

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Shannon P. Green and Darrell Russell,)
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 Plaintiffs,)
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 vs.)
)
 Edward C. McGee and David Hudgins,)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2017-CP-42-03523

Order Regarding Plaintiffs' Motion for
 a New Trial and Defendant David Hudgins'
 Motion for Judgment Notwithstanding the
 Verdict and, in the alternative, Motion for
 Setoff

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SC Court of Appeals

Hearing Date: December 20th, 2019, at 9:30 a.m.
 Hearing Judge: Grace Gilchrist Knie
 Counsel for Plaintiffs: Douglas A. Churdar
 Counsel for Defendants: James A. Bradshaw & Michael T. Coulter
 Court Reporter: Michael R. Watts

This matter was before the Court on Friday, December 20th, 2019, at 9:30 a.m., in Spartanburg County, SC, the Seventh Judicial Circuit. Attorney Douglas A. Churdar was present representing the interests of the Plaintiffs. Attorney James A. Bradshaw was present representing the interests of Defendant, David Hudgins. Attorney Michael T. Coulter was present representing the interests of Edward C. McGee and Progressive Direct Insurance Company. Michael R. Watts was the Court Reporter.

Procedural History:

This matter was before the Court pursuant to the parties' post-trial motions subsequent to a jury trial in which a verdict was received on October 16th, 2019. Specifically, before the Court are the following motions, all timely filed with the Court on October 25th, 2019: Plaintiffs' Rule 59, SCRCP, Motion for a New Trial Nisi Additur, or in the alternative, New Trial Absolute; Defendant Hudgins' Rule 50(b), SCRCP, Motion for judgment notwithstanding the verdict

("JNOV"), and, in the alternative, a Motion for a Setoff of the verdict against, pursuant to S.C. Code Ann § 15-38-50 of the proceeds received by Plaintiff.

Factual History:

This action was tried before a jury in Spartanburg County on October 14-16, 2019.

Following the conclusion of the testimony, argument, and charge, the jury found the Defendants were negligent, and were the proximate cause of the subject motor vehicle accident. The jury found that Defendant McGee was 60% at fault and Defendant Hudgins was 40% at fault. The jury returned a verdict for the Plaintiff Shannon P. Green in amount of Eighty Eight Thousand, Five Hundred Forty-Six and 78/100's Dollars (\$88,546.78) in actual damages and a punitive damages verdict against each defendant for Thirty Five Thousand Dollars (\$35,000.00). The jury found that neither Defendants' negligence proximately caused Loss of Consortium to Plaintiff Darrell Russell.

Prior to suit being filed, Plaintiff Shannon P. Green received the full policy limits of One Hundred Thousand Dollars (\$100,000.00) under Mr. McGee's liability policy from Nationwide and executed a Covenant Not to Enforce Judgment against Mr. McGee for that amount. Her husband, Darrell Russell, also executed a separate Covenant Not to Enforce Judgment against Mr. McGee for a settlement of Two Thousand, Five Hundred Dollars (\$2,500.00).

Law:

Under South Carolina law, "there can be only one satisfaction for an injury or wrong."

Truesdale v. South Carolina Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975).

Section 15-38-50 of the South Carolina Code states in full as follows:

"When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Thus, under this statute, “[a] non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action.” *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015). “Allowing this credit prevents an injured person from obtaining a double recovery for the damage he sustained.” *Rutland v. S.C.D.O.T.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012). “[T]he court must review the documents to determine the amount of the settlement and its terms. Under section 15-38-50, the court must determine if the release or covenant was ‘given in good faith.’” *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 438, 813 S.E.2d 288, 292 (Ct. App. 2017). This settlement credit is “statutorily mandated,” and “Section 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors.” *Ellis by Ellis v. Oliver*, 335 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999).

Conclusion:

The Court acknowledges and appreciates the amount of research and preparation for the hearing by all counsel, as well as, the professionalism of all counsel in their presentations to the Court. After consideration of the record, arguments of counsel, memoranda of counsel, and the applicable law, the Court finds that:

Defendant David Hudgins’ Motion for a Setoff of the verdict against him pursuant to S.C. Code Ann § 15-38-50 of the proceeds received by Plaintiff Shannon P. Green should be and is therefore granted as to both Defendants in the amount of One Hundred Thousand Dollars and no/100 (\$100,000.00); and

That the remaining amount of the verdict to be paid to Plaintiff Shannon P. Green of Fifty-Eight Thousand, Five Hundred Forty-Six and 78/100's Dollars (\$58,546.78) shall be shared by the Defendants on a pro-rata basis according to the fault assigned to the Defendants by the Jury Verdict; and Defendant McGee shall be responsible for 60% of the remaining amount owed to Plaintiff Green and Defendant Hudgins shall be responsible for 40% of the remaining amount owed to Plaintiff Green;

Further, the Plaintiffs' Rule 59, SCRPC, Motion for a New Trial Nisi Additur, should be and is therefore denied; and,

Further, the Court finds that Plaintiffs' Motion for a New Trial Absolute, made in the alternative, should be and is therefore denied; and,

Further, the Court finds that Defendant David Hudgins' Rule 50(b), SCRPC, Motion for judgment notwithstanding the verdict ("JNOV") should be and is therefore denied; and

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

January 5th, 2020
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Shannon P Green , plaintiff, et al VS Edward C Mcgee , defendant, et al
Case Number: 2017CP4203523
Type: Order/JNOV

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760