found as this jury did find. Plaintiff's case was well supported by both testimony and documentary evidence concerning Plaintiff's alleged damages, and the jury in fact did not award all actual damages requested by Plaintiff. Defendants argue that Plaintiff's evidence as to damages was wholly speculative as to the value of his property that was damaged. Plaintiff's argument is unavailing. Plaintiff, a licensed residential building contractor, for several decades clearly articulated his understanding of the repair and replacement costs of his damaged property. Clearly the building materials and construction related damage fell well within Plaintiff's area of knowledge and experience. In addition, Defendants' motion contradicts the testimony of Defendant Carlton E. Thompkins in which he admitted during cross-examination that Plaintiff's enumerated estimates of damage were reasonable. In Defendants' written motion, Defendants' counsel does properly concede that mathematical certainty of asserted damages is not required.

Defendants further assert properly that punitive damages are warranted only when the defendants' conduct is shown to be willful, wanton or in reckless disregard of the rights of others. *South Carolina Farm Bureau Mut. Ins. Co. vs. Love Chevrolet, Inc.*, 324 S.C. 149, 478 S.E.2d 57 (S.C. 1996). While the evidence in this case supports Defendants' assertion that the fire that spread onto Plaintiff's property was not spread willfully and that the fire "got away from" the Defendants, Defendants have failed to consider the repeated and intentional acts of trespass that were clearly

demonstrated in the records of this case. Defendant Carlton E. Thompkins testified that he knew that the ditch was the property line since he was a little boy. Further, Defendant Thompkins testified that he hired a licensed land surveyor to demark the property line. Defendant Thompkins' surveyor was called by Defendants' to testify. The surveyor authenticated photographs that were taken of his work to demark the property boundary between lands of Plaintiff and Defendants. Notwithstanding these efforts to clearly demark the property boundary, Defendants directed workers and equipment to cross the boundary line to remove vegetation, trees, and /or tree limbs from Plaintiff's property. In so doing Defendants caused damage to Plaintiff's trees and chain link fence. The evidence presented demonstrates a repeated and willful disregard by Defendant Carlton E. Thompkins of Plaintiff's property rights, after repeated objections by Plaintiff. Those actions are attributable to Defendants, Thompkins Investments, LLC and Thompkins Storage, LLC.

In South Carolina, post-trial relief in the form of motions for judgment notwithstanding the verdict, new trial, or new trial nisi are available to defendants claiming a verdict is excessive. See SCRPC. Rules 50 and 59. Moreover, although there is no precise formula for measuring a punitive damage award, if the trial judge "is convinced that the amount awarded is over-liberal, he has the authority and corresponding duty to reduce the verdict by order nisi." *Hicks v. Herring*, 246 S.C. 429, 436, 144 S.E. (2d) 151, 154 (1965). The amount of damages, actual or punitive, remains largely within the discretion of the jury, as reviewed by the trial judge. See *Fennell v. Littlejohn*, 240 S.C. 189, 125 S.E. (2d) 408 (1962).

In his case, the jury did not award all damages sought by Plaintiff. Further, to all but one or two enumerated damages, Defendant Thompkins admitted that Plaintiff's asserted actual damages were reasonable. Pursuant to the direction given in *Gamble vs. Stevenson*, 406 S.E.2d 350 (1991) and *BMW of North America v. Gore*, 517 U.S. 559 (1996) this Court has conducted a post-trial

review of award of punitive damages for compliance with due process and equal protection. With regard to the repeated instances of trespass that resulted in damages sustained to Plaintiff's trees and chain link fence, the evidence overwhelmingly demonstrated that Defendant Carlton E. Thompkins repeatedly directed employees and equipment to cross a known property boundary line to engage in work that resulted in a portion of Plaintiff's damages. And while a subsequent fire occurred that further damaged Plaintiff's property, it cannot be reasonably asserted that Plaintiff did not sustain damages as a result of the Defendant's trespass. The fact that the jury awarded actual damages for negligence and not trespass is consistent with the notion that the jury could not award damages twice for the same destroyed property. The Court specifically inquired whether the parties wished to send the jury back for more specific findings and the invitation was declined.

According to the testimony, Defendants' repeated conduct took place over many weeks. Officer Paul Rodriguez of the Horry County Police Department testified about his interaction with Defendant Carlton E. Thompkins when he was placed upon a notice to avoid further trespass upon Plaintiff's property. Defendant Thompkins response was to remark to the officer that he was crazy and also out of his jurisdiction. The evidence in this case established that Defendant Carlton E. Thompkins ignored both Plaintiff's directions and those of Officer Rodriguez. It is reasonable to assume that the jury's award of punitive damages will act to deter the Defendants and others from like conduct. From the testimony and evidence presented, the Court is persuaded that the Defendants' ability to pay is certain as the Defendants' own significant land and Defendant Thompkins and his brother recently sold their equipment rental business.

On this record the Court cannot find that the Defendants were denied either due process or equal protection. The jury determined that Plaintiff had proven by clear and convincing evidence that the conduct of Defendant(s) causing Plaintiff's Damages rose to the level of recklessness,

willfulness or wantonness, such that punitive damages should be considered and awarded. On this record, the Court declines to disturb the jury's determination of either actual or punitive damages and further finds that both are justified by the record. Defendants' motion is therefore respectfully denied.



Horry Common Pleas

Case Caption: Joseph Parks Brown VS Carlton E Thompkins , defendant, et al
Case Number: 2021CP2602184
Type: Order/JNOV

So Ordered

G.D. Morgan Jr.

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