

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

Michael G. Nettles, Circuit Judge

FEB 05 2016

SC Court of Appeals

Appellate Court Case No. 2015-002618

Patricia
Doller.....Respondent,

v.

Lohr Plumbing,
Inc.....Appellant.

**APPELLANT LOHR PLUMBING, INC.'S MEMORANDUM ADDRESSING
APPEALABILITY OF THE TRIAL COURT'S ORDER GRANTING A NEW
TRIAL AND DENIAL OF APPELLANT'S MOTION FOR DIRECTED VERDICT**

BACKGROUND

This memorandum is submitted in response to this Court's request for an explanation of whether the trial judge's Order granting the Respondent a new trial pursuant to the thirteenth juror doctrine is appealable. By way of background, this matter proceeded to a jury trial on August 31, 2015 through September 3, 2015. At the conclusion of the trial, the jury returned a verdict in favor of Appellant on a general verdict form (attached as Exhibit A). The Trial Court issued its Order granting the Respondent a new trial on November 30, 2015 (copy attached as Exhibit B), and this appeal followed.

ARGUMENT

Appellant maintains that the subject matter of this appeal—the granting of a new trial pursuant to the thirteenth juror doctrine, as well as the denial of Appellant’s motion for directed verdict—is, in fact, appealable. Both the Trial Court’s denial of Appellant’s Motion for Directed Verdict as well as its granting of a new trial are final judgments upon the merits of the case and, in the case of the order granting a new trial, affects a substantial right of the Appellant.

I. South Carolina Code Section 14-3-330 Specifically Addresses Appellate Jurisdiction

According to South Carolina Code Section 14-3-330 (1) and (2):

“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that, if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action... .”

At the conclusion of the Respondent’s case at trial, both Appellant and Respondent moved for directed verdicts upon their respective cases. Both motions were denied by the Trial Court. Both motions were renewed at the close of all evidence, and were again denied by the Trial Court. “The denial of a directed verdict is not appealable until final judgment.” *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 S.E.2d 856 (further citations omitted). Appellant could not appeal the Trial Court’s denial of Appellant’s

Motion for Directed Verdict until final judgment of the case. Although the jury returned a verdict in favor of the Appellant, the judgment was not final until the Trial Court ruled upon the Respondent's Motion for New Trial, which was ultimately granted. Thus, Appellant's position is that the Trial Court's denial of Appellant's Motion for Directed Verdict falls squarely within S.C. Code Section 14-3-300(1).

Appellant also appeals the Trial Court's granting Respondent a new trial pursuant to the thirteenth juror doctrine after the jury returned a verdict in favor of Appellant at trial. In the case of *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995), the Court found without merit Bailey's argument that the grant of a new trial *nisi additur* was not immediately appealable based upon the clear language of S.C. Code Section 14-3-330(2). Likewise, the Trial Court's granting of a new trial pursuant to the thirteenth juror doctrine in the case at bar is also appealable based upon the clear language of S.C. Code Section 14-3-330(2).

II. Abundant Case Law Demonstrates Orders Granting or Denying Motions for Directed Verdict and Orders Granting or Denying Motions for New Trial Pursuant to the Thirteenth Juror Doctrine Have Been Appealed

Both this Court and the South Carolina Supreme Court have, on multiple occasions, reviewed both the grant and denial of new trials specifically based upon the thirteenth juror doctrine. For example, the order granting a new trial pursuant to the thirteenth juror doctrine was reviewed and overturned in *Youmans v. S.C DOT*, 380 S.C. 263, 670 S.E.2d 1 (Ct.App. 2008) (holding the trial judge's determination that the jury could not have found the plaintiff was without negligence was not supported by the record, and further holding a new trial could not be granted based upon the length of jury deliberations). See also *Watford v. South Carolina State Highway Dep't*, 296 S.C. 130,

236 S.E.2d 558 (1977) (grant of new trial pursuant to thirteenth juror doctrine overturned for lack of evidentiary support, amounting to abuse of discretion), *South Carolina State Highway Dep't v. Terrain*, 267 S.C. 186, 277 S.E.2d 184 (1976) (grant of new trial pursuant to thirteenth juror doctrine overturned due to fundamental legal error). An order granting a new trial pursuant to the thirteenth juror doctrine was upheld in *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 681 S.E.2d 879 (2009) (holding the trial court did not abuse its discretion in granting a new trial pursuant to the thirteenth juror doctrine, as a review of the record suggested evidence supported the trial court's ruling). Each time, the Court of Appeals or Supreme Court reviewed the orders granting new trial pursuant to the thirteenth juror doctrine for errors of law or lack of evidentiary support. See *Youmans*, 380 S.C. 263, 570 S.E.2d 1 (Ct.App. 2008), *Lane*, 383 S.C. 590, 681 S.E.2d 879 (2009), *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 226 S.e.2d 696 (1976), *Folkens v. Hunt*, 300 S.C. 251, 387 S.e.2d 265 (1990). Further, "[a]n appellate court must view the circuit court's statements as a whole to determine its reasoning. An order should be construed within the context of the proceeding in which it is rendered. Judgments are to be construed as other instruments, and the determinative factor is the intention of the court, considering the judgment in its entirety." *Trivelas v. S.C.D.O.T.*, 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct.App. 2004), further citations omitted. Appellant in the case at bar therefore maintains that the order from which it appeals is also subject to review by this Court.

Similarly, decisions denying motions for directed verdicts have also been reviewed by this Court. Generally, grants or denials of motions for directed verdict will not be disturbed unless the decision is wholly unsupported by the evidence or is

controlled by an error of law. See *Howard v. Roberson*, 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007). See also *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 680 S.E.2d 778 (Ct.App. 2009) (trial court's denial of Bank's motion for directed verdict and J.N.O.V. reversed). Appellant in the case at bar, therefore, maintains that it is entitled to appeal the Trial Court's denial of Appellant's Motion for Directed Verdict.

CONCLUSION

Based upon the above and forgoing, the Appellant in this matter respectfully requests this Court to consider the arguments presented and authority cited, and to undertake the review of the Trial Court's denial of Appellant's Motion for Directed Verdict, and the Trial Court's Order Granting New Trial.

Respectfully Submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

Stacey P. Canaday (S.C. Bar No. 68805)

Ralph F. Tupper (S.C. Bar No. 5647)

Attorneys for Appellant Lohr Plumbing, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COPY

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH CIRCUIT

PATRICIA DOLLER,

Plaintiff,

vs.

LOHR PLUMBING, INC.,

Defendant.

C/A No. 2012-CP-07-1439

4139

VERDICT FORM

GENERAL SESSION
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2015 SEP -3 PM 3:33

I. Negligence

(1) Did Plaintiff prove by a preponderance of the evidence that defendant, Lohr Plumbing, Inc., was negligent and the negligence was one of the proximate causes of the alleged injury?

_____ Yes No

(2) If yes, determine actual damages.

\$ _____ Dollars (numerical)

\$ _____ Dollars (cursive)

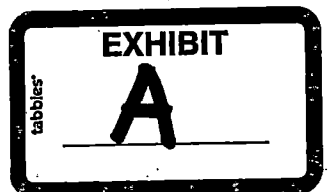
II. Negligent Misrepresentation

(1) Did Plaintiff prove by a preponderance of the evidence that the defendant, Lohr Plumbing, Inc., uttered a negligent misrepresentation and that the negligent misrepresentation was one of the proximate causes of the injury? *NO*

(2) If yes, determine actual damages.

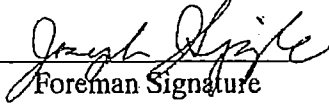
\$ _____ Dollars (numerical)

\$ _____ Dollars (cursive)



The verdict must be unanimous. Please notify Bailiff upon reaching a verdict.

Joseph J. Spingler


Foreman Signature

3 Day of September, 2015

Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-07-1439^{4/29}

PATRICIA DOLLER,)
Plaintiff)

vs.)

LOHR PLUMBING, INC.,)
Defendants.)

2015 NOV 09 PM 3:24
CLERK OF COURT
COURT OF COMMON PLEAS
BEAUFORT COUNTY
SOUTH CAROLINA

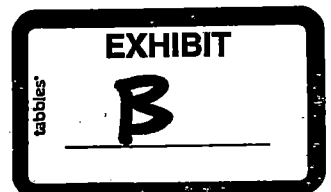
ORDER GRANTING NEW TRIAL ABSOLUTE ON LIABILITY AND DAMAGES

This matter is before the Court upon Plaintiff's Post-Trial Motions filed with the Clerk of Court on September 9, 2015, wherein she seeks relief from the jury verdict in favor of the Defendant rendered on September 3, 2015 and filed of record on September 3, 2015. More specifically, Plaintiff seeks judgment notwithstanding the verdict, a new trial under the Thirteenth Juror Doctrine, or a new trial absolute. The specific grounds for the Motion are set forth in Plaintiffs' Motion filed of record and arguments of her counsel. The Defendant's counsel has also ably stated and argued its position in opposition thereto. After carefully considering all matters of record, together with the applicable law, it is the opinion of this Court that a new trial is warranted under the Thirteenth Juror Doctrine.

Although the Court finds that JNOV may lie, this Court denies that motion and the motion for a new trial absolute because the motion for a new trial under the Thirteenth Juror Doctrine is granted.

The law is clear that a trial court, pursuant to the Thirteenth Juror Doctrine, may grant a new trial absolute when the evidence does not justify the verdict but cannot grant a new trial nisi or new trial absolute when the verdict is merely inadequate or unduly liberal. Neither can the Trial Court grant a new trial when the jury deliberations may appear suspicious, the quality or correctness of the jury verdict is questionable, or when there is concern with what the jury may have based its decision upon (*Scroggins v. McClellion*, 321 S.C. 264, 468 S.E.2d 12 (Ct. App. 1996); *Youmans v. S.C. Dept. of Transportation*, 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2009)). In other words, the trial court must only concern itself with whether the evidence justifies the verdict and cannot second guess the jury's actions or motives for its verdict.

It is also established law that the trial court is not required to set forth the specific reasons for its decision or explain them in any way and its Order granting or denying a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by evidence or the conclusion reached is controlled by an error of law (*Trivelas v. S.C. Dept. of Transportation*, 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2005); *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267



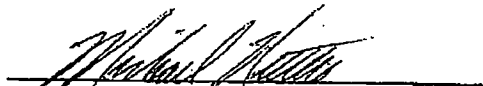
(1990)). This Court recognizes and appreciates this responsibility and that its discretion must be exercised with fairness and impartiality, *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938), and has carefully considered the evidence and the law in reaching its decision. In this case, the evidence does not justify the verdict.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for a New Trial Absolute on Liability and Damages is granted under the Thirteenth Juror Doctrine.
2. Plaintiff's other motions are denied.
3. The case shall be immediately restored to the active trial roster of the Court of Common Pleas for Beaufort County, South Carolina.

AND IT IS SO ORDERED.

11-22- _____, 2015



Michael G. Nettles, Presiding Judge
Court of Common Pleas, Beaufort County,

TUPPER, GRIMSLEY & DEAN, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 2055
611 BAY STREET
BEAUFORT, SOUTH CAROLINA 29901-2055
(843) 524-1116 Telephone
www.tuppergrimsleydean.com

RECEIVED

FEB 05 2016

SC Court of Appeals

RALPH E. TUPPER *
JAMES A. GRIMSLEY, III
ERIN D. DEAN
STACEY PATTERSON CANADAY
KATHERINE GRAHAM FERGUSON

* ALSO ADMITTED IN NEW YORK

February 3, 2016

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Patricia Doller v. Lohr Plumbing, Inc.
Appellate Case No. 2015-002618
Our File No.: 22013

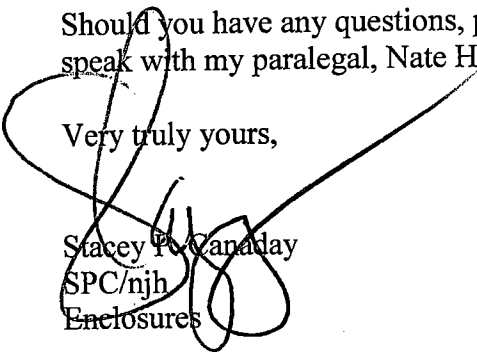
Dear Ms. Kitchings:

Please find enclosed the originals and two (2) copies each of *Appellant Lohr Plumbing Inc.'s Memorandum Addressing Appealability of the Trial Court's Order Granting a New Trial and Denial of Appellant's Motion for Directed Verdict* and *Proof of Service* with regard to the above referenced matter. I would appreciate it if you would file the originals and return the clocked copies to my office in the self-addressed, stamped envelope provided for your convenience.

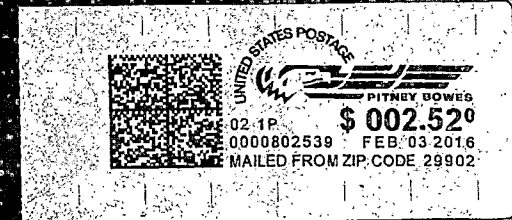
By copy of this correspondence, together with its enclosures, I am hereby serving a copy of the aforementioned pleading on opposing counsel.

Should you have any questions, please feel free to contact me. If I am unavailable, please ask to speak with my paralegal, Nate Head.

Very truly yours,


Stacey P. Canaday
SPC/njh
Enclosures

cc: All Counsel of Record (via U.S. Mail w/encls)
Mr. Joe Stubbs, Auto Owners Insurance Company, Claim No. 72-4827-2011 (via email only)



TUPPER, GRIMSLEY & DEAN, P.A.
POST OFFICE BOX 2055
611 BAY STREET
BEAUFORT, SC 29901-2055

RECEIVED

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211