

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Palmetto Pointe at Peas Island)
Condominium Property Owners)
Association, Inc. and Jack Love,)
individually, and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

Island Pointe, LLC, Complete Building)
Corporation, Tri-County Roofing, Inc., WC)
Services, Inc., Miracle Siding, LLC and)
Wilson Lucas Sales d/b/a Miracle Siding,)
LLC, Eloy Alonzo Vasquez, JMC)
Construction, Inc., and JMC Construction,)
LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No.: 2015CP1000955

**ORDER DENYING :
PLAINTIFFS' MOTION TO
VACATE DIRECTED VERDICT AND
FOR A NEW TRIAL**

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JULIE J. ARNISTROFF
CLERK OF COURT

FILED

This matter came to be heard before me on June 7, 2019, upon Plaintiffs' Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated (collectively hereinafter "Plaintiffs"), May 17, 2019 Motion to Vacate the Directed Verdict in Favor of JMC Construction, Inc. and JMC Construction, LLC and For a New Trial. Justin Lucey appeared on behalf of Plaintiffs, and James L. Williams appeared on behalf of Defendants JMC Construction, Inc. and JMC Construction, LLC (collectively hereinafter "JMC"). Based upon arguments of counsel and the applicable laws of South Carolina, I hereby deny Plaintiffs' Motion to Vacate the Directed Verdict in Favor of JMC Construction, Inc. and JMC Construction, LLC and For a New Trial.

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FACTS

This construction defect lawsuit stems from the construction of a community of duplex townhomes known as Palmetto Pointe at Peas Island (hereinafter "Palmetto Pointe"). Plaintiffs filed the original Complaint on February 13, 2015, and the case was tried to jury verdict in May of 2019. On May 6, 2019, the parties selected a jury, and began arguing pre-trial motions. The following day the parties finished arguing pre-trial motions, made opening statements, and Plaintiffs began presenting their case in chief.

During their opening statements, Counsel for Plaintiffs identified each Defendant by name to the jury, including JMC, and told the jury what Plaintiffs alleged was the scope of work of each defendant. Plaintiffs' counsel stated that JMC was involved with the siding work at Palmetto Pointe. During JMC's opening statement, JMC's Counsel noted that JMC performed minor repairs at the Palmetto Pointe project. On May 9, 2019, Plaintiffs rested their case in chief without ever mentioning or discussing JMC during the trial itself. Plaintiffs' counsel did not mention JMC by name, did not elicit any witness testimony that mentioned or discussed JMC, and did not enter any documents or other evidence into the record that identified or discussed JMC. Neither JMC's Counsel nor any other defendant's counsel mentioned JMC or entered any evidence into the record regarding JMC. No witness ever identified or discussed JMC during Plaintiffs' case.

The first time JMC was identified or discussed after opening statements was after Plaintiffs' rested their case when JMC's counsel moved for directed verdict. On May 9, 2019, after hearing arguments from counsel for JMC and counsel for Plaintiffs, the trial judge granted JMC directed verdict finding that Plaintiffs' failed carry their burden of presenting any evidence that could allow a jury to find in favor of Plaintiffs against JMC. The jury subsequently handed down its jury verdict against the remaining defendants on May 16, 2019. On May 17, 2019, Plaintiffs

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filed their Motion to Vacate the Directed Verdict in Favor of JMC Construction, Inc. and JMC Construction, LLC and For a New Trial. On June 7, 2019, the Court held a hearing and heard arguments from Plaintiffs' Counsel and JMC's Counsel regarding this motion. I find that the original grant of directed verdict was correct and, therefore, deny Plaintiffs' motion to vacate that decision.

LAW

"A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." Rule 59(a), SCRCP. "The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." SCRCP 59(e). "A party may wish to file [a 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court, to reconsider, or rule on it." Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 775, 780 (2004).

ANALYSIS

Plaintiffs made the same arguments in support of this motion to vacate that they made in opposition to JMC's Motion for Directed Verdict at the close of Plaintiffs' case at trial. Specifically, Plaintiffs argued that JMC's opening statements should be considered admissions by JMC, and further, that these alleged "admissions" taken along with Plaintiffs' expert witness

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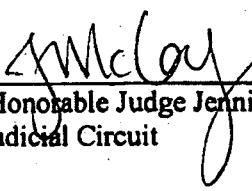
testimony that did not specifically mention JMC should be sufficient for a jury in this case to find in favor of Plaintiffs and against JMC. This court had already fully considered these arguments and ruled upon them in favor of JMC and against Plaintiffs. The opening statements did not constitute an "admission" in this case. Simply, there was no evidence presented at trial against JMC.

Further, the Court was not persuaded by case law or other alleged authority newly cited and argued by Plaintiffs in support of this motion to vacate. The South Carolina case law cited by Plaintiffs in support of this motion is distinguishable from the facts and circumstances of this matter, and the non-controlling authority and other authority cited by Plaintiffs did not persuade the Court. Again, Plaintiffs did not present any evidence, issues, or facts that warrant the Court's altering, amending, reconsidering, or vacating its grant of Directed Verdict in Favor of JMC. Thus, Plaintiffs' Motion is denied.

CONCLUSION

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiffs' Motion to Vacate the Directed Verdict in Favor of JMC Construction, Inc. and JMC Construction, LLC and For a New Trial is DENIED. The grant of directed verdict in favor of JMC Construction, Inc. and JMC Construction, LLC is affirmed.

AND IT IS SO ORDERED.


The Honorable Judge Jennifer McCoy
9th Judicial Circuit

August 5, 2019
Charleston, South Carolina

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