

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT ON COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO 2003-CP-10-4448

Jackie Cusack

Joseph Tucker and Tucker Architectural Associates
Inc

Plaintiff

versus

Defendant

FILED
2006 MAY -9 P. 1:33 55
JULIE J. ANTONIO
CLERK OF COURT

CHECK ONE

JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

DECISION BY COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK ONE) Rule 12(b), SCRPC, Rule 41(a), SCRPC (Voluntary nonsuit),
 Rule 43(k), SCRPC (Settled), Other _____

ACTION STRICKEN (CHECK ONE) Rule 40(j), SCRPC Bankruptcy, Other- _____

IT IS ORDERED AND ADJUDGED See attached order Statement of Judgment by Court,

As to the cause of negligence, finding is for the Plaintiff against the Defendant in the amount of seventy-five thousand dollars (\$75 000 00) actual damages

As to the cause of action of negligence, finding is for the Plaintiff against the Defendant in the amount of zero (0) dollars punitive damages

As to the cause of action of implied warranty finding is for the Plaintiff against the Defendant in the amount of one hundred fifty thousand dollars (\$150 000 00) actual damages

As to the cause of action of breach of contract, finding is for the Plaintiff against the Defendant in the amount of one hundred seventy three thousand sixty one dollars (\$173 061 00) actual damages

*Causes of Action as to Negligence and Breach, Implied Warranty
subject to set off, therefore, finding as to these two causes
of action is for the Plaintiff in the amount of zero (0) dollars.
As to cause of action for breach of contract it is not subject to set off,
finding is for the Plaintiff against the Defendant in the amount
of \$173,061.00 dollars.*

Dated at Charleston South Carolina ^{May 5} April 21, 2006

Jim Mc Math 2/14/5

Judge Signature Judge Code

This judgment was entered on the ____ Day of _____ 200____, and a copy mailed first class this ____ Day of _____ 200____, to attorneys of record or to parties (when appearing pro se) as follows

Justin Lucey
Attorney(s) for Plaintiff(s)

Michael Etheridge
Attorney(s) for Defendant(s)

Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE No 2003-CP-10-4448

JACKIE D CUSACK)
)
Plaintiff,)

v)

VERDICT FORM

JOHN BURTON COMPANY AND)
JOHN M BURTON, JOSEPH)
TUCKER AND TUCKER)
ARCHITECTURAL ASSOCIATES,)
INC)
Defendant)

VERDICT

NEGLIGENCE

X

(1) As to the cause of action of negligence, we, the Jury, unanimously find for the Plaintiff in the amount of \$75,000.00 dollars **actual** damages

_____ (2) As to the cause of action of negligence we, the Jury, unanimously find for the Plaintiff in the amount of -0- dollars **punitive** damages

_____ (3) As to the cause of action of negligence, we, the Jury, unanimously find for the Defendant

BREACH OF IMPLIED WARRANTY

X

(1) As to the cause of action of implied warranty, we, the Jury, unanimously find for the Plaintiff in the amount of \$150,000.00 dollars **actual** damages

_____ (2) As to the cause of action of implied warranty, we, the Jury, unanimously find for the Defendant

BREACH OF CONTRACT

(1) As to the cause of action of breach of contract, we, the Jury,
unanimously find for the Plaintiff in the amount of
\$173,061⁰⁰ dollars **actual** damages

(2) As to the cause of action of breach of contract, we, the Jury,
unanimously find for the Defendant

Stop your deliberations


Foreperson

April 21, 2006
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Jackie Cusack)
)
 Plaintiffs)
)
 vs)
)
 Joseph Tucker and Tucker Architectural)
 Associates Inc ,)
 Defendants)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE
 NINTH JUDICIAL CIRCUIT
 Case number 03 CP-10-4448

ORDER

2006 MAY -9 PH 3 55
 JULIE J ARMSTRONG
 CLERK OF COURT

FILED

This matter comes before the Court pursuant to a jury verdict in this Court of Common Pleas Charleston County awarding Plaintiff a judgment for damages in the amount of \$398 061 00 against Defendant By the agreement of counsel for both parties the matter of setoff was submitted for consideration by this Court through arguments and briefs After consideration of oral arguments and briefs advanced review of legal authority and other mediation settlement documents, this Court holds the jury verdict award is subject to setoff

Factual and Procedural History

Jackie D Cusack (Plaintiff) hired The Burton Construction Company (Burton) to serve as general contractor for the construction of her home in the Wild Dunes Resort on the Isle of Palm, SC Wild Dunes required architectural plans for review and approval by their Architectural Review Board in order to build The Plaintiff hired Defendant Tucker Architectural Associates Inc (Defendant”), to produce the architectural design plans Burton used the design plans and completed building of the residential home Thereafter the Plaintiff began to experience structural issues and excess moisture problems throughout her home

The Plaintiff brought suit to this Court in October of 2003 against Burton alleging damage to her house as the result of improper construction as well as a personal injury claim based on alleged mold exposure. Subsequently Burton filed a Third Party Complaint against numerous subcontractors and related entities. The Plaintiff filed an Amended Complaint naming Joseph Tucker and Tucker Architectural Associates Inc (Tucker) in February 2005 alleging Burton and Tucker are joint and severally liable for the damages to her house as a result of defective workmanship and construction based on sub standard architectural designs.

At the second mediation of this case, the Plaintiff reached a settlement with Burton in the amount of \$650,000 in exchange for a general release of all claims against Jack Burton and the Burton Company.

A jury trial of this matter was held before this Court during the week of April 17, 2006 through April 21, 2006. Testimony, exhibits, and arguments were presented before Court. The Jury returned a verdict on behalf of the Plaintiff for Negligence in the amount of \$75,000.00, Breach of an Implied Warranty in the amount of \$150,000.00, and Breach of Contract in the amount of \$173,061.

Law and Analysis

In his brief before this Court Plaintiff argues that Defendant Tucker was not a party to the Mediation Agreement. Plaintiff further argues that since Burton and Tucker were performing under separate contracts the Collateral Source Rule operates to not render payments by third parties to an injured plaintiff to be used to reduce the amount of damages owed by a defendant.

In support of his argument Plaintiff cited several South Carolina cases, including *Young v Warr* 252 S C 179, 165 S E 2d 797 (1969) *Atkinson v Orkin Exterminating Co Inc*, 604 S E 2d 385, 361 S C 156 (2004), *W B Easton Construction Co Inc*, 320 S C 90 463 S E 2d 317 (1995), and *Marlin v Wetzel County Bd Of Educ* 569 S E 2d 462 212 W Va 215 (2002) Plaintiff argues that the Collateral Source Rule operates to prevent a defendant from benefiting from payments or services given by others for the plaintiff's use *Young*, 252 S C 179 "A wrongdoer is not entitled to have the damages for which the wrongdoer is liable reduced by proving that the plaintiff has received or will receive compensation or indemnity for the loss from a collateral source that is wholly independent of the wrongdoer *Atkinson* at 393 Plaintiff further reasons that Tucker and Associates had duties distinguishable from the Burton Company under the terms of their separate contracts and thus the collateral source rule applies

Plaintiff additionally argues that the Burton settlement funds were paid over for a different cause of action that was for an overrun of construction costs that was not pursued against Tucker, therefore Tucker cannot claim an offset of damages for an amount of funds from Burton for the overrun cause of action Finally Plaintiff argues that the Burton contract provided for payment of attorney fees to the prevailing party contrasting with the Tucker contract which did not provide for the basis of attorney fees

However the Defendant Tucker and Associates Inc cited South Carolina Code § 15-38-50 and South Carolina case law to support their argument Section 15-38-50 provides ' [w]hen 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[,] 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 the greater S C Code Ann § 15 38 50 (Supp 2004) (emphasis added) In order for independent parties to qualify as tortfeasors for purposes of setoff under § 15-38-50, their separate acts must have caused a single injury A single injury, which is the proximate result of the separate and independent acts of negligence of two or more parties subjects the tortfeasors to a liability which is both joint and several is a proposition recognized and approved in this state and supported by the great weight of authority elsewhere *Pendleton v Columbia Ry Gas and Electric Co et al* 133 S C 326, 328 131 S E 265, 267 (1926) The Defendant further argued that South Carolina courts have allowed setoff where barring the same would permit a double recovery by the Plaintiff The Defendant cited *Welch v Epstein*, 342 S C 279 536 S E 2d 408 (Ct App 2000), where the Court held that a non-settling defendant is entitled to credit for the amount paid by another defendant who settles” in order 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 *Welch*, 342 S C at 312 536 S E 2d at 425

In this action, the record contains ample evidence to support the conclusion that the verdict rendered by the Jury on April 21 2006 with regards to Negligence and Breach of an Implied Warrant is subject to setoff There is evidence throughout the pleadings that indicate that Plaintiff held Mr Burton and Tucker and Associates Inc , as joint and several tortfeasors Throughout the Plaintiff’s complaint Burton Construction Company

Inc , and Tucker and Associates Inc , are plead as joint and several tortfeasors Further, the Collateral Source Rule is not applicable to our current set of facts because the current action involved the use of alleged inadequate architectural plans that were used to construct a residential home Due to alleged inadequate architectural design, the residential home was allegedly improperly constructed that resulted in property damage and personal injury due to mold exposure The builder relied on the architectural plans for construction But for the reliance on the inadequate design plans there would be no structural defects that ultimately caused water damage that festered into mold growth throughout the home Simply stated two negligent acts, one by Burton for failure to construct and properly oversee the construction and one by Tucker for failing to produce adequate architectural designs resulted in a single injury to the Plaintiff In the Amended Complaint and throughout discovery the Plaintiff and various experts contended that the design documents and drawings prepared by Tucker were insufficient for use by the general contractor and thus contributed to the defects that occurred during the construction of the house Additionally, once Defendant Burton began the construction of the Plaintiff's house, Tucker and Associates Inc failed to detect and/or rectify the alleged construction defects present during the construction phase of the home The two defendants duties were not wholly dependant from each other and the damages awarded to the Plaintiff for the Negligence cause of action and Breach of an Implied Warranty both arrived from the same factual scenario Thus, as to the cause of action for Negligence and Breach of an Implied Warranty this Court holds that both causes of action damages arise from one negligent factual scenario and is subject to setoff

The Breach of Contract cause of action is distinguishable The Plaintiff entered

into two (2) separate contracts One contract with Burton Construction Inc , and another with Tucker The Plaintiff entered into a contract with Tucker to provide adequate design plans for the construction of her home The Plaintiff thereafter entered into a wholly separate contract with Burton Construction Inc , for the company to properly construct her residential home even though the construction was based on Tucker s designs The two contracts were separate and distinct in that both involved separate meeting of the minds” with different intentions supported by separate consideration The jury verdict award for actual damages in the amount of \$173, 061 00 for the breach of contract is subject to the collateral source rule and shall not be offset by Plaintiff’s mediated settlement agreement between the Burton Construction Company in the amount of \$650,000 00

Conclusion

Therefore, based upon the foregoing and following, the April 21, 2006, Verdict for the Plaintiff for Negligence (\$75 000 00) and Breach of Implied Warranty (\$150 000 00) is subject to setoff based on the negotiated settlement in the amount of \$650,000 00 However, the Verdict for the Plaintiff for Breach of Contract (\$173 061 00) is not subject to setoff and judgment shall be entered for the Plaintiff against the Defendant in the amount of \$173,061 00

And it is so ordered

Charleston, South Carolina
5 May 06



The Honorable R. Knox McMahon

Presiding Judge

Charleston, South Carolina

April _____, 2006