

RECEIVED

Nov 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Morgan, Circuit Court Judge

Common Pleas Case No.: 2020-CP-23-05229

Appellate Case No.

Boyce Street, LLC

Appellant,

v.

David Smith Company, LLC,

Respondent.

MOTION TO DISMISS

Sarah Anderson Timmons, Esquire
SC Bar No. 100007
25 Delano Drive, Suite E
Greenville, SC 29601
(864)906-0289

Attorney for Respondent

Respondent/Defendant David Smith Company, LLC (“Respondent”) respectfully moves the Court to dismiss the appeal of Appellant/Plaintiff Boyce Street, LLC (“Appellant”), pursuant to Rule 203(b), SCACR, on the grounds that Appellant’s appeal is untimely and therefore the Court lacks jurisdiction to consider the appeal. Rule 203(b), SCACR states:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a **timely** motion for judgment n.o.v. (Rule 50 SCRCF), motion to alter or amend the judgment (Rules 52 and 59 SCRCF), or a motion for a new trial (Rule 59, SCRCF) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.

Rule 203(b), SCACR (emphasis added).

I. PROCEDURAL BACKGROUND

In the instant case, this matter was tried before the Honorable G.D. Morgan on August 26, 2024 through August 28, 2024. At the conclusion of trial, the jury returned a verdict on August 28, 2024 for the Appellant/Plaintiff in the amount of \$50,000. (Order of Judgment (Aug. 29, 2024), attached as **Exhibit 1.**) After Judge Morgan read the jury verdict, Judge Morgan asked the parties if there were “[a]ny post-trial motions,” to which Appellant/Plaintiff’s counsel responded that Appellant/Plaintiff had no post-trial motions and the trial concluded. (Tr. Transcript Excerpt, pp. 4:23-5:1, attached as **Exhibit 2.**) Further, Appellant/Plaintiff’s counsel did not request additional time for it to submit post-trial motions. (*See id.*) The Court’s Judgment was entered on August 29, 2024. (Order of Judgment (Aug. 29, 2024), attached as **Exhibit 1.**) Nine (9) days later, on September 6, 2024, Plaintiff’s counsel filed a Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial Nisi Additur, Motion for New Trial Absolution, and Motion for New Trial (“Appellant’s Motion”). (Motion (Sept. 6, 2024), attached as **Exhibit 3.**)

On September 13, 2024, Respondent filed a Memorandum in Opposition to Appellant’s Motion based on Appellant’s untimeliness pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (“SCRCP”). (Memo. In Opp. (Sept. 13, 2024), attached as **Exhibit 4**.) The grounds for Respondent’s Memorandum in Opposition to Appellant’s Motion were that Appellant’s Motion was untimely and should be denied pursuant to Rule 59, SCRCP, because Appellant failed to move for a new trial promptly after the jury was discharged and failed to request additional time to move for a new trial. (*See id.* (citing *Ex parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 241-42, 830 S.E.2d 718, 720 (Ct. App. 2019) (“Some post-trial motions—such as those seeking to correct or clarify an inconsistent verdict—must for practical reasons be made before the jury is discharged, or they are forever lost.”); *see Boone v. Goodwin*, 314 S.C. 374, 376, 444 S.E.2d 524, 525 (1994) (“We hold a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion”); *Person v. Carolina Pines Reg’l Med. Ctr.*, 2010 WL 10085618 (S.C. Ct. App. Nov. 4, 2010)¹.)

On October 3, 2024, Judge Morgan agreed with Respondent and denied Appellant’s Motion and held “the motions are untimely pursuant to Rule 59(b), SCRCP and even if considered by the Court, the motions should be denied.” (Order, p. 2 (Oct. 3, 2024), attached as **Exhibit 5**.) Therefore, because Appellant’s post-trial motion was untimely, the deadline to file an appeal was not tolled, and Appellant’s deadline to file an appeal was September 30, 2024.² Appellant did not file the Notice of Appeal until October 31, 2024.

¹ *Person v. Carolina Pines Reg’l Med. Ctr.*, 2010 WL 10085618 (S.C. Ct. App. Nov. 4, 2010) is attached as **Exhibit 1** to Respondent’s Memo. In Opposition (Sept. 13, 2024), attached as **Exhibit 4** to this appeal.

² Thirty (30) days from August 29, 2024 was Saturday, September 28, 2024, so Appellant would have had until Monday, September 30, 2024 to file the Notice of Appeal.

II. LEGAL ARGUMENT

Pursuant to Rule 59, SCRCP, “the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.” Courts have held that were a party fails to promptly move for a new trial or request additional time to file a motion for a new trial, that the motion is untimely and should be denied. *See Person v. Carolina Pines Reg’l Med. Ctr.*, 2010 WL 10085618 (S.C. Ct. App. Nov. 4, 2010) (attached as **Exhibit 1** to Respondent’s Memo. in Opp. (Sept. 13, 2024), attached as **Exhibit 4** to this appeal) (affirming the trial court’s denial of a party’s motion for a new trial where the party failed to move after the jury verdict or request additional time from the Court).

“[T]he meaning of Rule 59 is plain: a motion for new trial is a nullity unless it is made promptly after the jury is discharged or— if the judge allows—not later than ten days after the jury is discharged.” *Ex parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 241-42, 830 S.E.2d 718, 720 (Ct. App. 2019) (“Some post-trial motions—such as those seeking to correct or clarify an inconsistent verdict—must for practical reasons be made before the jury is discharged, or they are forever lost.”); *see Boone v. Goodwin*, 314 S.C. 374, 376, 444 S.E.2d 524, 525 (1994) (“We hold a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion”).

In the instant case, Judge Morgan correctly denied Appellant’s Motion pursuant to Rule 59, SCRCP, because it was untimely, as Appellant’s counsel declined to move after the jury was discharged and failed to request additional time for file post-trial motions. (*See* Order (Oct. 3, 2024), **Exhibit 5**; Tr. Transcript Excerpt, attached as **Exhibit 2**.)

Rule 203(b), SCACR, clearly states that the time for appeal is stayed **only** upon “a **timely** motion for judgment n.o.v. (Rule 50 SCRCP), motion to alter or amend the judgment (Rules 52

and 59 SCRCRCP), or a motion for a new trial (Rule 59, SCRCRCP).” Rule 203(b), SCACR (emphasis added). Therefore, because Appellant’s Motion was not “timely” the time to appeal the Court’s Order was not stayed and would have run from August 29, 2024, when the Court entered its Order of Judgment. *See id.*; (Order of Judgement (Aug. 29, 2024), attached as **Exhibit 1.**)

Appellant was required to appeal within thirty (30) days of the Judgment or on September 30, 2024.³ Appellant did not file the Notice of Appeal until October 31, 2024. Therefore, Appellant’s appeal is **untimely** and should be dismissed.

Furthermore, because “[t]he requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)); *accord Camp v. Camp*, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010). Therefore, Appellant’s appeal not only must be dismissed as untimely, the Court has no authority or discretion to “rescue” Appellant by extending or ignoring the deadline for service of notice. Therefore, Respondent respectfully requests the Court dismiss Appellant’s appeal.

In addition, Respondent requests that current briefing deadlines in this appeal be held in abeyance pending the Court’s resolution of this Motion.

[Signature Block Next Page]

³ Thirty (30) days from August 29, 2024 was Saturday, September 28, 2024, so Appellant would have had until Monday, September 30, 2024 to file the Notice of Appeal.

November 26, 2024

Respectfully submitted,

/s/ Sarah Anderson Timmons, Esquire
Sarah Anderson Timmons, Esquire
SC Bar No. 100007
25 Delano Drive, Suite E
Greenville, SC 29601
(864)906-0289

Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP2305229

Boyce Street LLC		David Smith Company LLC	Julie Eldridge Prs
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2024 AUG 29 PM 2:17
Boice Garrett, COC, OCL, CC

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____ **ENTERED COMPUTER**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. Defendants Julie Eldridge as PR for the Estate of David Smith, Construction Science and Engineering, Inc and Jason L. Smith were dismissed by Order dated June 24, 2024.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

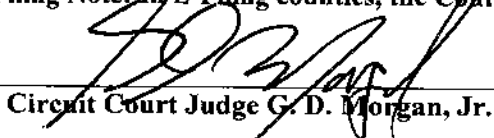
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaint: PF	Defendant	\$ 50,000

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge G. D. Morgan, Jr.

2773
Judge Code

8/28/24
Date

For Clerk of Court Office Use Only

This judgment was entered on 8-29-24, and a copy mailed first class or placed in the appropriate attorney's box on 8-29-24, to attorneys of record or to parties (when appearing pro se) as follows:

Devon Marc Puriefoy 3 Boyce Avenue Greenville, SC 29601
Kimberly Truluck Thomason 3 Boyce Avenue Greenville, SC
29601

Thomas Elihue Dudley III 704 E. Mcbee Ave. Greenville,
SC 29601
Sarah Anderson Timmons 25 Delano Drive, Suite E
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brice Garrett

Court Reporter

Brice Garrett Greenville County Clerk Of Court -
Clerk of Court

Court Reporter: Cheryl Smith

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Boyce Street, LLC,

Plaintiff,

v.

David Smith Company, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
C.A. No.: 2020-CP-23-05229

VERDICT FORM

24 AUG 29 PM 2:17
Bribe Garrett, CDC SCL SC

1. Do you find that the Defendant breached the contract as to the other alleged acts of the Defendant?

_____ YES
 _____ NO

2. Do you find that the Defendant's breach of contract proximately caused the Plaintiff damages?

_____ YES
 _____ NO

3. Do you find that the Defendant breached the express warranty or implied warranty as to the other alleged acts of the Defendant?

_____ YES
_____ NO

4. Do you find that its breach of the express or implied warranty proximately caused the Plaintiff's injuries?

 ✓ YES

 NO

5. If you answered YES to question numbers 2 or 4, or both, please state the total amount of damages, if any, sustained by the Plaintiff.

Total Amount of Damages: \$ 50,000.00

Stephanie Cochran

JUROR # 44, FOREPERSON

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
NOTIFY THE BAILIFF.

August 28, 2024

EXHIBIT 2

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2020-CP-23-05229
COUNTY OF GREENVILLE)
)
)
)
)
)
BOYCE STREET, LLC,)
)
) PLAINTIFF,)
)
) EXCERPTED
vs.) TRANSCRIPT OF RECORD
)
)
DAVID SMITH COMPANY, LLC;)
)
) DEFENDANT.)
)
)
_____)

August 28, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, JR., JUDGE, and a
jury.

A P P E A R A N C E S:

DEVON MARC PURIEFOY, ESQ.
Attorney for the Plaintiff

THOMAS ELIHUE DUDLEY, III, ESQ.
SARAH ANDERSON TIMMONS, ESQ.
Attorneys for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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INDEX

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

PAGE

There were no witnesses called during this excerpted
portion of the trial.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced during this excerpted
portion of the trial.

P R O C E E D I N G S

(Beginning of excerpted portion of transcript; the jury entered the courtroom at 5:12 PM.)

THE COURT: Madame Forelady, I understand y'all have reached a verdict.

JURY FOREPERSON: Yes, sir.

THE COURT: All right. If you would, hand it to Mr. Smith right there.

All right. Madam Clerk, if you would publish the verdict.

THE CLERK: Your Honor, this is Case Number 2020-CP-23-5229, Boyce Street, LLC vs. David Smith Company, LLC. Number 1, do you find that the defendant breached the contract as to the other alleged acts of the defendant? No.

Number 2, do you find that the defendant's breach of contract proximately caused the plaintiff's damages? No.

Number 3, do you find that the defendant breached the express warranty or implied warranty as to the other alleged acts of the defendant? Yes.

Number 4, do you find that its breach of the express or implied warranty proximately caused the plaintiff's injuries? Yes.

Number 5, if you answered yes to Questions 2 or 4 or both, please state the total amount of damages, if any,

1 sustained by the plaintiff. Total amount of damages:
2 \$50,000.

3 Signed Stephanie Cody, foreperson, August 28, 2024.

4 If this is your verdict, so say you all, please
5 signify by raising your right hand if so.

6 (WHEREUPON, all jurors raised their right hands.)

7 THE CLERK: Thank you.

8 THE COURT: All right. Anything else to -- not as
9 to motions, but anything as to the verdict from the
10 plaintiff before I excuse the jury?

11 MR. PURIEFOY: Nothing, Your Honor.

12 THE COURT: All right. Anything from the defense?

13 MR. DUDLEY: No, sir.

14 THE COURT: All right. Ladies and gentlemen, that
15 concludes your service in this trial, and even better
16 news, for the week, and even better news, for the next
17 three years and -- if you got called in Circuit Court.

18 So I want to thank you for your service here. I'm
19 going to step back and just speak with you for a minute
20 and let you go. And, again, thank you for your service.
21 And I'll just step back there in a minute. Thank you.

22 (WHEREUPON, the jury exits the courtroom at 5:15 PM.)

23 THE COURT: All right. Any posttrial motions?

24 MR. PURIEFOY: Nothing, Your Honor.

25 THE COURT: Anything from the defendant?

1 MR. DUDLEY: No, sir.

2 THE COURT: All right. That will conclude -- I have
3 enjoyed working with all of you. As I said earlier, I
4 don't know if you heard me, but I commend all of you in
5 your work in this case. Your clients can be very
6 satisfied with the representation. Y'all did a great,
7 great job, and I enjoyed working with you.

8 MR. DUDLEY: Thank you, sir. Likewise.

9 MS. TIMMONS: Thank you.

10 (WHEREUPON, proceedings concluded at 5:18 PM.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete excerpted Transcript of Record of
11 the proceedings had and evidence introduced in the trial
12 of the captioned case, relative to appeal, in the Court
13 of Common Pleas for Greenville County, South Carolina, on
14 the 28th day of August, 2024.15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.17
18 November 10, 202419
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Boyce Street, LLC,

Plaintiff,

v.

David Smith Company, LLC,

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

Case No. 2020-CP-23-05229

**PLAINTIFF’S MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT, MOTION FOR NEW
TRIAL NISI ADDITUR, MOTION FOR
NEW TRIAL ABSOLUTION, AND
MOTION FOR NEW TRIAL**

Plaintiff, Boyce St., LLC (hereinafter “Plaintiff”) by and through his undersigned counsel, hereby submits this Motion for judgment notwithstanding the verdict, new trial nisi additur, new trial absolution, and/or new trial.

This matter was tried before Honorable G.D. Morgan on August 26, 2024 through August 28, 2024. At the conclusion of the trial, the jury returned a verdict for the Plaintiff in the amount of \$50,000.00. Plaintiff has ten (10) days for posttrial motions in accordance with Rule 59 of the South Carolina Rules of Civil Procedure (“SCRPC”). A supporting memorandum will be filed following this motion.

JUDGMENT NOTWITHSTANDING THE VERDICT

Plaintiff first moves for Judgment Notwithstanding the Verdict (JNOV). In ruling on a Motion for JNOV, the Court is required to view the evidence and all reasonable inference in the light most favorable to the nonmoving party. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d

772 (2004). A motion for JNOV should be granted if no reasonable jury could have reached the challenged verdict. *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998).

This Court should grant the motion on the grounds that a reasonable jury would not have awarded damages of such an insufficient amount and that the evidence did not support such a minimal award. The opportunity for unbiased jury deliberation was removed when Defendants conceded liability on the HVAC issue and the Court instructed the jury on such liability on breach of contract for the HVAC only.

The jury's verdict is not supported by the evidence, and therefore the court should grant the motion for JNOV as to the amount the verdict.

NEW TRIAL NISI ADDITUR

A motion for new trial nisi additur asks the trial court to increase the verdict because the verdict is vastly insufficient. *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000). The consideration of a motion for a new trial additur requires the court to consider the adequacy of the verdict in light of the evidence presented. *Krepps by Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996).

The court should grant Plaintiff's motion for new trial nisi due to the inadequacy of the jury verdict which Plaintiff would argue was the direct result of an ambiguous jury charge and verdict form. The Plaintiff presented evidence supporting damages in the amount of Five Hundred Forty-nine Thousand Five Hundred Eight Dollars and Nine/One Hundred (\$549,508.58). Plaintiff presented three (3) experts that testified as to each defect and in support of the damage calculation. Defendants presented no rebuttal evidence in terms of testing but merely had one witness testify that he conducted approximately a thirty (30) to forty-five (45) minute-long investigation of the property. The jury returned a verdict for a mere Fifty Thousand Dollars and Nine/100 (\$50,000.00)

with liability on breach of contract and breach of implied warranty as to the HVAC issue only despite having no evidence before it that would permit it to find damages in amount presented by Plaintiff only. This was the case despite the fact the verdict form submitted to the jury did not provide an opportunity to find liability as to the breach of contract or breach of express and implied warranties related to the HVAC.

NEW TRIAL ABSOLUTE UNDER THE THIRTEENTH JUROR DOCTRINE

The thirteenth juror doctrine is a vehicle by which the circuit court may grant a new trial absolute when it finds the evidence does not justify the verdict.” *Trivelas v. South Carolina Dept. of Transportation*, 357 S.C. 545, 553 (2204) citing *Norton v. Norfolk, S. Ry. Co.* 350 S.C. 473 (2002). The effect is the same as if the jury failed to reach a verdict and thus the circuit court is not required to give any reason for granting the new trial. *Folkens v. Hunt*, 300 S.C. 251 (1990). Thus granting the court veto power as a thirteenth juror to the **N’th Degree**. *Worrell v. South Carolina Power Co.*, 186 S.C. 306 (1938)(emphasis added).

In the instant matter the verdict did not conform to the evidence as there was no rebuttal testimony or evidence presented to the jury which was capable of overcoming Plaintiff’s evidence.

It is unconscionable that a jury would find that Defendant was only liable for \$50,000.00 in damages when Plaintiff submitted expert testimony supporting over \$500,000.00 in damages. The inappropriateness of the verdict is highlighted by the fact that the jury award nearly parrots Plaintiff’s presentation on damages as it relates to the HVAC. This also highlights the fact that the jury clearly believed only a finding of liability related to HVAC was available. This certainly falls within the category of cases which warrants this Court’s exercise of its discretion in granting Plaintiff a new trial even if only on the issues of damages as Plaintiff prevailed on both of its remaining causes of action.

NEW TRIAL ABSOLUTE

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *Howard v. Roberson*, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007).

The award of merely Fifty Thousand Dollars and Nine/100 (\$50,000.00) was so inadequate such that it indicates that the amount was the result the jury being tainted by the verdict form they were instructed to complete. Due to the inadequate amount of the verdict, the court should grant a motion for new trial absolute.

NEW TRIAL – ERRORS OF LAW

Plaintiff is entitled to a new trial based on errors of law made by the court. These errors of law are as follows:

1. Charging the jury that the Court directed verdict as to Plaintiff's Breach of Contract and Breach of Implied and Express Warranties, while offering what reads like a limiting instruction to the jury on the finding of the respective breaches.
2. The jury form itself provided the jury with no ability to find an award of damages related to the HVAC issues as the same was not included on the form. Rather, the jury's verdict only related to "...the **other** alleged acts of Defendant" which necessarily assumes no damages were allocated HVAC issues. (Emphasis added).

WHEREFORE, Plaintiff requests this court grant Plaintiff's motion for judgment notwithstanding the verdict, new trial nisi additur, new trial absolute, or new trial.

Respectfully Submitted this,
6th day of September, 2024.

TRULUCK THOMASON LLC

s/Devon M. Puriefoy
Devon Puriefoy
S.C. Bar No.: 102097
3 Boyce Avenue
Greenville, South Carolina 29601
Phone: (864) 331-1751
devon@truluckthomason.com

Attorney for Plaintiff

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	C.A. No.: 2020-CP-23-05229
)	
Boyce Street, LLC,)	
)	
Plaintiff,)	
	)	DEFENDANT DAVID SMITH
v.	)	COMPANY, LLC’S MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF’S
David Smith Company, LLC.	)	MOTION FOR JUDGMENT
	)	NOTWITHSTANDING THE VERDICT,
Defendant.	)	MOTION FOR NEW TRIAL NISI
	)	ADDITUR, MOTION FOR NEW TRIAL
	)	ABSOLUTION, AND MOTION FOR
	)	NEW TRIAL
)	

Comes now Defendant David Smith Company, LLC (“DSC”), by and through its undersigned counsel, and hereby submits its Memorandum in Opposition to Plaintiff Boyce Street, LLC (“Plaintiff”)’s Motion for Judgment Notwithstanding the Verdict, Motion for New Trial Nisi Additur, Motion for New Trial Absolution, and Motion for New Trial (the “Motion”) pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (“SCRCP”) and would show that Plaintiff’s Motion is untimely and therefore should be denied.

This matter was tried before the Honorable G.D. Morgan on August 26, 2024 through August 28, 2024. At the conclusion of trial, the jury returned a verdict for the Plaintiff in the amount of \$50,000. After the jury verdict. Plaintiff’s counsel indicated, upon inquiry by the Court, that Plaintiff had no post-trial motions and did not request additional time to file post-trial motions. Subsequently, nine (9) days later, on September 6, 2024, Plaintiff’s counsel filed the instant Motion.

Pursuant to Rule 59(b), SCRCP, “The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.” Courts

have held that were a party fails to promptly move for a new trial or request additional time to file a motion for a new trial, that it is untimely and should be denied. *See Person v. Carolina Pines Reg'l Med. Ctr.*, 2010 WL 10085618 (S.C. Ct. App. Nov. 4, 2010) (attached as **Exhibit 1**) (affirming the trial court's denial of a party's motion for a new trial where the party failed to move after the jury verdict or request additional time from the Court). "[T]he meaning of Rule 59 is plain: a motion for new trial is a nullity unless it is made promptly after the jury is discharged or—if the judge allows—not later than ten days after the jury is discharged." *Ex parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 241-42, 830 S.E.2d 718, 720 (Ct. App. 2019) ("Some post-trial motions—such as those seeking to correct or clarify an inconsistent verdict—must for practical reasons be made before the jury is discharged, or they are forever lost."); *see Boone v. Goodwin*, 314 S.C. 374, 376, 444 S.E.2d 524, 525 (1994) ("We hold a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion").

Plaintiff failed to move for a new trial after the jury was discharged and failed to request additional time to move for a new trial. Therefore, Plaintiff's Motion is untimely and should be denied. Counsel for DSC submits this Memorandum in Opposition solely on the untimeliness of Plaintiff's Motion and reserves the right to file a supplemental Memorandum in Opposition on the merits of Plaintiff's Motion in the event the Court moves forward with considering Plaintiff's Motion on the merits.

Signature Block Next Page

Respectfully submitted,

s/Sarah Anderson Timmons

Sarah Anderson Timmons
SC Bar No. 10007
Timmons Brogdon Law Firm, LLC
25 Delano Drive, Suite E
Greenville, SC 29601
(864) 906-0289
sarah@timmonsbrogdon.com

Thomas E. Dudley, III (SC Bar No. 66154)
Kenison, Dudley & Crawford, LLC
325 West McBee Avenue Suite 301
Greenville, SC 29601
(864) 242-4899
dudley@conlaw.com

*Attorneys for Defendant David Smith
Company, LLC*

September 13, 2024
Greenville, South Carolina

CERTIFICATE OF SERVICE

I certify that on September 13, 2024, I electronically filed DEFENDANT’S MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, MOTION FOR NEW TRIAL NISI ADDITUR, MOTION FOR NEW TRIAL ABSOLUTION, AND MOTION FOR NEW TRIAL to be served on all counsel of record by means of the Court’s Notice of Electronic Filing.

Respectfully submitted,

s/Sarah Anderson Timmons
Sarah Anderson Timmons
SC Bar No. 10007
Timmons Brogdon Law Firm, LLC
25 Delano Drive, Suite E
Greenville, SC 29601
(864) 906-0289
sarah@timmonsbrogdon.com

Thomas E. Dudley, III (SC Bar No. 66154)
Kenison, Dudley & Crawford, LLC
325 West McBee Avenue Suite 301
Greenville, SC 29601
(864) 242-4899
dudley@conlaw.com

*Attorney for Defendant David Smith
Company, LLC*

September 13, 2024
Greenville, South Carolina



User Name: Thomas Dudley

Date and Time: Monday, September 9, 2024 3:26:00PM EDT

Job Number: 233064218

Document (1)

1. [Person v. Carolina Pines Reg'l Med. Ctr., 2010 S.C. App. Unpub. LEXIS 558](#)

Client/Matter: David Smith Co. Boyce

Person v. Carolina Pines Reg'l Med. Ctr.

Court of Appeals of South Carolina

October 1, 2010, Submitted; November 4, 2010, Filed

Unpublished Opinion No. 2010-UP-484

Reporter

2010 S.C. App. Unpub. LEXIS 558 *; 2010 WL 10085618

Ruth J. Person, Appellant, v. Carolina Pines Regional Medical Center, Respondent.

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Prior History: [*1] Appeal From Darlington County. J. Michael Baxley, Circuit Court Judge.

Disposition: APPEAL DISMISSED.

Counsel: Daryl James Corbin, of Florence, for Appellant.

Martin S. Driggers, Jr, of Hartsville, for Respondent.

Judges: WILLIAMS, PIEPER, and KONDUROS, JJ. concur.

Opinion

PER CURIAM: Appellant Ruth J. Person appeals the trial court's denial of her motion for a new trial pursuant to [Rule 59\(b\), SCRCR](#), following a jury verdict for Respondent Carolina Pines Regional Medical Center. After the jury verdict, Person's counsel indicated, upon inquiry by the trial court, that Person had no post-trial motions. The next day, Person requested ten days to file a new trial motion. Because Person's request for ten days to file the motion was not timely, we dismiss¹ the appeal pursuant to [Rule 220\(b\), SCACR](#), and the following authorities: [Rule 59\(b\), SCRCR](#) ("The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter."); [Boone v. Goodwin, 314 S.C. 374, 376, 444 S.E.2d 524, 525 \(1994\)](#) ("[A] party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion.").

¹We decide this case without oral [*2] argument pursuant to [Rule 215, SCACR](#).

APPEAL DISMISSED.

WILLIAMS, PIEPER, and KONDUROS, JJ., concur.

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STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2305229

Boyce Street LLC
PLAINTIFF(S)

David Smith Company LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See page 2 below

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Plaintiff's Motion for Judgment Notwithstanding the Verdict, Motion for New Trial Nisi Additur, Motion for New Trial Absolution, and Motion for New Trial. The Court has thoroughly reviewed the file and submissions of the parties and, based on that review, the motions are respectfully DENIED. The motions are untimely pursuant to Rule 59(b) SCRCP and even if considered by the Court, the motions should be denied. A hearing is not required pursuant to Rule 59(f) SCRCP.

It Is So Ordered.



Greenville Common Pleas

Case Caption: Boyce Street LLC vs. David Smith Company LLC , defendant, et al

Case Number: 2020CP2305229

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-10-03 12:33:57 page 3 of 3

RECEIVED

Nov 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Morgan, Circuit Court Judge

Common Pleas Case No.: 2020-CP-23-05229

Appellate Case No.

Boyce Street, LLC

Appellant,

v.

David Smith Company, LLC,

Respondent.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR and Section (d)(1) of the Supreme Court's Order dated April 24, 2024, undersigned counsel hereby certifies I have served a copy of Respondent's Motion to Dismiss Appellant's Appeal on counsel of record by electronic mail (see attached sent email):

Counsel Served:

Devon M. Puriefoy
Truluck Thomason LLC
3 Boyce Avenue
Greenville, SC 29601
devon@truluckthomason.com
(864) 331-1751

[Signature Block Next Page]

By: /s/ Sarah Anderson Timmons
Sarah Anderson Timmons, Esq.
SC Bar No. 100007
25 Delano Drive, Suite E
Greenville, SC 29601
(864)906-0289
Attorney for Respondent

Attorney for Respondent

November 26, 2024
Greenville, South Carolina

Boyce St, LLC v David Smith Company, LLC

From: **Sarah Timmons** | sarah@timmonsbrogdon.com

Tuesday, Nov 26 at
2:11 PM

To: **Devon Puriefoy** | devon@truluckthomason.com, **Brandi Larobardiere** | brandi@truluckthomason.com

Cc: **Brandi Larobardiere** | brandi@truluckthomason.com, **Beau Brogdon** | beau@timmonsbrogdon.com, **Haden Brogdon** | haden@timmonsbrogdon.com

Devon,

Please find attached for electronic service upon you a copy of Respondent's Motion to Dismiss Appellant's Appeal with exhibits. We will be filing a copy with the Court shortly.

Regards,

Sarah Timmons
Timmons Brogdon Law Firm, LLC
25 Delano Drive, Suite E
Greenville, SC 29601
(864) 906-0289
sarah@timmonsbrogdon.com

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