

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-07-1908

Michael J. Stefonick

Plaintiff,

vs.

Robert M. Deeb, Jr.,

Defendant and Third Party Plaintiff,

vs.

Andrew Patrick,

Third Party Defendant.

ORDER DENYING POST-TRIAL
MOTIONS

2016 OCT 20 AM 11:05
JERRI ANN ROSENHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THIS MATTER IS BEFORE THE COURT on Plaintiff's motions for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, and New Trial Pursuant to the Thirteenth Juror Doctrine. Oral argument was heard on October 12, 2016 in Newberry County. The Court finds as follows:

STATEMENT OF THE CASE

Plaintiff Michael J. Stefonick (Stefonick) alleged that Defendant Robert M. Deeb Jr. (Deeb) negligently disbursed funds held in the McNair Law Firm, P.A. (McNair) escrow account. Third Party Defendant Andrew Patrick (Patrick) entered into a contract to purchase a house and retained Deeb to represent him in connection with that transaction. On or around July 7, 2010, Stefonick, who is Patrick's father-in-law, delivered a check to Patrick in the amount of \$170,000 payable to the "McNair and Associates Escrow Acct." Patrick delivered the check to

McNair for deposit in McNair's escrow account.¹ The "For" line of the check recited that it was "for Andy and Ameer Patrick" Stefonick had no other communication regarding limiting the use of the \$170,000 to only the real estate transaction.

Ultimately, the sale fell through. On October 15, 2010, Patrick instructed Deeb to return the funds to Patrick. Deeb abided by the instructions, and the balance was reimbursed to Patrick. On July 29, 2013 Plaintiff filed suit against Deeb for improper disbursement. The Plaintiff sought damages in the amount of \$170,000.

The case went to a jury trial on August 29, 2016, and on September 1, 2016, the jury found Deeb liable on a negligence theory, awarded damages in the gross amount of \$158,200, and apportioned the comparative negligence as 40% to Plaintiff and 60% to Deeb 60%.² Deeb then filed a Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial.

LAW/ANALYSIS

I. Standard of Review

In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The Court may grant a motion for JNOV only if no reasonable jury could have reached the challenged verdict. Id. at 300, 536 S.E.2d at 419 (citing Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)). The Court will not overturn the jury verdict if any evidence exists that sustains the factual findings implicit in its decision. Id. (citing Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999)).

¹ For reasons explained at trial, McNair was never a party to this case.

² Accordingly, the net award to Plaintiff was \$94,920.

The Court may grant a new trial absolute where the jury verdict was “against the greater weight of the evidence presented at trial.” Creighton v. Coligny Plaza Ltd. P’ship, 334 S.C. 96, 114, 512 S.E.2d 510, 519 (Ct. App. 1998). Under the thirteenth juror doctrine, the Court may grant a new trial if, in the opinion of the Court, the verdict is “unsupported by the evidence” or “inconsistent and reflects the jury’s confusion.” Vinson v. Hartley, 324 S.C. 389, 403-04, 477 S.E.2d 715, 722 (Ct. App. 1996) (citations omitted). The trial judge exercises his discretion to grant a new trial based on his view of the facts, the evidence, the witnesses, the trial circumstances, and the verdict. Id. at 404, 477 S.E.2d at 723 (citing Fallon v. Rucks, 217 S.C. 180, 60 S.E.2d 88 (1950)). However, disturbance of a jury’s verdict is not to be lightly invoked simply because a party has unsuccessfully tried its case. Rhodes v. Winn-Dixie Greenville, Inc., 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967) (“It is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.”).

II. The Question Of Negligence Was Properly Submitted To The Jury.

Defendant argues that JNOV is appropriate on nine grounds.³ The first argument made by the Defendant is that the Plaintiff ratified the disbursement of funds from the McNair escrow account to Andy Patrick, thereby relieving Deeb of any liability. Ratification is the adoption by one person of an act done or bargain made by another under such circumstance that he would not have been bound but for his subsequent assent. First Carolinas Joint Stock Land Bank v. Stuyvesant Ins. Co., 168 S.C. 37, 166 S.E. 883, 886 (1932). The Defendant argued that when Stefonick became aware that the money from the escrow account was refunded to Patrick, Stefonick ratified the conduct of Deeb when (1) Stefonick did not tell Patrick to repay the money

³ Defendant's grounds for his Motion for a New Trial mirror his grounds for JNOV. Therefore, the court will consider the new trial motion and JNOV together. See Marsh v. S.C. Dept. of Highways & Pub. Transp., 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989).

immediately; (2) did not complain to Deeb or anyone at McNair about the disbursement; (3) declined Deeb's immediate offer to prepare a note and communicated to Deeb that he and Patrick had worked it out; (4) continued accepting loan payments on the same terms he had been accepting prior to learning that Patrick had the funds; (5) described the promissory note prepared by Jay Mullinax as not acceptable, but did not tell Mullinax or anyone else that the transaction was not a loan and that Mullinax should not have drafted a note at all; (6) waited almost three years to complain to McNair or Deeb about the disbursement, which was done by commencing this suit; and (7) waited more than one and half years after Patrick stopped making loan payments and until Andy and Plaintiff's daughter Ameer Patrick had separated to file this lawsuit.⁴

The Court declines to accept this argument. The Court cannot ignore the fact that jury was instructed on the defense of ratification as well as comparative fault. By their verdict, the jury, as finders of fact, rejected the defense of ratification. Additionally, by concluding that Deeb was at 60% fault when he refunded the \$170,000 from the McNair escrow account, the jury clearly took into account the relative conduct of the parties both before and after the refund. The issue put to the jury in this case was very narrow: Was Deeb negligent in the manner by which the funds were refunded to Patrick? By their verdict, the jury answered this question in the affirmative. Having made their decision, the jury was asked to apportion negligence, and they concluded Plaintiff was 40% at fault. The Court is extremely reticent to ignore jury's finding of fact and, given the deference properly afforded to the triers of fact, the Court declines to set aside or otherwise alter the verdict rendered. Put simply, the question is not what this judge would have done, but whether any competent evidence exists to support what the jury did. Based upon

⁴ Although these facts are lifted directly from Deeb's motion, the Court agrees that the facts presented at trial comport with these seven factual statements.



a review of the evidence presented at trial, the Court concludes that the verdict is not lacking in evidentiary support or the result of jury confusion.

Similarly, and for the reasons outlined above, the Court declines to set aside or otherwise alter the verdict on the theory of Patrick's apparent authority or intervening/superseding cause. Because Deeb never personally handled the initial check, Patrick could not have appeared to be Plaintiff's apparent agent from Deeb's perspective. Furthermore, the testimony at trial was that Deeb was personally unaware that the funds initially came from Plaintiff. Concerning the argument that Patrick's subsequent failure to repay all the funds to Plaintiff was the superseding case of Plaintiff's injury, the court instructed the jury on the issue of proximate cause, and conflicting expert testimony was presented on this question. The court finds that evidence in the record supports the jury's verdict that the manner by which Deeb refunded the funds could have been one of the direct and concurring causes, but maybe not the sole cause, of Plaintiff's damages.

Finally, the Court has considered Defendant's other arguments and declines Defendant's request for relief on those grounds.

III. The Court Denies the Motion for an Award Prejudgment Interest.

Plaintiff moved for an Award of Prejudgment Interest; the Court denies this motion. "In general, damages are unliquidated where they are uncertain quantity, depending on no fixed standard, referred to wise discretion of a jury, and can never be made certain except by the accord or verdict." Dixie Bell v. Redd, 376, 371, 656 S.E.2d 765, 770 (Ct. App.2007). Plaintiff argues that damages were fixed and therefore liquidated. The Court disagrees. In this matter, the Plaintiff was suing the Defendant on a negligence theory, not on breach of contract. Since negligence claims are not based in contract, but are at the discretion of the jury, they cannot be



liquidated until a verdict is returned. Furthermore, there is no mathematical certainty agreed upon by Plaintiff and Defendant because there was clearly no contract governing this transaction, and Plaintiff even disputed at trial that any such agreement arose between Plaintiff and Patrick.

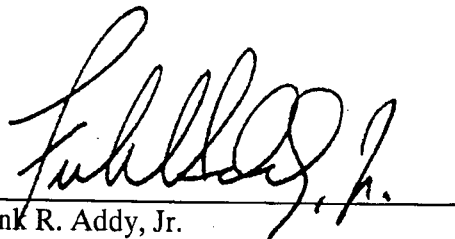
Accordingly, Plaintiff's motion is denied.

CONCLUSION

WHEREFORE, Defendant Robert M. Deeb Jr. motions for JNOV, for a New Trial Absolute, and for New Trial Pursuant to the Thirteenth Juror Doctrine are respectfully **DENIED**.

As a final matter, at trial the Court took the issue of Deeb's third party complaint against Patrick under advisement due to the equitable nature of these claims. The Court remains very familiar with the underlying facts, and unless further argument or briefing is requested by Deeb or Patrick, the Court shall rule upon that aspect of the case by November 1, 2016. Once that order is issued and any post-trial motions concerning it are resolved, this order shall be considered final for purposes of appeal.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

October 19, 2016
Greenwood, South Carolina