

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 14th day of April, 2016.

KJG231, LLC, Appellant,

against Record No. 150508
Circuit Court No. CL13001888-00

HALCO, LLC, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Hanover County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment of the Circuit Court of Hanover County (“trial court”) setting aside the jury verdicts should be reversed and the jury verdicts reinstated in part and dismissed in part.

I. BACKGROUND

KJG231, LLC (“KJG231”) entered into a Real Estate Purchase Agreement (“Agreement”) to purchase property from HALCO, LLC (“HALCO”), a real estate development company. Gregory W. Haley (“Haley”) was the sole managing member of HALCO and Haley signed the Agreement on behalf of HALCO. The Agreement provided that prior to closing, HALCO was required to gravel and pave the property’s parking lot and driveway in accordance with a specified site plan, which was incorporated into the Agreement. HALCO contracted with Haley Builders, Inc. (“Haley Builders”), also managed by Haley, to perform the paving. Thereafter, a pre-closing agreement between HALCO and KJG231 permitted HALCO to defer its paving obligations until after closing. HALCO did not perform the paving in accordance with the Agreement.

KJG231 filed a complaint against Haley, HALCO and Haley Builders (collectively “the defendants”) in the trial court asserting claims of breach of contract, fraudulent inducement, requesting a piercing of the corporate veil, and seeking compensatory and punitive damages. During a six-day jury trial, KJG231 introduced evidence that at the time HALCO and KJG231

entered into the Agreement, neither HALCO nor Haley intended to honor HALCO's paving obligations. This included evidence that when KJG231 confronted Haley about paving in accordance with the Agreement, Haley: (1) asserted paving was governed by a previously unmentioned agreement between HALCO, KJG231, and Evans (the previous property owner); (2) threatened KJG231 with claims unrelated to paving under the Haley Builders construction contract; and (3) misrepresented HALCO as having no money and going out of business to coerce KJG231 into accepting deficient paving. KJG231 also presented evidence showing that it paid another party to pave the property in the manner described in the Agreement.

During jury deliberations, the jury submitted the following question to the trial court: "May we award punitive damages if we find a party guilty of breach of contract but not fraud?" The trial court responded to the question by stating: "The answer to the question is simply that I'm going to refer you back to the instructions that I have already given you. I have instructed you on the law. You have the facts, the evidence in front of you, and you are to base your decision on the instructions as given."

Relevant to this appeal, the jury declined to pierce the corporate veil, but awarded \$110,000 in compensatory damages against Haley for fraudulent inducement and awarded KJG231 \$220,000 in punitive damages.¹ However, the jury did not identify the party against whom punitive damages were awarded. The verdict form did not give the jury the option of awarding punitive damages against Haley individually. The verdict form, as completed by the jury, provided:

Punitive Damages -- KJG231, LLC v. HALCO, LLC and Gregory W. Haley

_____ We, the jury on the issues joined as to KJG231, LLC's claims for punitive damages hereby award the Plaintiff KJG231, LLC punitive damages in the amount of \$220,000 and against:

_____ HALCO, LLC and Gregory W. Haley

Or

_____ against HALCO, LLC, only.

¹KJG231 prevailed on its breach of contract claims against HALCO and Haley Builders but those judgments have not been appealed.

Or

_____ We, the jury, find in favor of the defendants on the issue of punitive damages.

After the jury was discharged without inquiry, the defendants moved to set aside the verdict. Specifically, Haley moved to set aside the \$110,000 award in favor of KJG231 on its claim for fraudulent inducement against Haley on the basis that it was inconsistent with (1) the finding in favor of HALCO on KJG231's fraudulent inducement claim and (2) the jury's refusal to pierce the corporate veil and hold Haley personally liable for the actions of HALCO and Haley Builders. The defendants also sought to set aside the award of punitive damages on the basis that the jury failed to complete the verdict form and identify the party against whom it awarded punitive damages.

After a hearing, the trial court set aside the \$110,000 award in favor of KJG231 on its fraudulent inducement claim against Haley and the award of \$220,000 in punitive damages. The trial court found "[t]he jury's verdicts in favor of [HALCO] on [KJG231's] fraudulent inducement claim, in favor of [KJG231] on its fraudulent inducement claim against [Haley], and its verdict in favor of [Haley] on [KJG231's] claim seeking to pierce the corporate veil and hold Mr. Haley personally liable for the verdicts rendered against [HALCO and Haley Builders] are inconsistent and irreconcilable." In setting aside the punitive damages award, the trial court found that the jury "failed to identify against whom the [punitive damages] award was made" and that "[t]he [c]ourt does not know what the jury intended." The trial court entered judgment for the defendants on those claims. This appeal followed.

II. ANALYSIS

A. Standard of Review

"A trial court may set aside a jury verdict and enter final judgment only when the verdict is plainly wrong or without credible evidence to support it." Fobbs v. Webb Bldg. Ltd. P'ship, 232 Va. 227, 229, 349 S.E.2d 355, 357 (1986). On appeal of a trial court's order setting aside a jury verdict, "the verdict is not entitled to the same weight as one approved by the court." Id. at 230, 349 S.E.2d at 357. "Nevertheless, we must give the party who received the favorable verdict 'the benefit of all substantial conflict in the evidence, and all fair inferences that may be drawn therefrom.'" Id. (quoting Walton v. Walton, 168 Va. 418, 423, 191 S.E. 768, 770 (1937)).

“[I]f any credible evidence supports the verdict, we must reinstate the verdict and enter judgment thereon.” Id. “Verdicts are to be favorably construed, and, if the point in issue is substantially decided by the verdict, it is good, and when the meaning of the jury can be satisfactorily collected from the verdict, upon the matters involved in the issue, it ought not to be set aside for irregularity or want of form in its wording.” Cape Charles Flying Serv., Inc. v. Nottingham, 187 Va. 444, 454, 47 S.E.2d 540, 545 (1948) (quotations and citation omitted).

B. Fraudulent Inducement Compensatory Damages

The jury was instructed as to the issues in the case in Instruction 11 which, in part, stated:

Your verdict must be based on the facts as you find them and on the law contained in these instructions.

The issues in this case are:

- (1) Did HALCO, LLC breach its contract with KJG231, LLC?
- (2) Did HALCO, LLC fraudulently induce KJG231, LLC to enter the contract?
- (3) Did Gregory W. Haley fraudulently induce KJG231, LLC to enter the contract with HALCO?
- (4) Did Gregory W. Haley control or use HALCO, LLC and/or Haley Builders, Inc. to perpetuate a fraud, commit an injustice, or to gain an unfair advantage over KJG231, LLC?

* * * * *

(6) If KJG231, LLC is entitled to recover under Count 1 -- Breach of Contract against HALCO, LLC, Count 2 -- Fraud in the Inducement against HALCO, LLC, Count 3 -- Fraud in the Inducement against Gregory W. Haley, or Count 4 -- Breach of Contract against Haley Builders, Inc. what is the amount of KJG231, LLC's compensatory damages for each of those claims?

(7) Whether KJG231, LLC is entitled to an award of punitive damages against HALCO, LLC, and/or Gregory W. Haley?

(8) If KJG231, LLC is entitled to recover punitive damages against HALCO, LLC and/or Gregory W. Haley, what is the proper amount of punitive damages it should recover?

Further, the jury was instructed that it could find Haley or HALCO guilty of fraudulent inducement. Instruction 18 stated:

You shall find your verdict for KJG231, LLC against HALCO, LLC and/or Gregory W. Haley for Fraud in the Inducement if KJG231, LLC proved by clear and convincing evidence:

1. That HALCO, LLC or Gregory W. Haley misrepresented a material fact; and
2. That the material misrepresentation was made intentionally and knowingly; and
3. That it was made with the intent that KJG231, LLC rely upon it; and
4. That KJG231, LLC relied upon it; and
5. That KJG231, LLC was damaged as a result.

(Emphasis added). Haley did not object to these instructions nor did he ask the trial court to set aside the jury verdict on the basis of erroneous jury instructions. “[I]nstructions given without objection become the law of the case and thereby bind the parties in the trial court and this Court on review.” Wintergreen Partners, Inc. v. McGuireWoods, LLP, 280 Va. 374, 379, 698 S.E.2d 913, 916 (2010) (quoting Owens-Illinois, Inc. v. Thomas Baker Real Estate, Ltd., 237 Va. 649, 652, 379 S.E.2d 344, 346 (1989)). Based on these instructions, the jury, therefore, could find Haley liable for fraudulent inducement as an individual without piercing the corporate veil.

Because these instructions are the law of the case, Haley’s arguments that the verdicts are inconsistent because the jury did not pierce the corporate veil are misplaced. The trial court erred in setting aside the jury’s verdict finding Haley liable for fraudulent inducement and awarding KJG231 \$110,000 in compensatory damages. Accordingly, the Court will reverse the judgment of the trial court and reinstate that jury verdict.

C. Punitive Damages

“A punitive damages award is generally left to the jury’s discretion because there is no set standard for determining the amount of punitive damages.” Coalson v. Canchola, 287 Va. 242, 249, 754 S.E.2d 525, 528 (2014). Further, punitive damages are not permitted for breach of contract. See Dunn Constr. Co. v. Cloney, 278 Va. 260, 266, 682 S.E.2d 943, 946 (2009) (quotation marks and citation omitted) (“As a general rule, damages for breach of contracts are limited to the pecuniary loss sustained.”).

With regard to punitive damages, the following instruction was given in addition to Instruction 11. Instruction 31 provided:

If you find that KJG231, LLC is entitled to be compensated for its damages, and if you further believe by the greater weight of the evidence that Gregory W. Haley, HALCO, LLC and/or Haley Builders, Inc. acted with actual malice toward KJG231, LLC or acted under circumstances amounting to a willful and wanton disregard of the KJG231, LLC’s rights, then you may also award punitive damages to the KJG231, LLC to punish Gregory W. Haley, HALCO, LLC and/or Haley Builders, Inc. for their actions and to serve as an example to prevent others from acting in a similar way.

If you award punitive damages, you must state separately in your verdict the amount you allow as compensatory damages and the amount you allow as punitive damages.

The jury returned a punitive damages verdict in the amount of \$220,000, but did not indicate which defendant against whom the verdict was assessed. After rendering the verdict, the jury was released without any attempt to clarify its punitive damage award.

KJG231 argues that from the evidence presented, the jury only found Haley liable for fraudulent inducement, thus it seems that the jury meant to find Haley liable for the \$220,000 in punitive damages for fraudulent inducement. It cannot be discerned from the given jury instructions against whom the jury intended to award punitive damages. The punitive damages jury instruction itself tied the award to circumstances amounting to “willful and wanton” conduct, terminology normally associated with a tort and not breach of contract. Dunn Constr. Co., 278 Va. at 266, 682 S.E.2d at 946. However, the jury was not instructed regarding that association. Moreover, the instruction authorized punitive damages against Haley, HALCO,

and/or Haley Builders. Based on the jury instructions, the failure to select one of the existing options on the verdict form, coupled with a failure to limit the award of punitive damages to the fraud count to the exclusion of the contract count, the punitive damages award could as easily have indicated the jury's desire to impose punitive damages against Haley Builders that was found liable on the contract claim as against Haley, who was found individually liable on the fraudulent inducement claim. Neither was listed individually on the punitive damages verdict form.

Under the facts of this case, the proper relief would have been for the trial court to set aside the verdict and declare a mistrial.

The power of the trial court to amend a verdict as to a matter of form, before the discharge of the jury trying the case, is unquestioned. The power of a trial court to amend the verdict of a jury, after the trial has terminated, as to a matter of substance, has never been sanctioned by the appellate court. In 27 R.C.L., section 62, we read: "The court has no power to supply substantial omissions and the amendments in all cases must be such as to make the verdict conform to the real intent of the jury. The judge cannot, under the guise of amending a verdict, invade the province of the jury and substitute his verdict for theirs."

Atkinson v. Neblett, 144 Va. 220, 236-37, 132 S.E. 326, 331 (1926) (citation omitted). See Melton v. Commonwealth, 132 Va. 703, 712, 111 S.E. 291, 294 (1922) ("When the court announces [the jury's] discharge and they leave the presence of the court, their functions as jurors have ended, and neither with nor without the consent of the court can they amend or alter their verdict. The sanctity of jury trials cannot be thus subjected to the hazard of suspicion."); Porterfield v. Commonwealth, 91 Va. 801, 807, 22 S.E. 352, 354 (1895) ("The proper practice . . . is for the trial court to see that the verdicts of the juries are put in proper form before they are discharged, but if any change in the substance of the verdict is to be made, the jury should be sent back to their room, where they can, untrammelled by the presence or influence of others, find such verdict as they deem proper.").

"The power of the trial court over a verdict, after discharging the jury, is threefold: (a) [t]o set aside the verdict and award a new trial; (b) to enter judgment *non obstante veredicto*; (c) to set aside the verdict and enter such judgment as to the court shall seem right and proper, under

the provisions of section 6251 of the Code.”² Atkinson, 144 Va. at 237, 132 S.E. at 331.

Here, as noted above, the jury instructions became ““the law of the case and thereby bind the parties in the trial court and this Court on review.”” Wintergreen Partners, Inc., 280 Va. at 379, 698 S.E.2d at 916 (quoting Owens-Illinois, Inc., 237 Va. at 652, 379 S.E.2d at 346).

Because the jury instructions were inaccurate and incomplete, the trial court should have set aside the jury verdict and declared a mistrial.³ However, on appeal, the only relief requested was to enter judgment for KJG231 against Haley on punitive damages. Because the only relief requested on appeal is inappropriate, we will affirm the judgment of the trial court, dismiss the matter as to punitive damages, and enter final judgment.

In conclusion, the Court will reinstate the jury’s award of \$110,000 compensatory damages against Haley. The Court will affirm the trial court’s judgment setting aside the jury’s \$220,000 award in punitive damages and dismiss the matter. This judgment shall be final.

² Section 6251 of the Code of Virginia (1919) is now Code § 8.01-430, the first paragraph of which reads as it did in 1919:

When the verdict of a jury in a civil action is set aside by a trial court upon the ground that it is contrary to the evidence, or without evidence to support it, a new trial shall not be granted if there is sufficient evidence before the court to enable it to decide the case upon its merits, but such final judgment shall be entered as to the court shall seem right and proper. If necessary to assess damages which have not been assessed, the court may empanel a jury at its bar to make such assessment, and then enter such final judgment.

Nothing in this section contained shall be construed to give to trial courts any greater power over verdicts than they now have under existing rules of procedure, nor to impair the right to move for a new trial on the ground of after-discovered evidence.

³ The jury instructions did not clarify that punitive damages cannot be awarded in breach of contract cases. The verdict form did not accurately reflect against whom punitive damages could be awarded based on the other jury instructions. The jury failed to completely fill out the verdict form and was dismissed prior to either party noticing the incomplete verdict form. See Atkinson v. Neblett, 144 Va. at 237, 132 S.E. at 331 (quoting 27 R.C.L., section 62) (“The judge cannot, under the guise of amending a verdict, invade the province of the jury and substitute his verdict for theirs.”).

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamigto

Clerk