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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-305

No. COA21-470

Filed 3 May 2022

Carteret County, No. 18-CVS-721

HENRY WAYNE DAVIS, LANA DAVIS, and CAPTAIN HENRY'S GIFT SHOP,
Plaintiffs,

v.

SMARTOP, INC., and DEWEY WAYNE WILLIS, Defendants.

Appeal by Defendants from an order entered 29 January 2021 by Judge Paul Quinn in Carteret County Superior Court. Heard in the Court of Appeals 8 February 2022.

Joseph B. Dupree, II, and Stephanie A. Murad for Plaintiffs-Appellees.

Wheatley Law Group, P.A., by Stevenson L. Weeks, for Defendants-Appellants.

INMAN, Judge.

¶ 1

Defendants-Appellants Dewey Willis (“Mr. Willis”) and Smartop, Inc. (together with Mr. Willis as “Defendants”) appeal from an order denying their motion for a new trial following a jury verdict and judgment entered in favor of Plaintiffs-Appellees Henry Wayne Davis and Lana Davis (“the Davises”). Specifically, Defendants contend that the trial court erred in declining to order a new trial based on an

inconsistent verdict. After careful review, we reverse the trial court's order and remand for a new trial as to damages only.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Mr. Willis is the sole owner and president of Smartop, Inc., a self-storage facility in Carteret County. The Davises rented two storage units at Defendants' self-storage facility, storing household items in one unit and Christmas decorations in the other. The Christmas decorations were used to decorate their home and a gift shop they operated together.

¶ 3 The Davises made timely rent payments for both units. Mr. Willis mistakenly marked the Davises' storage unit containing the Christmas decorations as delinquent, leading him to sell its contents at a public yard sale without notice to the Davises. Mrs. Davis, by happenstance, drove by the storage facility on the day of the yard sale while running errands and decided to stop and look through the items being sold. She recognized several items and realized her property was being liquidated.

¶ 4 Mrs. Davis immediately called her husband to come to the facility. After waiting some time for the gate to be unlocked, the Davises, assisted by their son-in-law, attempted to gather their remaining belongings that were scattered and picked through among the yard sale offerings. A week later, Mr. Willis sent an email to the Davises admitting that their possessions were sold by mistake.

¶ 5

The Davises filed suit against Defendants for the unlawful sale of their property, asserting, among other claims, negligence, conversion, breach of contract, and unfair and deceptive trade practices (“UDTP”). Defendants failed to file an answer to the complaint, and the Davises secured an entry of default. After Defendants retained counsel, the entry of default was set aside by the consent of the parties and Defendants filed an answer admitting that they had mistakenly sold the Davises’ personal property. Other material allegations were denied.

¶ 6

At trial, Mrs. Davis testified at length to the nature and value of the items sold, including: over ten Christmas trees; a cedar tree; crab-pot trees; over 25 Santa statutes of varying sizes, many given to her by her daughter over the course of 25 years; several hand-carved Santa heads made and gifted by a family friend; ornaments; decorative lights; wreaths; icicles; holiday glassware; decorative lamps; holiday pictures; throw pillows; rugs; small tables; pocketbooks; and a suitcase. Mrs. Davis purchased some of these items while travelling, while she received others as gifts from family, friends, and her third-grade students from years prior. Mrs. Davis also testified that 12 irreplaceable decorative doves used in a number of family funerals were sold. She testified to the actual and replacement values for many of these items, which totaled in excess of \$21,000.

¶ 7

Mr. Willis testified in his defense, telling the jury that Defendants never notified the Davises because their account was not delinquent. He further testified

that he authorized the sale in question. His testimony also revealed that Defendants did not keep any records of the actual proceeds of the unlawful sale, making it nearly impossible for the Davises to track down their mistakenly-sold items.

¶ 8

At the conclusion of the Davises' evidence, Defendants secured dismissal of all claims except negligence, conversion, breach of contract, and UDTP. At the conclusion of all evidence, Defendants moved for a directed verdict and dismissal of the UDTP claim, both of which were denied.

¶ 9

After the charge conference, the trial court gave the same substantive instruction concerning the measure of damages for each cause of action. Specifically, the trial court instructed the jury that the Davises' damages for every claim was either the fair market value of the property unlawfully sold or, if there was no fair market value, the intrinsic actual value of the property.¹ It also provided the jury with the definition of nominal damages, and gave the following instruction explaining when either nominal or actual damages could be awarded:

[I]f you find by the greater weight of the evidence the amount of actual damages caused by the sale of the property of the plaintiffs, then it would be your duty to write the amount in the blank space provided.

If, on the other hand, you fail to so find, then it will be your

¹ The trial court first gave this instruction in connection with the negligence and conversion claim. As to each subsequent claim, the trial court informed the jury that it "already instructed you as to the measure of damages."

duty to write a nominal sum, such as one dollar, in the blank space provided.²

In short, the measure of damages for all claims was legally and factually identical: (1) the fair market value of the unlawfully sold property; (2) the intrinsic actual value of the same; or (3) nominal damages absent any proven value under (1) or (2).

¶ 10 The jury returned a verdict finding that Defendants were liable under all three theories and awarded the following damages:

- (1) Negligence and Conversion: \$1.00
- (2) Breach of Contract: \$1.00
- (3) UDTP: \$19,098.00

¶ 11 On 18 September 2019, Defendants moved for judgment notwithstanding the verdict, arguing there was insufficient evidence to submit the UDTP claim to the jury. Defendants also moved for a new trial, arguing: (1) the verdict was inconsistent and contradictory; (2) the jury instructions were disregarded; (3) damages were excessive; (4) insufficiency of evidence; and (5) error of law in the trial court's failure to grant the Defendants' motion for directed verdict. Both motions were denied following a hearing. The trial court subsequently granted the Davises' motion for treble damages and attorney's fees on the UDTP claim, bringing the total judgment to \$117,605.50. A final judgment memorializing the award was entered on 1 September 2020.

² The trial court first gave this instruction as to negligence and conversion; it gave substantially identical instructions for each subsequent claim with minor alterations to track the specific cause of action.

¶ 12 On 4 September 2020, Defendants submitted a second motion for new trial, as their prior motion had been determined before entry of the judgment and thus was decided by the trial court without jurisdiction. *See, e.g., Kor Xiong v. Marks*, 193 N.C. App. 644, 653, 668 S.E.2d 594, 600 (2008) (holding that “though a motion for new trial may be *filed* before entry of judgment, the trial court does not have jurisdiction to hear and determine the motion until after entry of judgment” (emphasis in original)). The trial court denied Defendants’ renewed motion and entered written findings of fact and conclusions of law at the request of Defendants on 29 January 2021. Defendants appeal.

II. ANALYSIS

¶ 13 Defendants contend that the jury’s verdict is irreconcilably inconsistent based on the differing damages awards. Because all of the Davises’ claims sought recovery for the same injury—and the jury received the same damages instruction for each cause of action—Defendants argue the nominal damage awards for negligence, conversion, and breach of contract are inconsistent with the award of \$19,098.00 for UDTP. In light of the instructions given by the trial court, we agree with Defendants and hold that there is a material contradiction in the verdict regarding damages that requires a new trial on that issue.

A. Standard of Review

¶ 14 The parties dispute the appropriate standard of review applicable to this appeal, with Defendants arguing for *de novo* review and the Davises advancing the abuse of discretion standard. In light of Defendants’ argument that the allegedly inconsistent verdict requires a new trial, our standard of review is clear:

[T]he decision concerning whether to grant a new trial on the basis of allegedly inconsistent verdicts is one of discretion rather than one of law. For that reason, our review of defendant’s challenge to the denial of his motion for a new trial on the grounds that the jury’s verdicts were impermissibly inconsistent “is strictly limited to the determination of whether the record affirmatively demonstrates a manifest abuse of discretion by the judge.” *Worthington v. Bynum*, 305 N.C. 478, 482, 290 S.E.2d 599, 602 (1982) (citations omitted). An abuse of discretion has occurred when a trial court’s discretionary decision was “manifestly unsupported by reason”; for that reason, such a discretionary decision will not be overturned on appeal absent “a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Piazza v. Kirkbride, 372 N.C. 137, 144, 827 S.E.2d 479, 485 (2019).

¶ 15 As for Defendants’ argument concerning the adequacy of the trial court’s findings of fact and conclusions of law, “the standard of review on appeal is whether there was competent evidence to support the trial court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *Shear v. Stevens Bldg. Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992). Findings of fact are conclusive on appeal when they are supported by competent evidence. *Andrews v. Peters*, 318

N.C. 133, 138, 347 S.E.2d 409, 413 (1986). “Unchallenged findings of fact are presumed correct and are binding on appeal.” *Branch Banking & Tr. Co. v. Schiphof (In re Schiphof)*, 192 N.C. App. 696, 700, 666 S.E.2d 497, 500 (2008). Conclusions of law are fully reviewable on appeal. *State v. Greene*, 332 N.C. 565, 577, 422 S.E.2d 730, 737 (1992). Together, the findings of fact and conclusions of law must be sufficiently detailed to allow meaningful review. *Andrews*, 318 N.C. at 139, 347 S.E.2d at 413.

B. Irreconcilable and Inconsistent Verdicts Generally

¶ 16 There is a strong doctrinal presumption in favor of preserving a jury’s verdict. “[J]ury verdicts should not be set aside for inconsistency lightly. . . . [A] verdict should be liberally and favorably construed with a view of sustaining it, if possible.” *Piazza*, 372 N.C. at 144, 827 S.E.2d at 485 (citation and quotation marks omitted). We will reverse a trial court’s ruling on whether to grant a new trial for inconsistent verdicts only “with *great care and exceeding reluctance*.” *Id.* (emphasis in original) (citation and quotation marks omitted). Setting aside a jury’s verdict on appeal risks second-guessing the sound judgment of the trial judge as a witness to and participant in the trial, and “will always have some tendency to diminish the fundamental right to trial by jury in civil cases which is guaranteed by our Constitution.” *Id.* at 144-45, 827 S.E.2d at 485 (citation and quotation marks omitted).

¶ 17 Some verdicts, while apparently inconsistent on their face, are nonetheless salvageable when the inconsistency arises out of surplusage. For example, where a jury finds a plaintiff contributorily negligent but nonetheless awards him damages, the damages award is stricken as ineffective surplusage. *See, e.g., Crane v. Carswell*, 203 N.C. 555, 555, 166 S.E. 746, 746 (1932) (“The contributory negligence of the plaintiff bars his recovery, although damages were assessed upon the third issue. We find nothing inconsistent in the verdict, and his honor’s refusal to set it aside as a matter of discretion is not reviewable.” (citations omitted)). Similarly, when a jury finds a party did not commit a trespass but nonetheless assesses damages for that conduct, the jury’s answer to the separate and subsequent issue of damages must be stricken and a reformed judgment entered. *Pitcock v. Fox*, 119 N.C. App. 307, 311, 458 S.E.2d 264, 267 (1995).

¶ 18 Other verdicts that initially appear to contradict themselves may be salvaged when a review of the evidence shows a reasonable jury may have understood the facts in a manner that explains the inconsistency. *See Piazza*, 372 N.C. at 145, 827 S.E.2d at 485 (holding a verdict finding one defendant liable for securities fraud and his co-defendant not liable for the same cause of action was not so inconsistent as to require a new trial when a particular view of the evidence showed “a reasonable jury could have reached different decisions with respect to the issue of whether [the liable] defendant and [the non-liable defendant] made false and misleading representations

to plaintiffs”); *Chisum v. Campagna*, 376 N.C. 680, 2021-NCSC-7, ¶ 49 (holding a jury verdict was not fatally inconsistent in finding defendant liable for constructive fraud but not breach of fiduciary duty when the evidence could be understood to show that the acts giving rise to the first claim were within its statute of limitations while acts giving rise to the second were not). *Cf. State v. Mumford*, 364 N.C. 394, 398, 699 S.E.2d 911, 914 (2010) (“It is firmly established that when there is sufficient evidence to support a verdict, mere inconsistency will not invalidate the verdict. However, when a verdict is inconsistent and contradictory, a defendant is entitled to relief.” (citations and quotation marks omitted)). A verdict that may appear factually inconsistent also need not be set aside so long as the factual inconsistency does not give rise to a legally contradictory result. *See Suntrust Bank v. Bryant/Sutphin Props., LLC*, 222 N.C. App. 821, 832, 732 S.E.2d 594, 602 (2012) (holding a verdict resolving claims and counterclaims, though perhaps factually inconsistent, was not legally inconsistent because “a finding that one party did not breach a contract does not legally require a finding that the other party breached the same contract; nor does a finding that a party breached a contract legally require a finding that the other party did not breach said contract”).

¶ 19 Some verdicts cannot be saved. *See, e.g., Allen v. Sallinger*, 105 N.C. 333, 339, 10 S.E. 1020, 1022 (1890) (“Where the findings of a jury are apparently repugnant in any material respect, so that the court cannot safely proceed to judgment, and see it

is unmistakable that to which the verdict establishes a right, a new trial must be granted.”). Such verdicts appear to arise when—as here—the jury contradicts itself as to the *same or mutually exclusive* issues, resulting in a verdict that cannot be explained by a reasonable interpretation of the facts or absent legal contradiction. *See, e.g., Porter v. Western N.C. R. Co.*, 97 N.C. 63, 74, 2 S.E. 580, 584 (1887) (holding a verdict finding the decedent contributorily negligent and *not* contributorily negligent was contradictory and a new trial was warranted); *In re Henderson’s Will*, 201 N.C. 759, 759, 161 S.E. 387, 388 (1931) (holding a new trial was required based on an inconsistent verdict because “the first issue finds the will to be valid, and the third issue finds it to be invalid. . . . The jury cannot find both for the plaintiff and the defendant on the same issue”); *Will of Leonard*, 71 N.C. App. 714, 718, 323 S.E.2d 377, 380 (1984) (same). *Cf. State v. Alonzo*, 261 N.C. App. 51, 56, 819 S.E.2d 584, 588 (2018) (noting, in the criminal context, that “[e]rroneous jury decisions occur when contradictory verdicts are ‘mutually exclusive,’ one guilty finding eliminating the possibility of an accurate guilty verdict on the other charges” (citation omitted)). These unsalvageable verdicts thus stand in contrast to verdicts that are inconsistent as to *different or distinct* factual or legal issues; in those cases, as detailed above, the verdicts may be reformed for surplusage, *Pitcock*, 119 N.C. App. at 311, 458 S.E.2d at 267, are explainable by a reasonable view of the evidence, *Piazza*, 372 N.C. at 145,

827 S.E.2d at 485, or do not result in a legal contradiction rendering the verdict irreconcilable, *Suntrust Bank*, 222 N.C. App. at 832, 732 S.E.2d at 602.

¶ 20 Though the denial of a new trial based on an asserted inconsistent verdict is reviewed for abuse of discretion, our caselaw is clear that an irreconcilable repugnancy in a verdict requires a new trial. *Allen*, 105 N.C. at 339, 10 S.E. at 1022; *see also Lee v. Rhodes*, 230 N.C. 190, 192, 52 S.E.2d 674, 676 (1949) (holding a trial judge “has no power . . . to remove an irreconcilable repugnancy in a verdict”). Stated differently:

When an irreconcilable repugnance in the verdict exists, it is not the function of the court to enter a judgment *non obstante veredicto* on one issue and ignore the other. Where the answers to the issues are so contradictory as to invalidate the judgment, the role of the court is to grant a new trial because of the evident confusion of the jury. While a trial court may set aside a verdict and vacate the answer to a particular issue when to do so does not affect or alter the impact of answers to other issues, the trial court may not remove an irreconcilable repugnancy in the verdict by vacating a part thereof. This is a matter exclusively for the jury.

Leonard, 71 N.C. App. at 719, 323 S.E.2d at 380 (citations omitted).

C. The Jury’s Verdict Is Irreconcilably Repugnant

¶ 21 Following caselaw, we hold that the jury’s inconsistent findings as to the same question—the fair market and/or actual intrinsic value of the Davises’ unlawfully sold property—is a factual and legal repugnancy in the verdict that requires a new

trial. Under the facts of this case, awarding only nominal damages for claims of negligence, conversion, and breach of contract, while simultaneously awarding actual damages for UDTP creates an irreconcilable verdict because the measure of damages for each of these claims is factually and legally identical. In such a circumstance—where, as a matter of law, the claimant is entitled only to the same nominal *or* actual damages on every claim—it is impossible to discern whether the jury found no actual damages, found some actual value of the claimants’ loss, or assessed damages on some other basis not rooted in the evidence or law.³ Because these factual and legal inconsistencies are only for the jury to resolve, *id.*, the trial court abused its discretion in declining to require a new trial and entering a judgment that effectively vacated the jury’s findings that contradicted its UDTP award.

¶ 22 Our caselaw and the trial court’s instruction on the measure of damages illustrate the factual and legal repugnancy present in the jury’s verdict. The law is well-established that “the amount of damages is ordinarily a question of fact, [while] the standard *for measuring damages* is a question of law.” *Smith v. Childs*, 112 N.C. App. 672, 685, 437 S.E.2d 500, 509 (1993) (emphasis in original). It is likewise settled

³ We note that, in some cases, “[d]amages on a Chapter 75 [UDTP] claim are not necessarily limited to those that might be had for breach of contract.” *Poor v. Hill*, 138 N.C. App. 19, 34, 530 S.E.2d 838, 848 (2000). This is not one of those cases, as, per the evidence and the trial court’s instructions, the Davises suffered the same actual injury and were entitled to the same measure of damages for each claim tried.

law that “[n]ominal damages are recoverable where some legal right has been invaded *but no actual loss or substantial injury has been sustained.*” *Title Ins. Co. of Minn. v. Smith, Debnam, Hibbert and Pahl*, 119 N.C. App. 608, 611, 459 S.E.2d 801, 804 (1995) (emphasis added). The trial court’s instructions to the jury followed the law by tasking the jury with awarding: (1) actual damages by finding the fair market and/or actual intrinsic value of the property unlawfully sold; or (2) nominal damages if it “fail[ed] to so find [actual damages].” Thus, based on the above law and the instructions given by the trial court, the jury entered a verdict that was both factually and legally inconsistent on its face; the jury found the fair market and/or actual intrinsic value of the Davises’ property to be both \$19,098.00 and \$0.00, leading it to impose different measures of damages for UDTP (actual damages) and the remaining claims (nominal damages). The verdict at issue thus contains an irreconcilable factual *and* legal contradiction.

¶ 23 The trial court’s order, even if sustained as to all factual findings, does not resolve the above factual and legal contradictions in the verdict. For example, the trial court found as a fact that the “jury’s verdict was consistent with the instructions given to them by the Court,” and Defendants challenge this finding on appeal. To the extent that this finding is supported by competent evidence, it conclusively establishes the verdict’s repugnancy. The jury could not have followed the court’s instruction to irreconcilably find the Davises’ lost property simultaneously valueless

and worth in excess of \$19,000. If the trial court’s finding is not supported by the evidence and the jury did disregard the trial court’s mutually exclusive damages instructions, then striking this finding further supports a holding that the trial court abused its discretion. *Cf. Robertson v. Stanley*, 285 N.C. 561, 568, 206 S.E.2d 190, 195 (1974) (reversing the denial of a motion for new trial where “the verdict in this case is contrary to the instructions of the trial court, is inconsistent, and therefore improper and invalid.”).

¶ 24 The Davises contend on appeal that the jury’s verdict is explained by the “one recovery” rule, which precludes multiple recoveries for the same injury. *Owens v. W.K. Deal Printing, Inc.*, 111 N.C. App. 900, 903, 433 S.E.2d 793, 795 (1993). They further argue that the parties’ un-transcribed closing arguments, which included statements to the jury that an UDTP award would be trebled and lead to recovery of attorneys’ fees, likewise explains the jury’s rationale. While these explanations are attractive at first blush, further consideration demonstrates them to be conjecture that fails to reconcile the irreconcilable.

¶ 25 Nothing in the record discloses that the jury was informed of the “one recovery” rule, and the Davises point to nothing on appeal showing the jury was aware of the

doctrine.⁴ As for treble damages and attorneys' fees for a successful UDTP claim, the record is clear that the trial court informed the jury that it could not consider those possibilities in arriving at its damages calculation. In response to an objection lodged and sustained in the jury's presence, the trial court "[p]ut on the record, I want to strike the reference to 'treble damages' or 'triple damages.' Just strike that. The jury will not consider that, okay? That's for the Court to consider. Not for the jury. Okay? All right." Then, at the conclusion of its substantive jury instructions, the trial court directly told the jury that "[t]he appropriate measure of damages in this case has been given to you by the Court as provided by law, *and you should consider this measure only.*" (Emphasis added). While it appears that the jury directly disregarded the trial court's instructions that actual and nominal damages were mutually exclusive, we will not assume the jury disregarded these specific instructions to ignore counsels' arguments and the possibility of treble damages. *See Ridley v. Wendel*, 251 N.C. App. 452, 460, 795 S.E.2d 807, 813-14 (2016) ("A jury is presumed to follow the court's instructions, and we must therefore presume that the jury based its verdict on these instructions." (cleaned up)). And, as previously noted, any decision by the jury to

⁴ This supposition also does not entirely explain the jury's verdict; if the jury disregarded the trial court's damages instructions in favor of unilaterally applying the one recovery rule, it is unclear why the jury would not also disregard the nominal damages instruction entirely and award the Davises \$0 on all claims but UDTP.

ignore these additional instructions does not necessarily support the denial of a new trial. *Cf. Robertson*, 285 N.C. at 568, 206 S.E.2d at 195.

¶ 26 Either way, the Davises’ arguments amount to conjecture, picking and choosing which instructions and law the jury disregarded and which it followed. They likewise require picking and choosing between two sets of damages awards that, as a matter of both fact and law, are mutually exclusive. Unlike those verdicts which are legally reconcilable or factually explainable based on a reasonable interpretation of the evidence, none of the logics presented by the Davises ultimately resolve the inherent factual and legal contradictions present here. Because selecting the actual damages award as the jury’s true factual finding and application of the law necessarily requires the outright rejection of the mutually exclusive—but equally valid—nominal damages awards, this was not a judgment in which the trial court could “set aside a verdict and vacate the answer to a particular issue when to do so does not affect or alter the impact of answers to other issues.” *Leonard*, 71 N.C. App. at 719, 323 S.E.2d at 380. Only the jury could resolve the discrepancy, *id.*, and the trial court therefore abused its discretion in denying Defendants’ motion. *Cf. id.* See also *Allen*, 105 N.C. at 339, 10 S.E. at 1022; *Lee*, 230 N.C. at 192, 52 S.E.2d at 676.

D. New Trial as to Damages Only

¶ 27 When “a trial court has erred ruling on a motion [for new trial] made pursuant to . . . Rule 59(a), the reviewing court has the authority to determine the scope of the

new trial that should be awarded even though the trial court did not address that issue.” *Justus v. Rosner*, 371 N.C. 818, 833, 821 S.E.2d 765, 775 (2018). This is a discretionary determination. *Id.* A new trial on all issues is not required when the reviewing court is “not persuaded that the error in assessing damages tainted the entire verdict, making it unfair to the defendant to order a partial new trial on the issue of damages alone.” *Id.* at 833-34, 821 S.E.2d at 775 (quotation marks omitted). Factors that may guide this discretionary determination include whether the issues of liability and damages were presented separately to the jury, the manner in which the trial court resolved any discrepancy raised by the Rule 59 motion, or indications from the record that the jury reached a compromise verdict on the issue of liability. *Id.*

¶ 28 We do not believe that a new trial on liability is required in this case for several reasons. First, Defendants admitted liability as to one cause of action, conclusively establishing Defendants’ acts amounted to wrongdoing as to at least one claim. Second, while the verdict is inconsistent as to the amount of damages sustained by the Davises, the jury was unequivocal in finding Defendants liable on each cause of action submitted to it. Third, Defendants do not specifically argue or identify anything in the record showing that the verdict’s inconsistency extended beyond calculating and measuring damages. Finally, the only question asked by the jury during deliberations was to review an exhibit inventorying the items unlawfully sold,

and it returned its verdict within 90 minutes of receiving the jury charge. Because the record, as detailed above, discloses that the error in the verdict was limited to the calculation and measure of damages, did not extend to liability, and does not otherwise suggest a compromise verdict on liability, we hold in our discretion that Defendants are entitled to a new trial on damages only.

III. CONCLUSION

¶ 29 As detailed above, we hold the jury verdict in this case contained an irreconcilable factual and legal contradiction in the resolution of the same issue, namely, the calculation and measure of damages suffered by the Davises in the unlawful sale of their property. Because this results in a material repugnancy that only the jury is empowered to resolve, the trial court abused its discretion in denying Defendants' motion. We also hold, in our discretion and absent any indication of a contradictory or compromise verdict as to liability, that the matter shall be remanded for a new trial on damages only.

REVERSED AND REMANDED FOR A NEW TRIAL ON DAMAGES.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).