

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
ROBERT CUTRIGHT,)
) Plaintiff,)
vs.)
JOSEPH ROBERTS AND CAROL)
ROBERTS,)
) Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-06507

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MELANIE HIGGINS-WARD
CLERK OF COURT

**ORDER DENYING DEFENDANTS' MOTION FOR DIRECTED VERDICT
OR JNOV OR JUDGMENT FOR THE DEFENDANTS BASED UPON
THE 13TH JUROR REVIEW**

This matter comes before me pursuant to the post-trial motions of the Defendants, Joseph Roberts and Carol Roberts, for Directed Verdict or JNOV or Judgment for the Defendants pursuant to the Thirteenth Juror Review. Based upon the evidence presented, I deny the Defendants' motions.

In determining whether to grant a motion for directed verdict, the trial court must view the evidence in the light most favorable to the non-moving party, which in this case is the Plaintiff. The trial court is required to deny the motion if either the evidence yields more than one inference or its inference is in doubt. See, Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110 (Ct. App. 2007).

Likewise, in determining whether to grant a motion for JNOV, the trial court must view the evidence in the light most favorable to the non-moving party, which in this case is the Plaintiff. The trial court is required to deny the motion if either the evidence yields more than one inference or its inference is in doubt. See, Triple E, Inc. v. Hendrix & Dial, Inc., 344 S.C. 186, 543 S.E.2d 245 (Ct. App. 2001).

The Plaintiff submitted to the jury admissible evidence to support his claim for breach of contract against the Defendants. Taken in the light most favorable to the Plaintiff, the testimony and other evidence submitted to the jury established the existence of an enforceable contract, breach by the Defendants, and damages to the

Plaintiff. As to issues raised by the Defendants regarding the breach, there was testimony and evidence at the trial to establish that the two (2) denials of the subdivision by Chesterfield County and the expiration of ninety (90) days were sufficient factual occurrences to require the Defendants to refund to the Plaintiff his initial \$49,750.00, plus the development expenses paid by the Plaintiff, with 3.00% interest on those amounts. The Defendants' refusal and failure to repay the Plaintiff in accordance with the contract supports the jury's finding of a breach of the agreement. The damages awarded by the jury were less than the amount claimed by the Plaintiff, and were supported by the evidence. Therefore, the Defendants' Motions for Directed Verdict and JNOV are both denied.

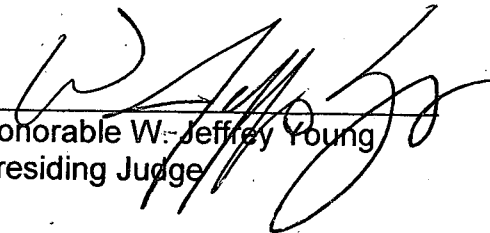
The Defendants have also moved for a new trial based upon the thirteenth juror review.

A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. When an order granting a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order. ...The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case... Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. ... Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion... (under "thirteenth juror doctrine," trial court may grant new trial if judge believes verdict is unsupported by evidence and, similarly, new trial may be granted if verdict is inconsistent and reflects jury's confusion). Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007) (internal citations omitted).

As previously indicated, the Plaintiff submitted sufficient evidence to support the jury's determination of a breach of contract by the Defendants and damages. The verdict does not indicate any confusion by the jury. Therefore, I deny the Defendants' Motion for a New Trial Based Upon the Thirteenth Juror Review.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
Motions for Directed Verdict, JNOV and New Trial Based Upon the Thirteenth
Juror Review of the Defendants, Joseph Roberts and Carol Roberts, are
DENIED.

AND IT IS SO ORDERED.


Honorable W. Jeffrey Young
Presiding Judge

Sumter, South Carolina

September 3, 2015

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