

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)

Federal Logistics, Inc.,

Plaintiff,

vs.

DMP Construction, LLC,

Defendant.

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APR 24 2019

SC Court of Appeals

ORDER DENYING DEFENDANT'S
POST-TRIAL MOTION
2017-CP-04-01382

This matter came before the Court on Defendant's post-trial motion to vacate the judgment and/or grant a new trial. Arguments were heard January 31, 2019. On considering the arguments of counsel, I find that Defendant's motion should be denied.

The parties stipulated at trial that the Defendant owed Plaintiff either \$16,421.28 plus interest, or \$54,377.24 plus interest. At the conclusion of Defendant's case, timely motions for directed verdict were made by the parties. The Court granted Plaintiff directed verdict for \$54,377.24 plus interest.

Defendant moved to vacate the judgment, and instead enter a judgment for the lesser sum of \$16,421.28 plus interest, or alternatively to grant a new trial. Defendant argued that the undiscounted amounts billed and sued upon included improper interest. Defendant seems to rely upon e-mails sent to the Defendant which contained admittedly incorrect information about the interest accruing on the account. However, there is no evidence that the undiscounted amounts billed by Plaintiff included any such improper interest, nor that Plaintiff has sued for any such improper interest. At trial, the Court requested Defendant's counsel to explain how the Plaintiff had calculated and included the alleged improper interest into the amounts billed. Defendant has been unable to do so, and it appears that no means of re-calculations or manipulations of the numbers

results in any improper interest being included in the amounts billed. Furthermore, Defendant was admittedly not billed nor sued for any such improper interest.

The Court recognizes that in ruling upon the motion for directed verdict, it does not have authority to decide credibility issues or resolve conflicts in testimony, but in essence must determine whether a verdict for the Defendant would be *reasonably possible* under the facts as liberally construed in its favor. See Harvey v. Strickland, 350 S.C. 303, 566 S.E.2d 529 (2002) (emphasis added). “However, this does not give the Court license to ignore facts unfavorable to that party [Defendant].” Bultman v. Barber, 277 S.C. 5, 281 S.E.2d 791, 792 (1981).

At trial, Marco Petrovic, the owner of the Defendant, admitted that he reviewed and signed the Freight Broker Agreement with the Plaintiff, which clearly set forth that Defendant was to receive discounted rates in exchange for prompt payment. Plaintiff explained that this arrangement allowed it to promptly pay the trucking companies, thereby enabling it to offer to its customers (including the Defendant) the discounted rates. Defendant further admitted that it failed to pay promptly for the transportation services as agreed, and that it knew it would then be billed the undiscounted rates under the terms of the Agreement. Defendant further admitted that under the terms of the Agreement, it would have to pay interest on the undiscounted amounts at the rate of 1.5% per month. Importantly, the Defendant also admitted that it did not dispute with Plaintiff the undiscounted amounts charged in writing as it was required to do under the Agreement. Defendant’s responses to Requests for Admission were published at trial wherein the Defendant admitted that it received the invoices sued upon for the undiscounted amounts. A party is bound by its responses to Requests for Admission. Rule 36, SCRCP. There was no evidence presented of any complaints made to the Plaintiff in writing regarding the amounts claimed due, despite requests

for same made through Plaintiff's Interrogatories and Requests for Production directed to Defendant.

Importantly, there was no testimony or other evidence that the balance of \$54,377.24 sued upon included interest, only speculation by counsel. However, statements or arguments of counsel are not evidence and may not be considered as evidence. See Shinn v. Kreul, 311 S.C. 94, 427 S.E.2d 695 (S.C.App. 1993).

Therefore, I find that viewing the evidence and inferences to be drawn therefrom in the light most favorable to the Defendant, who oppose the directed verdict motion, it would not be reasonably possible for the Defendant to obtain a verdict in its favor (i.e. a verdict that the balance due was only \$16,421.28 plus interest). Defendant seeks to use suppositions and arguments in the place of evidence. The Defendant admitted to signing and reviewing the Agreement between the parties. Defendant admitted being aware under the terms of the Agreement that it would be quoted a discounted rate, but that if it failed to timely pay the discounted rate it would lose the discount and be billed the full amount by the Plaintiff. The Defendant further admitted being aware that interest on the unpaid balance would accrue at 1.5% per month. Defendant also admitted that it received invoices for the undiscounted amounts sued upon, and that it had not disputed any of those invoices in writing as required by the terms of the parties' Agreement. Accordingly, under the terms of the Agreement, the undiscounted amounts billed were conclusively presumed valid (per Paragraph 7 of the Agreement).

Accordingly, IT IS ORDERED that the post-trial motion of the Defendant to vacate the Order for Judgment filed December 13, 2018 and/or to grant a new trial is denied.

IT IS SO ORDERED.

[SIGNATURE PAGE TO FOLLOW]



Anderson Common Pleas

Case Caption: Federal Logistics Inc VS Dmp Construction Llc
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Type: Order/Other

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