

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMONS PLEAS  
COUNTY OF AIKEN ) FOR THE SECOND JUDICIAL CIRCUIT

PRESCOTT & SONS CONSTRUCTION, )  
LLC, )

CASE No.: 2012-CP-02-2382

Plaintiffs, )

-vs- )

ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL

LARRY ROGERS AND MICHELLE )  
ROGERS, )

**RECEIVED**

Defendants. )

MAY 22 2015

**SC Court of Appeals**

**WHEREAS** Defendant's motion for a New Trial was made after judgment for Plaintiff was entered on January 21, 2015, for the case captioned above, and came before this court on March 16, 2015 wherein arguments were made on behalf of the Defendants by James Ervin, Esquire, and on behalf of Plaintiff by Lir Derieg, Esquire. Upon examination of the evidence and upon application of South Carolina Jurisprudence, and for reasons set forth below, the court denies Defendant's motion for new trial.

#### ISSUE

Defendants contend the jury verdict rendered in favor of Plaintiff in the amount of \$18,166.03 was confused, is not absolutely clear what was intended and contrary to the weight of the evidence.

#### DISCUSSION

A trial judge has the power to grant a new trial. However, this power may be exercised only when the verdict "is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761



(2000). A jury's determination of damages is entitled to "substantial deference." *Todd v. Joyner*, 385 S.C. 509, 517, 685 S.E.2d 613, 618 (Ct. App. 2008), *aff'd*, 385 S.C. 421, 685 S.E.2d 595 (2009). The decision to grant or deny a "new trial motion rests within the discretion of the circuit court," *Brinkley v. S.C. Dep't of Corrs.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

If the trial court determines that the verdict is "merely excessive," the court has the power to reduce the verdict by granting a new trial nisi remittitur. "A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). Even as to a new trial nisi remittitur, the trial judge's discretion is broad. "The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." *Id.*; see also *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) ("If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial nisi additur.").

Turning to the case at bar Defendants state the Jury verdict is contrary to the weight of the evidence. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978). They claim the amount of \$18,166.03 could only have been reached if the jury included the balance of builder's fee, which they deem was expressly and specifically unavailable to Plaintiff by the terms of the contract. Additionally they claim the only other damages asserted were unpaid invoices in an amount no larger than \$5,089.82. Defendants move for a new trial asserting error in the amount of the verdict and for the verdict being excessive by clear and convincing evidence presented at trial.

On the contrary it appears the evidence presented to the jury includes the signed contract stating the Defendants would pay Plaintiff \$25,000.00 in addition to costs of materials and labor. Therefore the award is not excessive given the jury could have awarded more and is therefore upheld. The Defendants motion for a new trial is DENIED.

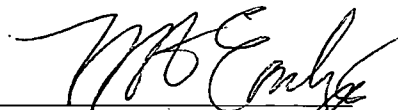
A handwritten signature in black ink, appearing to be 'VBC' with a flourish underneath.

CONCLUSION

NOWHEREFORE, after hearing arguments and reviewing evidence by both parties, and after applying applicable South Carolina jurisprudence, it is the Order of this Court that Defendant's motion for a new trial is DENIED and the jury verdict for Plaintiff is confirmed.

Aiken, SC

May 12, 2015



The Honorable Doyet A. Early, III  
Circuit Court Judge for the  
Second Judicial Circuit October

PRESCOTT & SONS CONSTRUCTION

LARRY AND MICHELLE ROGERS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James Ervin

Attorney for :  Plaintiff  Defendant  
or  
 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;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- 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: Motion for New Trial is DENIED

ORDER INFORMATION

This order  ends  does not end the case.

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)
		\$
		\$
		\$

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.

Circuit Court Judge

Judge Code

Date

