IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KURATLE CONTRACTING, INC., a Delaware Corporation	)	
Plaintiff,	)	
v.	)	**C.A. No. N12C-03-079 MJB**
LINDEN GREEN CONDOMINIUM, ASSOCIATION, a Delaware Corporation	)	
Defendant.	)	

Submitted: January 8, 2014
Decided: March 27, 2014

Upon Plaintiff Kuratle's Motion for Additur or New Trial, **DENIED.**

OPINION

Thomas C. Marconi, Esq., Losco & Marconi, P.A., *Attorney for Plaintiff*

Michael F. Duggan, Esq., and Marc Spotsato, Esq., Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., *Attorneys for Defendant*

BRADY, J.

I. INTRODUCTION

On December 12, 2013, Kurtale Contracting, Inc. ("Kuratle") filed a timely Motion for *Additur* or New Trial pursuant to Superior Court Civil Rule 59. Kuratle urges the Court to increase the jury award by exercising its *additur* authority or, in the alternative, grant a new trial. Linden Green Condominium Association's ("Linden Green") filed a response in opposition on December 23, 2013, and Kuratle filed a reply to Linden Green's opposition on January 8, 2014. Upon consideration of the evidence presented at trial, a review of Kuratle's motion, Linden Green response, and Kuratle's reply, Kuratle's motion is **DENIED**.

II. BACKGROUND

Kuratle is engaged in the business of, *inter alia*, general contracting and managing, as well as maintaining, real property for condominium complexes. Linden Green manages the business and affairs of the Linden Green Condominiums, which are located in Wilmington, Delaware. In November of 2002, Kuratle and Linden Green entered into a written agreement ("2002 Agreement"), in which Linden Green employed Kuratle "to manage the maintenance, operations, landscaping, snow removal and finances of [Linden Green]."[1] In October 2007, the parties entered into a second contract ("2007 Agreement") and in September 2010, the parties entered into a third contract ("2010 Agreement"). Both the 2007 and 2010 Agreements were very similar to the 2002 Agreement; however, the 2010 Agreement increased the price paid to Kuratle and, notably, no longer required Kuratle—or any subcontractors it hired—to maintain insurance coverage.

Approximately one year after the 2010 Agreement was executed, Linden Green sent a letter to Kuratle, dated December 12, 2011, contending that Linden Green had submitted the 2010 Agreement to an attorney who advised that the agreement was "invalid and unenforceable."[2] Linden

[1] Pl.'s First Mot. for Part. Summ. J. Tab 1, Ex. A (Sept. 17, 2013).
[2] Pl.'s First Mot. for Part. Summ. J. at 4-5 (Sept. 17, 2013) (quoting Pl.'s Tab 1, Exhibit E).

Green's letter further advised Kuratle that Linden Green was continuing to operate under the 2007 Agreement, and that the attorney also found "some problems" with the 2007 Agreement that prompted the Council to propose an "Addendum."[3] Linden Green requested Kuratle to "sign the Addendum and keep a copy for [its] records."[4] They further advised Kuratle that its failure to sign the Addendum would be considered a default, which could result in Linden Green terminating the 2007 Agreement.

In response to the December 12, 2011 letter from Linden Green, former counsel for Kuratle wrote a letter, dated December 23, 2011, to Linden Green, stating he had reviewed the 2010 Agreement and concluded it was valid and enforceable and advised that Linden Green's proposed Addendum was not acceptable to Kuratle.[5] "Kuratle expects to fully comply with its obligations under the 2010 contract . . . and it fully expects Linden Green to do so [as well]."[6] Linden Green thereafter, by letter dated January 16, 2012, declared Kuratle to be in default of the 2007 Agreement for failing to execute the Addendum within thirty days and advised Kuratle it was terminating their business relationship.

Kuratle filed suit against Linden Green on March 7, 2012, asserting Linden Green breached the 2010 and 2007 Agreements[7] by unilaterally terminating the parties' business relationship prematurely. Linden Green filed an answer, affirmative defenses, and a counterclaim to Kuratle's Complaint on April 13, 2012.[8]

Both parties filed cross motions for summary judgment, which the Court heard within a month of trial. The Court issued a written decision on November 19, 2013, based on the summary

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[3] *Id.*
[4] *Id.*
[5] Pl.'s First Mot. for Part. Summ. J. at 5 (citing Pl.'s Tab 1, Exhibit G).
[6] *Id.*
[7] Although Kuratle asserted that Linden Green breached the valid and enforceable 2010 Agreement, Kuratle asserted in the alternative that, in the event the Court found the 2010 Agreement to be invalid, Linden Green breached the 2007 Agreement.
[8] Linden Green withdrew its counterclaim prior to trial.

judgment motions, and concluded (1) the 2010 Agreement was valid and (2) Linden Green breached the 2010 Agreement when it unilaterally terminated the parties' business relationship in January 2012. The Court's November 19 decision did not, however, decide the duration of the 2010 Agreement, an important issue disputed by the parties. Therefore, the only issues for the jury to decide at trial were (1) the duration of the 2010 Agreement and (2) the damages, if any, to which Kuratle was entitled as a result of Linden Green's breach.

Trial commenced on December 1, 2013 and lasted two and one-half days. The jury heard testimony from Kuratle's expert, David J. Ford, CPA, who stated that, in his opinion, the lost profits suffered by Kuratle between the date of the breach, *i.e.*, January 16, 2012, and December 31, 2017—reduced to net present value, including pre-judgment interest calculated to December 2, 2013—totaled, $518,079. During cross-examination by Linden Green, Mr. Ford explained that he excluded certain expenses from his damages calculation because he did not find the expenses were directly related to the 2010 Agreement. Further, upon questioning by Linden Green, Mr. Ford conceded that he was unaware that Linden Green had a full-time employee who performed maintenance services and, therefore, he failed to include the employee's wages when performing his damages calculation.

In addition to Mr. Ford's testimony, the jury also heard testimony from the owners of Kuratle, Henry and DruAnne Kuratle, who testified that they each worked approximately twenty hours per week. However, on cross examination both DruAnne and Henry were presented with their previous sworn testimony, in which they stated they worked between thirty and forty hours per week. Finally, the jury heard testimony that Henry was diagnosed with cancer, is now considered totally disabled, and as a result would potentially need to hire, and therefore pay, an additional employee to perform the work that he no was longer able to complete.

After approximately two hours of deliberation, the jury returned a verdict finding that (1) the term of the 2010 Agreement was January 1, 2011 through December 31, 2017, representing a seven-year term, and (2) Kuratle sustained $165,000 in lost profits as a result of Linden Green breaching the 2010 Agreement. Kuratle filed a timely Motion for *Additur* or New Trial pursuant to Superior Court Civil Rule 59 on December 12, 2013.

Kuratle contends "[a] verdict of $165,000.00 on an essentially unchallenged expert lost profits calculation of $518,070.00 is so grossly out of proportion to the damages sustained by [Kuratle] so as to shock the Court's conscience and sense of justice," thereby warranting *additur* or, in the alternative, a new trial. Kuratle contends the verdict in this case must "have been based on passion, prejudice or perhaps sympathy directed toward Linden Green." Linden Green responded in opposition on December 23, 2013, and Kuratle filed a reply to Linden Green's opposition on January 08, 2014.[9]

III. DISCUSSION

"Under Delaware law, enormous deference is given to jury verdicts. In the face of any reasonable difference of opinion, courts will yield to the jury's decision."[10] "A jury verdict is presumed to be correct and just, but when it is clear that the award is so grossly out of proportion to

[9]In opposition, Linden Green contends the jury's verdict awarding $165,000 should not shock the Court's conscience, contending the jury heard testimony from Mr. Ford regarding how he excluded numerous expenses from his calculation and failed to consider that Kuratle had an additional full-time employee. Linden Green also emphasizes how Henry and DruAnne Kuratle provided contradictory testimony regarding the number of hours they worked per week. Further, Linden Green contends the jury likely took into account that Kuratle would need to hire someone to perform responsibilities that Henry no longer was able to perform, as a result of him suffering from cancer and being totally disabled. Finally, Linden Green proposes, hypothetically, different ways by which the jury could have reasonably awarded $165,000. As stated above, Kuratle filed a reply in response to Linden Green's opposition. Through its reply, Kuratle takes issue with the examples raised by Linden Green. For the reasons discussed below, putting aside any hypothetical posed by Linden Green, the Court cannot conclude that the jury's verdict of $165,000 shocks the Court's conscience.

[10] *Young v. Frase*, 702 A.2d 1234, 1236 (Del.1997); *see also Storey v. Camper,* 401 A.2d 458, 465 (Del.1979) ("... a trial judge is only permitted to set aside a jury verdict when in his judgment it is at least against the great weight of the evidence. In other words, barring exceptional circumstances, a trial judge should not set aside a jury verdict on such ground unless, on a review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.").

the injuries suffered as to shock the Court's conscience and sense of justice, it will be set aside."[11] The Delaware Supreme Court concisely stated the circumstance in which a trial court may set aside a jury verdict in *Young v. Frase:*

> A jury award will meet this standard when it is so inadequate that it must have been based on passion, prejudice or misconduct rather than on an objective consideration of the trial evidence. Therefore, as a practical test, a court presented with a request for additur must review the record and determine whether the jury's award of damages is within the range supported by the evidence. As long as there is a sufficient evidentiary basis for the amount of the award, the jury's verdict should not be disturbed by a grant of additur or a new trial as to damages.[12]

This is the standard by which this Court analyzes Kuratle's Motion for *Additur* or New Trial.

Turning to the case *sub judice*, the Court cannot conclude the jury's verdict of $165,000 is against the great weight of the evidence or so grossly out of proportion to the harm suffered by Kuratle as to shock the Court's conscience or sense of justice. Kuratle, itself, acknowledges that Mr. Ford's prospective damages calculation was challenged by Linden Green on cross examination.[13] Mr. Ford excluded certain expenses from his calculation. Linden Green challenged Mr. Ford's basis for such exclusion, and contended that all expenses incurred by Kuratle were directly related to the 2010 Agreement. Additionally, Mr. Ford conceded that, when reaching his damages calculation, he was unaware that Kuratle had an additional full-time employee. Reasonably, the jury could have determined that the damages calculated by Mr. Ford were overstated.

The jury also heard inconsistent testimony from Henry and DruAnne Kuratle regarding the number of hours they worked per week. Initially, prior to trial, Henry and DruAnne testified they worked, respectively, thirty to forty hours per week; however, both testified at trial that they worked approximately twenty hours a week each. The jury could reasonably have concluded that the

[11] *Mills v. Telenczak*, 345 A.2d 424, 426 (Del.1975).
[12] *Young v. Frase*, 345 A.2d at 1237.
[13] Pl.'s Mot. at 3.

inconsistent figures provided regarding the number of hours the Kuratles work would undermine Mr. Ford's prospective damages calculation.

The jury was also presented with testimony that Henry Kuratle was diagnosed with cancer and disabled. It was claimed Kuratle would need to hire someone to perform the work Henry was no longer able to perform. Mr. Ford's damages calculation did not take into account hiring someone to perform Henry's workload.

It is well-established in Delaware that a jury "is free to accept or reject in whole or in part testimony offered before it, and to fix the verdict upon the testimony it accepts."[14] The Court cannot conclude, given the challenge to Mr. Ford's damages calculation—which was prospective in nature—that the case *sub judice* is one of the "unusual circumstances"[15] where the jury's verdict should be disturbed.

IV. CONCLUSION

For the reasons stated above, the Court concludes that an award of $165,000 is not against the great weight of the evidence or so grossly out of proportion to the harm suffered by Kuratle as to shock the Court's conscience or sense of justice. Accordingly, Kuratle's Motion for *Additur* or New Trial is **DENIED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

[14] *Debernard v. Reed*, 277 A.2d 684, 688 (Del. 1971).
[15] *Young*, 702 A.2d at 1237.