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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-527

Filed 16 July 2024

Mecklenburg County, No. 18CVS13955

JASON COLGATE, Plaintiff

v.

GLOBAL GROWTH PARTNERS, INC., JASON L. PATTERSON, MICHAEL PARRISH and MICHAEL F. RUCH, Defendants.

Appeal by Plaintiff from Order entered 5 October 2022 by Judge Louis A. Trosch, Jr. in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 January 2024.

Raynor Law Firm, PLLC, by Kenneth R. Raynor, for Plaintiff-Appellant.

Robinson Elliott & Smith, by William C. Robinson and Dorothy M. Gooding, for Defendant-Appellant Global Growth Partners.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones and David L. Levy, for Defendant-Appellant Ruch.

HAMPSON, Judge.

Factual and Procedural Background

Jason Colgate (Plaintiff) appeals from an Order denying his Motion Pursuant

to Rule 60(b)(1) to Amend to Correct Clerical Mistake and Motion for a New Trial which sought amendment of damages awarded to Plaintiff against Global Growth Partners, Inc. (GGP) in a judgment entered upon a jury's verdict or, in the alternative, a new trial on all issues or just damages. The Record before us tends to reflect the following:

On 18 July 2018, Plaintiff filed a Complaint against GGP, Jason L. Patterson (Patterson), and Michael Parrish (Parrish) alleging claims of Breach of Contract arising from an alleged employment agreement and Wage and Hour Act violations. Subsequently, on 12 August 2019, Plaintiff filed an Amended Complaint naming GGP, Patterson, and Parrish, and adding Michael F. Ruch (Ruch), as Defendants. The Amended Complaint maintained the claims for Breach of Contract arising from an alleged employment agreement and Wage and Hour Act violations, and added an alternative Breach of Contract claim, as well as claims for Tortious Interference with Contract against Patterson, Parrish, and Ruch.

The matter was tried in Mecklenburg County Superior Court beginning on 4 April 2022 and concluding on 21 April 2022. The evidence presented at trial reflected the following:

Patterson and Parrish are the owners of GGP. GGP is an investment banking company—operating as a broker for business owners who are interested in selling their companies. GGP compiles information about the companies to provide to potential buyers, identifies potential buyers, and facilitates discussions with

interested candidates to consummate the sales. GGP's earnings come from monthly retainers paid by the companies and success fees, which are effectively a commission calculated on a percentage of the sale price of the company.

Plaintiff met Parrish in 2015 when the two lived in the same apartment complex. Plaintiff also worked in investment banking, providing business development for a company focused on healthcare mergers and acquisitions. At some point, Plaintiff indicated to Parrish that he had left that company and would be interested in working with GGP. Plaintiff indicated he had the ability to bring additional deals into GGP.

Initially, on 28 March 2016, Parrish provided Plaintiff with GGP's referral partner agreement. Under this agreement, Plaintiff would receive a referral fee of 20% of revenues received from a client Plaintiff referred to GGP. Plaintiff did not accept this agreement. Instead, Plaintiff wanted to be more involved in GGP, including working for GGP, and to receive a higher commission. Parrish explained that, as part of the justification for Plaintiff seeking a greater share of the revenues, Plaintiff represented he would do more than just refer the clients, including that he would "take a lot of the heavy lifting off of you up front . . . with all of the work that needs to happen before even signing up [a] client, and I can also help you with the work that you guys are doing."

Plaintiff, Parrish, and Patterson continued to discuss terms of a potential agreement. At some point, the three met for dinner and discussed terms. During

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dinner, Parrish and Patterson presented Plaintiff with a \$5,000 check. On 19 May 2016, at approximately 10:00 p.m., Plaintiff emailed Parrish and Patterson to provide his recap of the terms they had discussed during the dinner. These included: the \$5,000 payment; Plaintiff receiving 1/3 ownership in GGP vesting in March 2016; splitting of all deal revenues—including retainers and success fees—three ways, with the exception of a fee for the “Dellinger deal” from which Plaintiff would receive \$30,000; and equal salaries of \$5,000 per month for all three.

Plaintiff testified that following this email, he, Patterson, and Parrish continued to discuss “tweaks” to the terms. Parrish, however, testified Plaintiff’s email caused Patterson to immediately call Plaintiff and then Parrish. Parrish testified Patterson expressed the terms Plaintiff set out in the email were not the agreed upon terms and that Plaintiff’s expectation of immediately being an equal partner was unacceptable. Instead, Patterson expressed his expectation that Plaintiff would have to prove himself and contribute as a partner. Parrish testified he was refereeing the dispute between Plaintiff and Patterson until close to midnight.

Parrish further testified the three discussed a basic framework where if Plaintiff started bringing in deals, GGP would begin paying him a third of the deals, but that Plaintiff was expected to contribute to the deals. Parrish stated there was “not a definitive structure.” According to Parrish, while Plaintiff wanted more of a defined structure ensuring he was an owner in GGP, Patterson “wanted nothing to do with” Plaintiff at that point.

The following day, 20 May 2016, as he was preparing to leave the country, Parrish sent an email to Plaintiff and Patterson with the subject line “Deal”. This email purported to “summarize the conversation from last night” and provided:

- 1) [Plaintiff] to vest 33% equity in GGP one year from now;
- 2) Split all incoming deals and retainers 33% each going forward with the exception of:
 - Huseby: [Plaintiff] gets \$10k when we close the Yadkin Bank deal;
 - Dellinger and APS: [Plaintiff] gets \$30k on each when they close
- 3) Salary: [Plaintiff] gets equal salary to Patterson and I once we close the first deal. . . .

Parrish testified Patterson called him again—while Parrish was vacationing—and “just rips into me” stating there was “no chance [Patterson] [would] ever agree to that stuff.” Neither Patterson nor Plaintiff ever responded to Parrish’s email. Parrish explained nobody ever finalized this agreement, but the parties generally agreed that Plaintiff would receive 33% of incoming deals he brought in, with the increased percentage from the standard referral fee based on Plaintiff’s assertion he would actually help with the deals. Parrish further explained Plaintiff indicated he could assist with preparing “pitch books” for clients and that he expected Plaintiff to have the “horsepower” to assist with financial analysis and “everything else” that went into business development.

During Plaintiff’s relationship with GGP, Plaintiff introduced GGP to two clients. First, Plaintiff introduced GGP to a company called nGroup. nGroup retained

GGP and paid a monthly retainer. GGP, in turn, paid Plaintiff a third of the monthly retainers. The nGroup deal did not result in a sale of the company and no success fee was collected.

Plaintiff also introduced Patterson and Parrish to Ruch. Ruch owned a company called Industrial Timber. Industrial Timber eventually retained GGP, including paying a monthly retainer. GGP paid Plaintiff a third of this monthly retainer.

After Industrial Timber retained GGP, Ruch became disenchanted with Plaintiff. Ruch testified Plaintiff was constantly attempting to convince Ruch to attend parties and social events rather than work on the deal. At some point, in the middle of GGP and Ruch preparing due diligence for the sale of Industrial Timber, Plaintiff went on vacation for several weeks. Ruch testified Plaintiff disappeared and only reappeared once a Letter of Intent was sent by a prospective buyer. Ruch began questioning the competence of Parrish and Patterson for including Plaintiff in the deal. Ruch felt Plaintiff was incompetent and added no value to the deal, and he requested Plaintiff leave him alone. However, Plaintiff continued to press Ruch to socialize. Ruch decided to terminate the agreement with GGP because of GGP's association with Plaintiff.

Ruch further testified Plaintiff left him a voicemail in which Plaintiff implied he could find an alternative buyer for Industrial Timber and "change avenues" from the sale brokered by GGP. In the voicemail, Plaintiff indicated he needed the money

from a deal to pay for his wedding and a house. Ruch testified this was the final straw with Plaintiff. Ruch shared the voicemail with Parrish and Patterson. Ruch testified he did not want Plaintiff to receive any portion of the sales proceeds paid to GGP upon the sale of Industrial Timber because Plaintiff had not earned it. Ruch explained Plaintiff was “out of his league” and did not have the ability “to even have a conversation wrapped” around the deal. Ruch asserted “I have not seen one footprint of [Plaintiff] around the transaction with Industrial Timber.”

On 28 February 2017, GGP terminated its relationship with Plaintiff. Following Plaintiff's termination, Parrish and Patterson worked to repair the relationship with Ruch and restore the Industrial Timber deal. Ultimately, the sale of Industrial Timber brokered by GGP was successful. GGP received a success fee of \$1,285,000 on 15 May 2017.

Following Plaintiff's termination, GGP stopped paying Plaintiff shares of the nGroup and Industrial Timber retainers. GGP did not pay Plaintiff any share of the Industrial Timber success fee or any fees for the Dellinger or APS deals referenced in Parrish's prior email. At trial, Plaintiff contended he was entitled to each of those sums.

Following the presentation of evidence by both parties, the trial court granted directed verdict for Patterson and Parrish on Plaintiff's claim for Tortious Interference with Contract. Plaintiff's remaining claims for Breach of Contract, Wage and Hour Act violations, and Tortious Interference with Contract against Ruch were

submitted to the jury. During the trial, two jurors became incapacitated. The parties and the trial court agreed the trial would continue with 10 jurors. After the jury began deliberating, the parties stipulated a verdict on any issue of 9 out of 10 jurors would be accepted.

The jury returned a verdict finding Plaintiff was not an employee of GGP and Ruch had not wrongfully interfered with any contract right between Plaintiff and GGP. However, the jury did find GGP had breached a contract with Plaintiff. The jury awarded Plaintiff damages of \$8,125.02 and \$9,999.99 for his share of retainers paid by nGroup and Industrial Timber, respectively, to GGP following Plaintiff's termination. The jury also awarded Plaintiff \$63,607.50 as his share of the Industrial Timber success fee. The jury made no award to Plaintiff of any fee from the Dellinger or APS deals. On 31 May 2022, the trial court entered Judgment consistent with the jury verdict.

On 10 June 2022, Plaintiff filed his "Motion Pursuant to Rule 60(b)(1) to Amend to Correct Clerical Mistake and Motion for a New Trial" (Plaintiff's Motion). Plaintiff's Motion alleged the jury award of \$63,607.50 for Plaintiff's share of the Industrial Timber success fee was either a clerical mistake or grounds for a new trial on damages or, alternatively, all issues. Plaintiff contended all of the evidence demonstrated he was owed 1/3 of the \$1,285,000 Industrial Timber success fee. Plaintiff contended the jury was therefore required to award him \$424,050.00—representing 1/3 of the success fee.

On 6 October 2022, the trial court entered its Order denying Plaintiff's Motion. The trial court ultimately concluded "Plaintiff has failed to present sufficient evidence entitling him to amendment of the Judgment entered in this matter or to a new trial on any of the issues presented to the jury for consideration at trial."

On 1 November 2022, Plaintiff filed Notice of Appeal from the trial court's Order on Plaintiff's Motion. Plaintiff did not file Notice of Appeal from the underlying Judgment entered on the jury verdict. On appeal to this Court, Plaintiff limits his issues presented to contending he is entitled to a new trial on the issue of Breach of Contract—or damages flowing therefrom.

Issue

The sole issue on appeal is whether the trial court abused its discretion by denying Plaintiff's Motion based solely on the amount of the jury's award of damages related to the success fee paid by Industrial Timber to GGP.

Analysis

Plaintiff only noticed appeal from the Order denying Plaintiff's Motion. Plaintiff did not file Notice of Appeal from the underlying Judgment. "Notice of appeal from denial of a motion to set aside a judgment which does not also specifically appeal the underlying judgment does not properly present the underlying judgment for our review." *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990). As such, in this case, the only ruling preserved for our review is the trial court's denial of Plaintiff's Motion made post-trial. Indeed, on appeal, Plaintiff does

not challenge the validity of the Judgment itself. Instead, Plaintiff limits his argument to contending the trial court was required to grant a new trial for Breach of Contract and, specifically, solely on the issue of how much Plaintiff was owed from the Industrial Timber success fee.¹

Plaintiff moved for a new trial asserting various grounds under Rule 59 of the North Carolina Rules of Civil Procedure. *See* N.C. Gen. Stat. § 1A-1, Rule 59 (2021). “It has been long settled in our jurisdiction that an appellate court’s review of a trial judge’s discretionary ruling either granting or denying a motion to set aside a verdict and order a new trial 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). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason ... [or] upon a showing that [the trial court’s decision] 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) (citation omitted). However, “it is plain that a trial judge’s discretionary order pursuant to G.S. 1A–1, Rule 59 for or against a new trial upon any ground may be reversed on appeal only in those exceptional cases where an abuse of discretion is clearly shown.” *Worthington*, 305

¹ Accordingly, to the extent the Judgment dismissed with prejudice Plaintiff’s claims against Patterson and Parrish, individually, and against Ruch following the jury verdict, the Judgment remains undisturbed as to those Defendants. Likewise, to the extent the Judgment dismissed the remaining claims other than Breach of Contract against GGP, the Judgment also remains undisturbed.

N.C. at 484, 290 S.E.2d at 603. Our Supreme Court has explained:

the trial judges of this state have traditionally exercised their discretionary power to grant a new trial in civil cases quite sparingly in proper deference to the finality and sanctity of the jury's findings. We believe that our appellate courts should place great faith and confidence in the ability of our trial judges to make the right decision, fairly and without partiality, regarding the necessity for a new trial. Due to their active participation in the trial, their first-hand acquaintance with the evidence presented, their observances of the parties, the witnesses, the jurors and the attorneys involved, and their knowledge of various other attendant circumstances, presiding judges have the superior advantage in best determining what justice requires in a certain case.

Id. at 487, 290 S.E.2d at 605.

Here, Plaintiff argues the trial court abused its discretion in failing to grant a new trial on the issue of damages arising from a breach of contract related to the Industrial Timber success fee. Plaintiff contends the uncontroverted evidence established that GGP agreed to pay Plaintiff 1/3 of all deals—including retainers and success fees—and that the evidence showed GGP received a success fee of \$1,285,000 from Industrial Timber. Plaintiff asserts he was thus owed \$424,050 as his share of the success fee. Plaintiff therefore submits there was no basis in the evidence for the jury to award him \$63,607.50 as the portion of the success fee owed to him. As such, he concludes the trial court's decision not to grant a new trial on this issue was a substantial miscarriage of justice constituting an abuse of discretion.

Plaintiff first relies on *Robertson v. Stanley*, 285 N.C. 561, 206 S.E.2d 190 (1974). There, our Supreme Court reversed a trial court's denial of a motion for new

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trial in a personal injury case and ordered a new trial on all issues where the jury's verdict was inconsistent with the evidence of damages. The jury in that case awarded no damages for pain and suffering despite there being uncontroverted evidence the minor plaintiff endured pain and suffering. The Court observed:

Notwithstanding the uncontradicted evidence of pain and suffering and the instruction of the judge on the law, the jury found that Douglas Wayne Robertson had been injured by the negligence of the defendant with no contributory negligence on his part and yet found he had suffered no compensable damages for pain and suffering and permanent scarring. Under such circumstances, with the evidence of pain and suffering clear, convincing and uncontradicted, it is quite apparent that the verdict is not only inconsistent but also that it was not rendered in accordance with the law.

Id. at 566, 206 S.E.2d at 193-94.

Plaintiff also points to *Myers v. Catoe Construction Company*, 80 N.C. App. 692, 343 S.E.2d 281 (1986). There, this Court reversed a trial court's denial of a motion for new trial where the jury awarded a dollar as the value of the real property at issue in the case where the evidence showed the minimum value of the property was \$7,000.00. *Id.* at 696, 343 S.E.2d at 283. We observed: "Other evidence supported a higher valuation but no evidence supported a lower valuation." *Id.* We, thus, concluded the uncontroverted evidence did not support the verdict.

In this case, the evidence was not uncontroverted. While Plaintiff's evidence was that the terms of his contract with GGP provided for Plaintiff to receive 1/3 of all the proceeds GGP received from any deals, other evidence reflected differing terms of

any agreement. Indeed, Defendants' evidence reflected there was a great deal of dispute over the terms of any agreement. Defendants' evidence tended to show that, to the extent GGP had any agreement with Plaintiff, it was that he would be entitled to 1/3 of the proceeds for deals commensurate with the substantive work Plaintiff provided on the deal and not merely for referring the client. In fact, this was the basis for GGP agreeing to an arrangement where Plaintiff received more than its standard 20% referral fee.

There was also evidence Plaintiff did not substantively assist with the work on the Industrial Timber deal and even undermined GGP's relationship with Ruch. Ruch's own testimony was that Ruch did not believe Plaintiff had earned any of the success fee based on Plaintiff's dealings with Ruch and Industrial Timber. To the contrary, the evidence demonstrated Plaintiff—through his actions—almost caused GGP to lose the deal with Industrial Timber.

Moreover, to the extent Plaintiff contends the evidence supported only a single amount of damages on the Breach of Contract claim, the jury was not directed to return a particular amount of damages upon a finding of a breach of contract. To the contrary, the jury was given a general instruction placing the amount of damages in the jury's sole determination:

If you have answered Issue 5 "Yes," in favor of the Plaintiff, the Plaintiff is entitled to recover, at a minimum, some nominal damages even without proof of actual damages.

Nominal damages consist of some trivial amount, such as \$1, in

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recognition of the technical damage resulting from the breach. The Plaintiff may also be entitled to recover actual damages. On this issue, the burden of proof is on the Plaintiff. This means the Plaintiff must prove by the greater weight of the evidence the amount of actual damages sustained as a result of the breach. A person damaged by a breach of contract is entitled to be placed, insofar as this can be done by money, in the same position he would have occupied if there had been no breach of contract.

As to this sixth issue on which the Plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of damages sustained by the Plaintiff by reason of Defendant, Global Growth Partners, breach of contract then it would be your duty to write that amount in the blank space provided.

Nowhere in the Record is there reflected a motion for directed verdict or for JNOV on the issue of breach of contract damages.

In denying Plaintiff's Motion, moreover, the trial court made a number of factual findings. These findings included:

2. The impaneled jury was selected and passed by all sides.
3. All jurors were noted to have been alert and to have paid attention during the presentation of evidence and the Court's charge to the jury.
4. The jury deliberated for parts of two days, during which time the jury was allowed to view requested admitted exhibits.
5. All parties stipulated to a unanimous verdict of nine (9) out of the ten (10) jurors.
6. The jury reached a verdict. Plaintiff asked to poll the jury. Nine (9) jurors affirmed the verdict and the tenth (10) noted that she disagreed with the jury's verdict, but that the verdict had been entered correctly.
7. No juror expressed any sign or concern of error or confusion.

8. Plaintiff never requested any special interrogatories to have the jury determine each of the terms of Plaintiff's and [GGP]'s contract.

As the trial court found, the jury deliberated for several days, the parties consented to a non-unanimous jury verdict, and there was no request for a special verdict form to determine the terms of the contract. There is, further, nothing in this Record suggesting the jury disregarded the instructions or evidence, or otherwise compromised the verdict. At most, Plaintiff can point only to the amount of the verdict itself. However, “[t]he dollar amount of the verdict alone is insufficient to set aside the verdict as being either an unlawful compromise or a quotient verdict.” *Piedmont Triad Reg’l Water Auth. v. Lamb*, 150 N.C. App. 594, 598, 564 S.E.2d 71, 74 (2002) (citations omitted).

Indeed, on appeal, Plaintiff does not contest any other aspect of the jury’s verdict on the multiple questions submitted to it or with regard to the individual Defendants. For example, Plaintiff makes no argument with respect to the jury’s decision to award no damages from the Dellinger or APS fees, which were allegedly owed as part of the deal Plaintiff contended existed between the parties. The jury’s verdict simply reflects that Plaintiff and GGP had some agreement but rejected Plaintiff’s assertion that Parrish’s email reflected the terms. Instead, it is reasonable to discern that the jury verdict reflected the agreement as outlined by Defendants: Plaintiff was entitled to 1/3 of the retainers and a portion of the success fee based on

his efforts—but not the Dellinger or APS fees or a guaranteed 33% referral fee.

Thus, applying a limited abuse of discretion standard, the trial court’s decision was neither unsupported by reason nor arbitrary and, instead, was based on its consideration of the proceedings, hearing first-hand the evidence presented at trial, the particular issues submitted to the jury, its own observations, and the jury’s deliberative process. Therefore, the trial court did not abuse its discretion in denying Plaintiff a new trial on the issue of damages related to the Industrial Timber success fee. Consequently, the trial court did not err in denying Plaintiff’s Motion.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court’s Order denying Plaintiff’s Motion Pursuant to Rule 60(b)(1) to Amend to Correct Clerical Mistake and Motion for a New Trial.

AFFIRMED.

Judges COLLINS and THOMPSON concur.

Report per Rule 30(e).