

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
Elisa Montgomery Edwards and )  
Emily Cecile Edwards, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
David C. Bryan, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Civil Action No: 2018-CP-32-00927



This action arose out of claims of fraud and negligent misrepresentation brought by Elisa Montgomery Edwards and Emily Cecile Edwards (“Plaintiffs”) against David C. Bryan (“Defendant”). A jury trial was held on the claims in this matter on October 20, 2020. The same day, the jury reached a verdict for Plaintiff and awarded \$500,000.00 in actual damages and \$100,000.00 in punitive damages.

On October 30, 2020, Defendant filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, a Motion for a New Trial *Nisi Remittitur* (collectively as the “Motion”). Plaintiff filed a Memorandum In Opposition to Defendants’ Motion on November 2, 2020. After a review of this Motion, the court denies Defendant’s Motion.

**STANDARDS FOR GRANTING A NEW TRIAL**

**A. Judgment Notwithstanding the Verdict and/or Granting a New Trial:**

It is within the discretion of the trial judge to grant or deny a motion for a new trial, and their decision will not be disturbed on appeal unless their findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Howard v. Roberson, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007). A motion for judgment notwithstanding the

verdict under Rule 50(b), SCRCP is simply a renewal of a motion for directed verdict. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006).

When a party makes a motion for directed verdict, he or she “must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law.” Rule 50(a), SCRCP; RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). It follows that “[o]nly the grounds raised in the directed verdict motion may properly be reasserted” in a motion for judgment notwithstanding the verdict. RFT Mgmt. Co., at 331, 732 S.E.2d at 170-71 (citing In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001)). In deciding motions for judgment notwithstanding the verdict, the trial court does not have the authority to decide “credibility issues or to resolve conflicts in the testimony or the evidence.” RFT Mgmt. Co., 346 S.C. at 332, 732 S.E.2d at 171.

**B. Granting a New Trial Absolute or New Trial *Nisi Remittitur* due to Excessive Verdict:**

Discretion in granting or denying a motion for a new trial rests with the trial judge, and his or her decision “will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard, 376 S.C. at 149, 654 S.E.2d at 880. “A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993)). Granting a new trial absolute is appropriate only if the amount of the verdict is “grossly inadequate” or so excessive “as to shock the conscience”; it must clearly indicate that the figure reached was the result of “passion, caprice, prejudice, partiality, corruption[,] or some other improper motives.” Vinson, 324 S.C. at 404, 477 S.E.2d at 723.

In contrast, a motion for new trial *nisi remittitur* is a request to reduce an excessive verdict. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). “A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 345–46, 450 S.E.2d 66, 74 (Ct. App. 1994). “The grant or denial of this motion is within the trial court’s discretion and its decision will not be reversed on appeal absent an abuse of discretion.” Id. at 346, 450 S.E.2d at 74.

### **ANALYSIS**

Defendant argues that, based upon the evidence and testimony presented at trial, judgment notwithstanding the verdict or a new trial *nisi remittitur* or new trial absolute is warranted due to the inadequate and insufficient verdict returned by the jury. This Court disagrees.

After careful consideration of the record in this case and the submissions of Defendant, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In addition, this Court does not find the reasons cited by Defendant compelling enough to invade the province of the jury by granting *remittitur* or new trial absolute. This Court notes that as fact finder, the jury weighed the evidence at trial based upon their own judgment. Accordingly, Plaintiff’s motion for a new trial *nisi remittitur* or in the alternative motion for new trial absolute based upon the thirteenth juror doctrine is denied.

**THEREFORE**, based upon the foregoing, **IT IS HEREBY ORDERED** that Plaintiff’s Motion is **DENIED**.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

**Case Caption:** Elisa Montgomery Edwards , plaintiff, et al VS David Cuttino Bryan  
III  
**Case Number:** 2018CP3200927  
**Type:** Order/JNOV

It Is So Ordered

s/ Walton J. McLeod