

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
HBC, Inc.,)
)
Plaintiff/Counterclaim Defendant,)
)
Scott W. Patterson and Adrienne C.)
Patterson,)
)
Defendants/Counterclaimants.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2015-CP-02-00834

ORDER DENYING PLAINTIFF'S
MOTION FOR NEW TRIAL AND
AWARDING DEFENDANTS
ATTORNEYS' FEES

RECEIVED

PRESIDING JUDGE:
DATE OF TRIAL:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
COURT REPORTER:

FEB 05 2018

SC Court of Appeals

R. SCOTT SPROUSE
DECEMBER 4-7, 2017
WESLEY D. FEW
CLARKE W. MCCANTS, III
STACY JOHNSON

This case involved the remodeling of the Defendants' home by the Plaintiff. The Plaintiff initiated the proceedings by filing a mechanic's lien followed by a subsequent lawsuit. The Defendants answered and counterclaimed, alleging that the Plaintiff did not complete the remodeling in a workmanlike manner, proximately causing damages. The case was tried by jury in Aiken County, December 4, 2017 through December 7, 2017. The jury found that the Plaintiff was entitled to a judgment of \$12,962.58, representing a portion of the monies claimed by the Plaintiff. Likewise, the jury found that the Defendants were entitled to a judgment in the amount of \$37,070.00, representing a portion of the monies claimed by the Defendants. After the trial of this case, the Plaintiff moved for a new trial absolute, or in the alternative, a new trial *nisi additur* pursuant to Rule 59. SCRPC. Additionally, each party has petitioned for an award of attorneys' fees, costs, and expenses pursuant to S.C. Code Ann. § 29-5-10 (2007). This Court now considers the motions from both parties.

I. Plaintiff's Motion for New Trial Absolute, or in the alternative, New Trial *Nisi Additur*

The Plaintiff asserts that the verdict returned by the jury was inadequate and inconsistent with the evidence presented at trial. The first responsibility of this Court when considering such a motion is to determine whether the award is merely unduly liberal or conservative or whether it is one actuated by passion, caprice, or prejudice. *Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (2015) (citing *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530-531, 431 S.E.2d 557, 558 (1993)). Where the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute. *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993). However, when the amount of the verdict is simply the result of an unduly liberal or conservative jury, the trial judge should only grant a new trial *nisi*. *Id.* Unlike the duty to grant a new trial absolute, the granting of a new trial *nisi* is a decision left to the discretion of the trial court. *Riley*, at 192, 777 S.E.2d at 829. In deciding to invade the province of the jury by granting a new trial *nisi*, the trial judge must have a "compelling reason" to justify his actions. *Vinson v. Hartley*, 324 S.C. 389, 406, 477 S.E.2d 715, 723 (Ct. App. 1996) (citing *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995)).

After carefully reviewing the case and materials submitted, the Court finds no reason to disturb the verdict. The parties presented evidence on numerous specific pieces of work done by the Plaintiff in the Defendants' residence. There was sharp disagreement between the parties regarding the quality of the work done by Plaintiff to the Defendants' residence. The jury was the trier of fact in this case and had a wide latitude in determining the facts. The parties put much effort and energy into presenting their respective claims, supporting the same with voluminous exhibits, and the jury deliberated for a significant period of time before reaching a verdict.

Accordingly, the Plaintiff's Motion for New Trial Absolute, or in the alternative, New Trial *Nisi Additur* is denied.

II. Petitions for an Award of Attorneys' Fees, Costs, and Expenses

a. Determination of the Prevailing Party

Each party has petitioned for an award of attorneys' fees, costs, and expenses. A party who prevails in either enforcing or defending an action to foreclose a mechanic's lien may recover the costs of the action, including a reasonable award of attorneys' fees. S.C. Code Ann. § 29-5-10 (2007). The amount awarded to the prevailing party is left to the discretion of the court, provided the amount does not exceed the amount of the lien. *Id.* For purposes of determining the prevailing party, subsection (b) of the statute is instructive. The relevant portion of that subsection states:

For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees.

Thus, in order to determine which party is the "prevailing party" this court must consider not only the verdict returned by the jury but also the offers of settlement made by both parties.

Prior to trial, the Plaintiff filed an Offer of Settlement of \$30,000.00 on May 11, 2015, pursuant to § 29-5-10(b). On November 17, 2017, the Defendants filed an Offer of Settlement in the amount of \$15,000.00 payable by the Plaintiff to the Defendants. These offers must be considered as if placed on a number line, with the Plaintiff's offer being a positive number and the Defendants' counteroffer being a negative number. Whichever party's offer is closer to the verdict when it is added to that line shall be the prevailing party.

In consideration of the Defendants' successful counterclaims, "one verdict" must be read to mean a verdict of \$24,107.42 in favor of the defendants. *Brasington Tile Co., Inc. v. Worley*, 327 S.C. 280, 286, 491 S.E.2d 244, 247 (1997), *abrogated on other grounds by JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 614 S.E.2d 629 (2005). When placed along the number line with the offers of settlement, the verdict must be placed on the negative side with the Defendants' counteroffer. Therefore, this Court finds that the Defendants are the prevailing party and entitled to an award of attorneys' fees, costs, and expenses.

b. Amount of Attorneys' Fees, Costs, and Expenses to be Awarded

The determination of the amount awarded is generally within the discretion of the trial court. *D.A. Davis Const. Co., Inc. v. Palmetto Properties, Inc.*, 281 S.C. 415, 419 315 S.E.2d 370, 372 (1984). This Court is, however, statutorily restricted to awarding an amount no more than the amount of the original lien. S.C. Code Ann. § 29-5-10(a) (2007). Counsel for the Defendants submitted an affidavit for his fees, costs, and expenses totaling \$40,514.64. This amount consists of attorneys' fees in the amount of \$21,906.70 and costs and expenses in the amount of \$18,607.94.

In considering the reasonableness of attorneys' fees, this Court must consider: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). This Court also considers the intentions of the jury in delivering their verdict. The jury returned a verdict for both parties, finding merit in both the Plaintiff's claim and the Defendants' counterclaims. There were numerous items of work in the house for which payment was demanded. Likewise, there were numerous claims of unworkmanlike performance in different rooms of the house. The jury found that the Plaintiff was entitled to payment on some items, but

found that the Plaintiff had not completed other items in workmanlike fashion. In presenting their counterclaims, the Defendants requested the jury award them \$52,770.00. The jury saw it fit to return a verdict for less and awarded an amount equal to 45.68% of their requested verdict.

After a review of the record, counsel's affidavits, and the required factors under *Jackson* and Rule 407, SCACR, this Court finds that the Defendants are entitled to an award in the amount of \$18,507.09 in attorneys' fees, costs, and expenses.

WHEREFORE, this Court finds no reason to disturb the verdict returned by the jury.

WHEREFORE, this Court finds that the Defendants have prevailed in defending against the Plaintiff's cause of action and are entitled to attorneys' fees, costs, and expenses.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for New Trial Absolute, or in the alternative, New Trial *Nisi Additur* is denied.

IT IS FURTHER ORDERED that the Plaintiff shall pay to the Defendants \$18,507.09 in attorneys' fees, costs, and expenses.

R. Scott Sprouse, Judge

Aiken, South Carolina
January __, 2018



Aiken Common Pleas

Case Caption: HBC Inc VS Scott W Patterson

Case Number: 2015CP0200834

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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