

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, Inc. and Russell Moats,

Plaintiffs,

v.

Anderson County, Rusty Burns, Matt Schell,
and Holt Hopkins,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP-04-00085

ORDER GRANTING NEW TRIAL

RECEIVED

Nov 12 2024

SC Court of Appeals

This matter is before the Court upon Defendant Anderson County’s (“Anderson County” or the “County”) post-trial motions for a Judgment Notwithstanding the Verdict (“JNOV”) pursuant to Rule 50 of the South Carolina Rules of Civil Procedure; for a New Trial Absolute, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure; or for a New Trial *Nisi Additur* or *Remittitur*.

For the reasons stated herein, the Court grants the County’s Motion for a New Trial Absolute. The Court finds and concludes that the excessiveness of the verdict shocks the conscious and indicates the verdict was reached as a result of caprice, passion, prejudice, partiality, corruption or other improper motives. This is especially true in light of the absence of evidence upon which the jury could have arrived at the verdict amount awarded. Alternately, the Court further exercises its discretion and orders a new trial on the basis of the “thirteenth juror” doctrine, as the verdict is not supported by the evidence.

I. BACKGROUND

In this case, Plaintiffs (hereinafter, “Moats Construction”) contracted with Anderson County to perform two construction projects. One contract was for the removal and remediation

of Toxaway Mill (the “Toxaway Contract” or the “Toxaway Project”) and the other contract was for the construction of the East West Parkway (the “East West Contract” or the “East West Project”). Disputes arose between the parties relating to the work under both contracts, and the parties entered into a binding Mediated Settlement Agreement on March 29, 2018, which resolved all disputes between the parties, with the exception of the claim for retainage remaining on the East West Project. At trial, after the Court granted various directed verdicts, the only two causes of action that were submitted to the jury for deliberation were Moats Construction’s breach of contract claim related to the retainage issue and the County’s counterclaim for costs incurred in completing the East West project. The jury returned a verdict in favor of Moats Construction on the breach of contract claim and awarded Moats Construction \$412,105.00 in damages; and returned a verdict for the County and awarded the County damages of \$1,900.00 on its counterclaim. The County timely filed its post-trial motions.

II. MOTION FOR NEW TRIAL ABSOLUTE

In considering this motion for new trial, the Court stresses that it has due respect for the jury’s verdict. As the South Carolina Supreme Court has stated:

The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not interfere or substitute its own judgment for that of the jurors. One is entitled to the constitutional privilege of the fair judgment of a jury rather than that of the Court

Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953). In general, “it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.” *Daves v. Chary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). Specifically, “[a] jury’s verdict should be affirmed if it is possible to do so and carry into effect the jury’s clear intention.” *Id.* at 234, 584 S.E.2d at 432 (internal quotations and citations omitted). Thus, when “determining whether any verdict is inadequate or excessive . . . the court must give ‘substantial

deference' to the jury's determination of damages.” *Jolly v. Fisher Controls Int'l, LLC*, ___ S.C. ___, ___ S.E.2d ___, 2024 WL 3882708, at *2 (S.C. Aug. 21, 2024) (citations omitted). The trial court must further “justify its ruling by giving ‘compelling reasons’ for invading the jury's province.” *Id.* (citation omitted).

Rule 59 provides that a new trial may be granted “in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.” *See* Rule 59(a), SCRPC. One basis upon which the Court may grant a new trial absolute is if the verdict is against the weight of the evidence. *See South Carolina State Highway Dept. v. Clarkson*, 267 S.C. 121, 127, 226 S.E.2d 696 (1976). The Court may order a new trial under this standard if it concludes that the jury’s verdict is contrary to the fair preponderance of the evidence and that justice was not done by the jury’s verdict. *See id.* at 124-28 (affirming trial judge’s grant of new trial made on this ground). In this regard, a trial court does not abuse its discretion in granting a new trial even when the evidence conflicts. *See id.* at 126-27 (“the testimony was in conflict on the issues of fact,” so “the finding of the trial judge has support in the evidence” and “there was no abuse of discretion . . . in granting a new trial”). Moreover, a trial court may order a new trial when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, partiality, corruption, or other considerations not reflected by the evidence affected the amount awarded. *See Sanders v. Prince*, 304 S.C. 236, 238-39, 403 S.E.2d 640, 642 (1991) (reversing trial court’s denial of a new trial because jury verdict was so grossly excessive as to indicate passion, prejudice or other improper motive); *Small v. Springs Indus. Inc.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987) (verdict was based upon improper considerations not found in the evidence); *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996).

The Court finds the verdict is grossly excessive in that there is no evidence to support it and, therefore, the verdict was the result of passion, caprice, prejudice, partiality, corruption or other considerations not reflected by the evidence such as confusion and/or misunderstanding of the evidence. *See Jolly*, 2024 WL 3882708, at *2. There is no trial evidence supporting any verdict over \$33,105.91, which would have been the maximum contractual damages recoverable by the Plaintiffs based on the evidence presented because evidence of the Court's directed verdict of \$50,000 on delay damages was not submitted to the jury. Therefore, at most, the contract damages under the Mediated Settlement Agreement were \$33,105.91, which consisted of \$27,555.91 in retainage on East West Park Project and \$5,550.00, or the net amount of the Change Order. The Plaintiffs also asked the jury to make an award to Moats Construction related to its inability to obtain bid bonds because the County did not rescind its termination of the Toxaway Contract. The County argued at directed verdict, at the close of all evidence, and again during post-trial motions that there was no evidence by which the jury could determine such damages and that such damages were speculative. Consequently, the remaining amount of \$378,999.09 is not only unsupported by the evidence, but there is no evidence in the record upon which the jury could have relied to support the amount awarded.

Therefore, this Court finds and concludes that a new trial is warranted under these circumstances because the verdict is grossly excessive and was clearly the result of passion, caprice, prejudice, partiality, corruption or other considerations not reflected by the evidence such as confusion and/or misunderstanding of the evidence.

III. "THIRTEENTH JUROR" DOCTRINE

Additionally, and alternately, I find that the County is entitled to a new trial based upon the "thirteenth juror" doctrine. The "thirteenth juror" doctrine is a vehicle by which the trial court

may grant a new trial absolute when it finds the evidence does not justify the verdict. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *see also Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (affirming trial court's order granting a new trial under the thirteenth juror doctrine where the evidence did not justify the verdict); *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 631, 578 S.E.2d 746, 747 (Ct. App. 2003) (same); *Sorin Equipment Co., Inc. v. Firm, Inc.*, 323 S.C. 359, 363-64, 474 S.E.2d 819, 822 (Ct. App. 1996) (same). In other words, South Carolina's "thirteenth juror" doctrine entitles the trial judge to sit, in essence, as the thirteenth juror when he or she finds the evidence does not justify the verdict, and then to grant a new trial based solely "upon the facts." *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *See id.*

For the reasons set forth above, the Court finds that the evidence at trial does not justify the verdict.

IV. MOTIONS FOR JNOV AND NEW TRIAL *NISI*

The County also argued that it is entitled to a JNOV pursuant to Rule 50(b), SCRCP or a new trial *nisi additur* or *remittitur*.

A court should only grant a JNOV when the evidence presented at trial is insufficient to support the jury's verdict. *See Rogers v. Norfolk Southern Corp.*, 343 S.C. 52, 59, 538 S.E.2d 664, 668 (Ct. App. 2001), *aff'd as modified*, 356 S.C. 85, 588 S.E.2d 87 (2003). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). Here, the Court has found that a new trial is warranted because the award was grossly excessive and based upon passion, caprice and/or other improper considerations in light of the evidence propounded. Therefore, the Court declines

to grant the County's Motion for JNOV, as this matter is more properly addressed as one for a new trial.

Likewise, the Court denies the County's Motions for New Trial *Nisi Additur* and *Remittitur*. "When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice." *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000) (citing *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993)). To this end, "[i]f the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute." *Id.* (citations omitted). Since this Court finds that a new trial is warranted because the verdict was grossly excessive and was clearly the result of passion, caprice, prejudice, partiality, corruption or some other improper motives in light of the evidence presented at trial, the Court declines to exercise its discretion in granting a new trial *nisi*, as a new trial absolute is required under these circumstances. *See Waring*, 341 S.C. at 257, 533 S.E.2d at 911; *see also Jolly*, 2024 WL 3882708, at *2 (stating that the "'merely inadequate or excessive' standard distinguishes cases in which a trial court may grant a new trial *nisi* from cases in which the trial court may not do so because the verdict is 'grossly inadequate or excessive,' indicating the verdict was not based on the evidence and the law" (citations omitted)).

V. CONCLUSION

Based on the foregoing, this Court finds and concludes that the County is entitled to new trial absolute pursuant to Rule 59, SCRCP because the verdict was grossly excessive and not

supported by the evidence. The verdict was clearly the result of passion, prejudice, caprice, and other improper considerations. *See Krepps*, 324 S.C. at 607, 479 S.E.2d at 295; *Sanders*, 304 S.C. at 238-39, 403 S.E.2d at 642; *Small*, 292 S.C. at 487, 357 S.E.2d at 455. I further find and conclude that the County is entitled to a new trial absolute under the “thirteenth juror” doctrine, in which a trial court may grant a new trial absolute when it finds the evidence does not justify the verdict. *See Bailey v. Peacock*, 318 S.C. at 13, 455 S.E.2d at 690; *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267 (1990); *McEntire*, 353 S.C. at 631, 578 S.E.2d at 747; *Sorin Equipment Co., Inc.*, 323 S.C. at 363-64, 474 S.E.2d at 822.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Anderson County is entitled to a new trial absolute.

IT IS SO ORDERED.

**THE HONORABLE R. LAWTON MCINTOSH
COURT OF COMMON PLEAS, TENTH JUDICIAL CIRCUIT**

<judicial e-signature and date found on a subsequent page>



Anderson Common Pleas

Case Caption: Russell Moats , plaintiff, et al VS Anderson County , defendant, et al

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S/R. LAWTON McINTOSH

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