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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

SC Court of Appeals

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Richard W. and Rebecca A. Dreier; et al.,

Case No.: 2018-CP-07-00911

Plaintiffs,

**ORDER ON PLAINTIFFS JESSICA  
AND SARMED SHAFI'S MOTION  
FOR HEARING AND ADDITIONAL  
FINDINGS TO ESTABLISH  
AMOUNT OF SETOFF, AND FOR  
OTHER RELIEF**

v.

Advanced Flooring & Design Division of ISI,  
LLC f/k/a Advanced Flooring and Design, LLC;  
et al.,

Defendants.

This matter is before the Court on Plaintiffs Jessica and Sarmed Shafi's ("Shafi") Motion for Hearing and Additional Findings to Establish Amount of Setoff, and for Other Relief, filed December 10<sup>th</sup>, 2021. Having considered the parties' filings and the oral arguments presented at a hearing, conducted on January 7<sup>th</sup>, 2022, Shafi's motion is GRANTED and the judgment in favor of Shafi against Defendant D.R. Horton, Inc. ("DRH") shall be reduced by \$937.50. The basis for the findings and decision are as follows:

**I. Relevant Procedural History and Evidence at Trial**

In this construction defect case, the claims of 27 Plaintiffs (the "Dreier Plaintiffs")—representing fifteen (15) households in the Tidewater Creek neighborhood in Beaufort County, South Carolina—were asserted against DRH and various of its subcontractors (the "Dreier Lawsuit"). Due to Covid considerations, at a status conference on May 12<sup>th</sup>, 2021, the Court ordered that Plaintiffs' counsel select one of the fifteen households to try as a "test case." Plaintiffs' counsel selected the home located at 4892 Breeze Way (Lot 18), owned by Shafi (the "Shafi Property"), to be the subject of trial.

A jury trial was held the week of November 15<sup>th</sup>, 2021, on Shafi's claims against DRH and three of its subcontractors—Lather Construction, Inc. (“Lather”), Hutton's Landscapes, LLC (“Hutton”), and East Coast Construction Cleanup Corporation (“East Coast”) (hereinafter collectively, the “Horizontal Subcontractors”)—related to issues with the horizontal construction of the Shafi Property (the “Shafi Trial”).<sup>1</sup> At trial, Shafi presented evidence and testimony documenting damage to the Shafi Property resulting from the presence of trash, broken glass, shingle debris, rusted sheet metal, and other solid waste found in the Shafi yard from the date the Shafi's purchased the property through the date of trial. Shafi presented expert testimony and a cost estimate from Roger Odum of U.S. Waste, indicating it would cost between \$137,725.00 and \$150,225.00 to repair the issues with the Shafi yard. (Pl. Ex. 52; Pl. Ex. 69.) Jessica Shafi testified that the value of the Shafi's loss of use of their yard over the six years they owned the property was \$10,000. Lastly, both Sarmed and Jessica Shafi testified that they did not receive the benefit of their bargain under their contract with DRH.

During the trial, Lather, Hutton, and East Coast settled all 27 *Dreier* Plaintiffs' claims (the “Horizontal Subcontractor Settlements”), leaving DRH the sole defendant at the time of the Shafi verdict. The jury considered Shafi's claims for breach of contract, negligence/gross negligence, and violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”) against DRH. The jury returned a verdict for Shafi's breach of contract and negligence claims and awarded \$140,000 in actual damages “to the Plaintiffs Shafi for harm to their property as a result of the defendant's violation of any of the causes of action” (the “Shafi Verdict”). (See November 22<sup>nd</sup>, 2021, Form 4 Order.)

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<sup>1</sup> Prior to the Shafi Trial, all *Dreier* Plaintiffs—including Shafi—settled claims related to issues with vertical construction with the various Vertical Construction Subcontractor Defendants. No vertical construction issues were presented in the Shafi Trial and DRH's motion for setoff and memoranda in support sought setoff only of the amount paid by the Horizontal Subcontractors. (See DRH's Mem. Supp. Mot. For Set Off 4.)

Prior to and after the Shafi Verdict, DRH moved for setoff. Prior to addressing the motion on the merits, the Court granted the parties 10 days to file post-trial motions and to brief the issue of setoff. In the interim, the Court entered a judgment in favor of Plaintiffs Sarmed and Jessica Shafi against DRH, in the amount of \$140,000 via Form 4 Order. (See November 22<sup>nd</sup>, 2021, Form 4 Order.)<sup>2</sup> DRH filed its Memorandum in Support of its motion for setoff on November 29<sup>th</sup>, 2021. The Court entered the Form 4 Order granting DRH's motion on December 3<sup>rd</sup>, 2021, but the order did not specify the amount by which the judgment against DRH was to be reduced. On December 10<sup>th</sup>, 2021, Shafi filed the subject motion requesting a hearing to establish the amount of any setoff to which DRH was entitled for reduction of the Shafi Verdict. The motion was heard on January 7<sup>th</sup>, 2022, and the parties submitted supplemental briefs on January 17<sup>th</sup> and 27<sup>th</sup>, 2022.

## II. Ruling on Plaintiffs' Motion to Establish Amount of Setoff

DRH is entitled to setoff in the amount of Shafi's settlements with other defendants in this case pursuant to S.C. Code Ann. § 15-38-50 and South Carolina common law. S.C. Code Ann. § 15-38-50 provides that, "[w]hen a release ... 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 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 the greater...." S.C. Code Ann. § 15-38-50.

A settlement by a joint tortfeasor "reduces the claim against the others to the extent of any amount stipulated by the release or the covenant." Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury.

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<sup>2</sup> The Court's post-trial Form 4 Orders, filed on November 22<sup>nd</sup> and December 3<sup>rd</sup>, 2022, both indicate they end the entirety of the *Dreier* Lawsuit rather than just resolve the Shafi claims. The Court agrees with the Plaintiffs that this was likely a scrivener's error and will instruct the clerk to restore the case to the trial roster for prosecution of the remaining 14 households' claims against DRH.

*Smith v. Widener*, 397 S.C. 468, 471-72, 724 S.E.2d 188, 190 (Ct. App. 2012) (quoting S.C. Code Ann. § 15-38-50(1) (2005)) (emphasis added).

In determining the portion of settlement funds received from the Horizontal Subcontractors that were paid to compensate Shafi as opposed to the other *Dreier* Plaintiffs, the Court accepts Shafi's representation that the funds were to be allocated equally among the 15 households in the *Dreier* Lawsuit. Specifically, the Shafi portion of the Horizontal Subcontractor Settlements was as follows: \$937.50 from East Coast; \$33,333.33 from Lather; and \$16,666.67 from Hutton. In accordance with *Smith*, only the amounts paid to compensate Shafi—as opposed to the other *Dreier* Plaintiffs—should be considered when determining the setoff amount.

The trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties. A set-off is not necessarily founded upon any statute or fixed rule of court, but grows out of the inherent equitable jurisdiction of the court. Therefore, such motions are addressed to the discretion of the court—a discretion which should not be arbitrarily or capriciously exercised.

*Welch v. Epstein*, 342 S.C. 279, 313, 536 S.E.2d 408, 425-26 (S.C. App. 2000) (citations omitted).

A nonsettling defendant is entitled to credit for the amount paid by another defendant who settles. The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him. In other words, there can be only one satisfaction for an injury or wrong. However, the reduction in the judgment must be from a settlement for the same cause of action.

*Oaks At Rivers Edge Prop. Owners Ass'n, Inc. v. Daniel Island Riverside Developers, LLC*, 420 S.C. 424, 436, 803 S.E.2d 475, 481 (Ct. App. 2017) (quoting *Welch*, 342 at 312-13, 536 S.E.2d at 425) (emphasis added); *see also Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012) (“A non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action.”) “Thus, where a settlement involves more than one claim, the allocation of settlement proceeds between various causes of action impacts the

amount a non[ ]settling defendant may be entitled to offset.” *Oaks*, 420 S.C. at 438, 803 S.E.2d at 482 (quoting *Riley v. Ford Motor Co.*, 414 S.C. 185, 196, 777 S.E.2d 824, 830 (2015)).

The claims tried to verdict in the Shafi Trial were breach of contract, negligence/gross negligence, and violation of the SCUTPA. In accordance with *Welch* and *Rutland*, only the amounts received by Shafi in settlement for their breach of contract, negligence/gross negligence, and violation of the SCUTPA claims should be considered in determining the setoff amount.

In determining the allocation of the Horizontal Subcontractor Settlements among the various causes of action, the Court accepts Shafi’s representation that, “[t]he terms of the settlement agreements with Lather and Hutton allocate the total recoveries thereunder to all *Dreier* Plaintiffs’ breach of the implied warranty of workmanlike service cause of action and to Plaintiffs’ claims for loss of use thereunder.” (Shafi Mem. Supp. Mot. to Establish Amount of Setoff 6.) The settlement agreement with East Coast does not allocate the settlement to a specific cause of action, but rather allocates the entire recovery to all 15 Residences claims for loss of use. (*Id.*) As laid out above, Shafi’s portion of the Lather and Hutton settlements amounts to \$50,000 total, while their portion of the East Coast settlement amounts to \$937.50.

The Court finds that the allocation of the settlement funds received by Shafi is reasonable. The South Carolina Supreme Court in *Riley* agreed with the Illinois Court of Appeals’ approach to apportionment in settlement agreements:

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff’s ability to apportion the settlement proceeds in the manner most advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

*Id.*, 414 S.C. at 197, 777 S.E.2d at 831 (quoting *Lard v. AM/FM Ohio, Inc.*, 387 Ill.App.3d 915, 327 Ill.Dec. 273, 901 N.E.2d 1006, 1019 (2009)). Here, the Plaintiffs apportioned their settlement proceeds in the manner most advantageous to them in their settlement agreements with Lather and Hutton: to the breach of implied warranty of workmanlike service cause of action. The fact that this allocation reduces the amount to which DRH is entitled in setoff is the consequence of DRH's refusal to settle with the Plaintiffs.

As set forth above, DRH is entitled to a setoff in the amount of Shafis' portion of the Horizontal Subcontractor Settlements allocated to breach of contract, negligence/gross negligence, and violation of the SCUTPA. Only Shafi's portion of the East Coast settlement—\$937.50—is for the same causes of action as the Shafi Verdict. As such, DRH is entitled to a setoff in the amount of \$937.50.

Applying the setoff of \$937.50, it is ORDERED that the total judgment of \$139,062.50 is awarded to Shafi against DRH.

**IT IS SO ORDERED.**

[SIGNATURE PAGE TO FOLLOW]



Beaufort Common Pleas

**Case Caption:** Richard W Dreier , plaintiff, et al VS Atlas Surveying Inc , defendant,  
et al  
**Case Number:** 2018CP0700911  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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