

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

David Longstreet and Karen Longstreet,)
Individually and as the Personal)
Representatives of the Estate of Emma)
Longstreet and as the Natural Guardians of)
the minor children, Noah Longstreet,)
Levi Longstreet, Micah Longstreet and)
Kenneth M. Sinchak,)

Plaintiffs,)

vs.)

Rabit, LLC d/b/a The Loose Cockaboose,)
and Kelly Whitlock,)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

C. A. FILE NO.: 2014-CP-40-188

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
SETOFF OF VERDICT AMOUNT**

RECEIVED

JAN 07 2016

SC Court of Appeals

JENNIFER M. MCBRIDE
CLERK
P. 8 G.S.

2015 DEC 11 PM 3:20

RICHLAND COUNTY
FILED

The matter was before the Court by way of Defendant TLC's Post Trial Motion for Setoff. On October 16, 2015 the jury returned a verdict solely against Defendant TLC in favor of all Plaintiffs for various awards totaling \$3,850,000.00. The parties agreed the Defendant is entitled to setoff previously received settlement funds from other bars involved in the incident but disagreed as to the amount.

The parties agree and the Court finds that \$1,975,000.00 in settlement funds were received prior to trial from other potentially liable entities in the following amounts:

66

SCANNED

Plaintiff	Jillian's/ The Big Ugly Settlement (\$1,925,000)	Hutto/UAIC Auto Liability Settlement
Estate of Emma	\$750,750 (39%)	\$41,500
David	\$288,750 (15%)	\$0.00
Karen	\$288,750 (15%)	\$0.00
Noah	\$134,750 (7%)	\$2,500
Levi	\$134,750 (7%)	\$2,500
Micah	\$134,750 (7%)	\$2,500
Sinchak	\$192,500 (10%)	\$1,000

Those settlement amounts and their allocations amongst the various parties and individual causes of action were agreed to by all settling parties and further scrutinized and approved by Judge Garrison Hill in his May 15, 2014 Order based upon his review of the facts, record and testimony.

I find that the Estate of Emma Longstreet's net settlement funds of \$500,500.00 were also allocated by the settling parties and approved by Judge Hill as being evenly divided (50/50) between the wrongful death and survival actions.

I find that significant portions of the individual verdicts, and in some cases all of the verdicts, should be offset at the amounts the individuals actually received in settlement of their individual cause of action.

This Court considered two issues:

- 1) What portion of the verdict amount for each Plaintiff is satisfied or offset by funds previously received from Jillian's, The Big Ugly and Hutto's liability carrier?
- 2) Should the Defendants' be allowed to reallocate the gross proceeds that were attributable to wrongful death and survival action in the previous settlement solely to the wrongful death claim presented at trial for purposes of reducing the verdict?

The Court finds and the parties agree that absent a reallocation of Emma Longstreet settlement funds attributed to the Survival Claim, Defendant would be entitled to reduce the verdict amounts as follows:

Plaintiff	Jillian's/TBU Settlement (\$1,925,000)	Total Setoff Combined	Verdict	Reduced Verdict
Estate of Emma	\$750,750 (39%)	\$520,500	\$3,000,000	\$2,479,500
David	\$288,750 (15%)	\$288,750	\$350,000	\$61,250
Karen	\$288,750 (15%)	\$288,750	\$125,000	\$0
Noah	\$134,750 (7%)	\$137,250	\$100,000	\$0
Levi	\$134,750 (7%)	\$137,250	\$100,000	\$0
Micah	\$134,750 (7%)	\$137,250	\$100,000	\$0
Sinchak	\$192,500 (10%)	\$193,000	\$75,000	\$0
			TOTAL VERDICT AFTER SETOFF	\$2,540,750

As to the second issue, the Court declines Defendants' request to reallocate those funds in a manner that simply maximizes the setoff benefit to the Defendant. The record reflects that Defendants were notified of the settlement approval hearings and received copies of the Order

Defendant did not attend the initial settlement hearings and raised no objections to the allocations of the settlement funds after receiving copies of Judge Hill's May 15, 2014 Order.

There is no dispute that Defendant TLC is entitled to offset \$520,500.00 of settlement funds that were attributable to the wrongful death claim and Emma's verdict of \$3,000,000.00 should be reduced accordingly. Reallocation however, would violate the standards set forth in *Riley* and unjustly reward the Defendants' refusal to settle.

Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do. *Lard*, 327 Ill.Dec. 273, 901 N.E.2d at 1019 (citing *Muro v. Abel Freight Lines, Inc.*, 283 Ill.App.3d 416, 218 Ill.Dec. 691, 669 N.E.2d 1217 (1996)).

Id. Riley v. Ford Motor Co. (emphasis added).

That equitable premise is particularly sound in this case, where significant evidence was presented setting forth the misconduct of the bar and where damages were virtually uncontested. Plaintiff voluntarily withdrew the Survival Action at trial following Defendant's motion to dismiss the same. Plaintiff simply chose not to pursue the Survival Action claim and presented no evidence of conscious pain and suffering, instead focusing solely on the Wrongful Death claim. However, at the settlement approval hearing Plaintiff presented evidence that Emma Longstreet maintained a pulse for at least five (5) hours following the accident. Those medical records and the Coroner's report confirming the time of death are in evidence. The decision to pursue different claims in different hearings is a strategic decision and the right of the Plaintiff.

Defendant TLC was not a party to the settlement hearing and was not represented by counsel.

5-4

4
SCANNED

to settle" and failure to take any issue with the allocation in a timely manner. Moreover, their suggested reallocation of the individual awards in addition to Emma's survival action settlement has no basis in South Carolina law or equity. Accordingly, Defendant's request for equitable reallocation of the third party settlement proceeds is denied.

THEREFORE, The Defendant's Motion for Setoff is GRANTED IN PART AND DENIED IN PART. Setoff is appropriate in the amounts set forth above and the initial verdicts are reduced and shall be entered as a final judgment accordingly:

- 1) Estate of Emma Longstreet verdict is reduced to \$2,479,500.
- 2) David Longstreet verdict is reduced to \$61,250.00
- 3) Karen Longstreet verdict is reduced to \$0.
- 4) Noah Longstreet verdict is reduced to \$0.
- 5) Levi Longstreet verdict is reduced to \$0.
- 6) Micah Longstreet verdict is reduced to \$0.
- 7) Kenneth Sinchak verdict is reduced to \$0.

IT IS SO ORDERED!

DOUGLAS
November 11, 2015
CHURCH, South Carolina

G. T. Cooper, Jr.
The Honorable G. Thomas Cooper, Jr.