

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

The Oaks at Riverside South Property Owners Association, Inc.; Colette Alderson; Leland Atkins Trust; Bette Atkins Trust; Michael Dorton; Emily Dorton; James VanCampen; Celia VanCampen; Janet Fiorenza; Richard Labaudiniere; Lydie Labaudiniere; Alley Oak, LLC; Lesene Hudson; and Asbury Hudson,

Plaintiffs,

Vs.

DI Associates, LLC;
Carriage Hill Associates of Charleston, LLC;
Charleston Landmark Builders, LLC;
Lesco Restorations, Inc.;
Mike Phillips a/k/a Michael A. Phillips d/b/a Phillips Masonry Contractors, Inc. a/k/a Mike Phillips Masonry;
Benchmark Surveying and Construction, LLC n/k/a Benchmark Construction of Charleston, LLC;

SKA Consulting Engineers, Inc.;
D&D Home Improvements, LLC;
Coleman Floor Company, Inc.;
Wards Waterproofing, Inc.; and
John Doe Contractors and Subcontractors 10-20,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL CASE NO.: 2019-CP-08-00092

ORDER GRANTING DEFENDANT SKA CONSULTING ENGINEERS, INC.'S MOTION FOR SETOFF PURSUANT TO S.C. CODE § 15-38-50 AND AMENDING THE JUDGMENT ON THE VERDICT FILED AUGUST 8, 2024

RECEIVED

Nov 27 2024

SC Court of Appeals

This matter came before the Court on Defendant, SKA Consulting Engineers, Inc.'s ("SKA") Motion pursuant to S.C. Code Ann. § 15-38-50 to setoff from the jury's verdict of July 31, 2024, all amounts paid, or to be paid, to Plaintiffs in settlement. Having considered the arguments of counsel for the parties and considered Plaintiffs' settlement documents submitted

for in-camera review, SKA's Motion for Setoff as it relates to Plaintiff, the Oaks at Riverside South Property Owners' Association, Inc. ("POA") is hereby GRANTED.

SKA's Motion for setoff from the verdict in favor Plaintiffs Leland Atkins Trust; Bette Atkins Trust; Michael Dorton; Emily Dorton; James VanCampen; Celia VanCampen; Janet Fiorenza; Richard Labaudiniere; Lydie Labaudiniere; Alley Oak, LLC; Lesene Hudson; and Asbury Hudson is hereby DENIED.

Although SKA was the only Defendant remaining at trial in this action, Plaintiffs previously sued 9 other companies that they claimed were also liable in tort for causing the same damages as SKA. *See* 3rd Am. Compl. This Court has reviewed in-camera the pretrial settlement documents provided by Plaintiffs' counsel. The settlement documents establish that Plaintiffs reached fair and reasonable settlements in exchange for releases given in good faith with all parties, other than SKA, in amounts totaling \$5,000,000 payable to the Plaintiff POA.

Pursuant to S.C. Code Ann. § 15-38-50, SKA is entitled to a setoff from the jury's \$1,619,828.80 verdict in favor of the Plaintiff POA.¹ Section 15-38-50 of the South Carolina Code provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable *in tort for the same injury* or the same wrongful death:

- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, ***but it reduces the claim against the others*** to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

¹ On July 31, 2024, the jury returned a verdict against SKA in the total amount of \$1,656,538.83 --- \$1,619,828.80 - POA; \$4,435.47 – Colette Alderson; \$2,902.37 – Leland Atkins Trust/Bette Atkins Trust; \$12,185.53 – Michael Dorton/Emily Dorton; \$4,010.95 – James VanCampen/Celia VanCampen; \$2,639.55 – Janet Fiorenza; \$6,922.36 – Richard Labaudiniere/Lydie Labaudiniere; \$33.96 – Alley Oak, LLC; \$2,229.84 – Lesesne Hudson/Asbury Hudson; \$1,350.00 – Samuel ("Noel") Baxter/Sandra Baxter.

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

S.C. CODE ANN. § 15-38-50 (emphasis added). In *Smith v. Widener*, the South Carolina Court of Appeals provided the legal framework for setoff under South Carolina law:

There can be only one satisfaction for an injury or wrong. A settlement by a joint tortfeasor reduces the claim against the others to the extent of any amount stipulated by the release or the covenant. Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury. When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law. Under this circumstance, section 15-38-50 grants the court no discretion in applying a set-off.

397 S.C. 468, 471-72, 724 S.E.2d 188, 190 (Ct. App. 2012) (internal quotations, citations, and brackets omitted). “Precedent instructs that before entering judgment on a jury verdict, the court must reduce the amount of the verdicts to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury.” *Green v. McGee*, 441 S.C. 157, 168, 892, S.E.2d 520, 525-526 (2023).

South Carolina courts have recognized that this setoff is “statutorily mandated” from the total damages award. *Id.* at 471-72, 724 S.E.2d at 190; *Welch v. Epstein*, 342 S.C. 279, 313, 536 S.E.2d 408, 425-26 (Ct. App. 2000); *see also Smith v. Tiffany*, 419 S.C. 548, 557, 799 S.E.2d 479, 484 (2017) (noting “the General Assembly took steps to protect nonsettling defendants by codifying . . . the right to offset the value of any settlement received prior to the verdict—a right which arises by operation of law and is not within the discretion of the courts”). Even before the enactment of Section 15-38-50, South Carolina courts held for over 100 years that trial courts should equitably set off prior settlements against a judgment to prevent the plaintiff from receiving a double recovery. *See, e.g., Truesdale v. S.C. Hwy. Dep’t*, 264 S.C. 221, 234-35, 213 S.E.2d 740, 746 (1975).

This Court finds that the Plaintiff POA received \$5,000,000 in pretrial settlements in consideration for the POA's release of its claims against all parties, except SKA. The settlement amount paid was for the same claims and for the same injuries for which it received a verdict against SKA. Further, the Court finds that the releases were to joint tortfeasor given in good faith and shield those joint tortfeasors from all liability for contribution. *See Glenn v. 3M Co.*, 440 S.C. 34, 86, 890 S.E.2d 569, 596-597 (Ct. App. 2023). Therefore, the setoff for pretrial settlements exceeds the jury's award of \$1,619,828.80. The jury award is entirely eclipsed by the pretrial settlements and SKA owes zero for the verdict in favor of the POA.

The Plaintiffs Colette Alderson; Leland Atkins Trust/Bette Atkins Trust; Michael Dorton/Emily Dorton; James VanCampen/Celia VanCampen; Janet Fiorenza; Richard Labaudiniere/Lydie Labaudiniere; Alley Oak, LLC; Lesesne Hudson/Asbury Hudson; and Samuel ("Noel") Baxter/Sandra Baxter released their claims as to all Defendants, except SKA, but none of the settlement funds were paid to those Plaintiffs. This Court finds that SKA is responsible for the verdicts as to those Plaintiffs as follows: \$4,435.47 – Colette Alderson; \$2,902.37 – Leland Atkins Trust/Bette Atkins Trust; \$12,185.53 – Michael Dorton/Emily Dorton; \$4,010.95 – James VanCampen/Celia VanCampen; \$2,639.55 – Janet Fiorenza; \$6,922.36 – Richard Labaudiniere/Lydie Labaudiniere; \$33.96 – Alley Oak, LLC; \$2,229.84 – Lesesne Hudson/Asbury Hudson; \$1,350.00 – Samuel ("Noel") Baxter/Sandra Baxter.

CONCLUSION

The Court GRANTS SKA's motion for setoff as to The Oaks at Riverside South Property Owners' Association, Inc., and allows a setoff of \$5,000,000 against the jury verdict of \$1,619,828.80. SKA owes zero on the jury award to The Oaks at Riverside South Property Owners' Association, Inc.

The Court DENIES SKA'S motion for setoff as to Colette Alderson; Leland Atkins Trust/Bette Atkins Trust; Michael Dorton/Emily Dorton; James VanCampen/Celia VanCampen; Janet Fiorenza; Richard Labaudiniere/Lydie Labaudiniere; Alley Oak, LLC; Lesesne Hudson/Asbury Hudson; and Samuel ("Noel") Baxter/Sandra Baxter. Judgement will be entered against SKA as follows: \$4,435.47 – Colette Alderson; \$2,902.37 – Leland Atkins Trust/Bette Atkins Trust; \$12,185.53 – Michael Dorton/Emily Dorton; \$4,010.95 – James VanCampen/Celia VanCampen; \$2,639.55 – Janet Fiorenza; \$6,922.36 – Richard Labaudiniere/Lydie Labaudiniere; \$33.96 – Alley Oak, LLC; \$2,229.84 – Lesesne Hudson/Asbury Hudson; \$1,350.00 – Samuel ("Noel") Baxter/Sandra Baxter.

IT IS SO ORDERED.

-ELECTRONIC SIGNATURE PAGE TO FOLLOW-



Berkeley Common Pleas

Case Caption: The Oaks At Riverside South Property Owners Association, Inc ,
plaintiff, et al VS Di Associates, Llc , defendant, et al
Case Number: 2019CP0800092
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764