IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AA
CASE NO: 502010CA028706XXXXMB

YESSENIA SOFFIN and WILLIAM JORDAN SOFFIN,

Plaintiffs,

v.

CLEAN COAL TECHNOLOGIES, INC.,
a Nevada Corporation, DOUGLAS HAGUE,
DAVID DOUGLAS, as Independent Executor
of the Estate of C.J. Douglas, and DIANE HUNT,
as Personal Representative of the Estate of
Larry Hunt,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

and

ORDER DENYING PLAINTIFFS' MOTION FOR ADDITUR

THIS MATTER came before the court for hearing on July 10, 2017, on Defendants, CLEAN COAL TECHNOLOGIES, INC ("Clean Coal"). and DOUGLAS HAGUE's ("Hague") (collectively, the "Defendants") Motion for Judgment in Accordance with Prior Motions for Directed Verdict or for Judgment Notwithstanding the Verdict (the "Motion"), filed on May 15, 2017[1]. Plaintiffs, YESSENIA SOFFIN and WILLIAM JORDAN SOFFIN (the "Plaintiffs") filed a Response to the Motion on July 5, 2017 and a subsequent Memorandum in Support of Plaintiffs' Response to Defendants' Motion for Judgment in Accordance with Prior Motions for Directed Verdict or for Judgment Notwithstanding the Verdict (the "Memorandum"). Finally, on July 27, 2017, Defendants filed a Reply to the Plaintiff's Memorandum. The court, having reviewed the record, the arguments and submissions of counsel, and being otherwise fully advised in the

[1] The court treats the Motion as a Motion for Judgment Notwithstanding the Verdict (sometimes hereinafter referred to as a "Motion for JNOV"). The court notes that the legal principals applicable to a directed verdict and a JNOV are identical. *Premier Lab Supply, Inc., v. Chemplex Indus., Inc.*, 10 So.3d 202, 205 (Fla. 4th DCA 2009).

premises, does hereby FIND, ORDER, and ADJUDGE as follows:

I. JURY VERDICT AND BACKGROUND

This case was tried before a jury which returned a Verdict on April 28, 2017 in favor of Plaintiffs on their Fraud and Negligent Misrepresentation claims as set forth in the Fifth Amended Complaint. As to Count I on the Verdict Form (Negligent Misrepresentation), the jury awarded damages in the total amount of $405,153.36, which they apportioned among the three Defendants.[2] The jury also awarded Plaintiffs an identical amount of damages for Count II (Fraud) against Defendants Hague and C.J. Douglas, jointly and severally.[3]

Defendants have filed this Motion challenging the jury's verdict on two grounds: (1) Plaintiffs' damages for lost profits are entirely speculative and cannot be determined with a reasonable degree of certainty and (2) Plaintiffs' claims are premised upon a promise to perform a future act(s). Because the court's ruling on the first ground is dispositive, there is no need to address the second ground.

Some background is helpful. In February 2009, Plaintiffs purchased in a private transaction a total of fifteen million shares of restricted Clean Coal stock. They claim that prior to their purchase, Defendants Hague and Douglas, on behalf of Clean Coal, represented that the restrictive legends on the fifteen million shares could and would be removed by Clean Coal's transfer agent so that they would be freely tradeable during February, 2009 and the months thereafter. Before these restricted shares could be publicly traded and sold in the stock market, the Plaintiffs would be required to have the restrictive legends removed by the transfer agent prior to resale. Clean Coal's transfer agent was Florida Atlantic Stock Transfer, Inc. ("FAST"). Despite the promises made by Defendants to remove the restrictive legends from their certificates, it is alleged that on multiple occasions between February 2009 and January 2010, when the stock value was high, FAST refused to do so based upon the directions and instructions of the Defendants. Plaintiffs contend this was part of a scheme by the Defendants to manipulate the price of Clean Coal shares for the purpose of selling their own shares while preventing the Plaintiffs from doing the same. Plaintiffs were not able to sell their stock until the period from March 2010 through June 2010, during which time the value of Clean Coal stock had plummeted, resulting in the Plaintiffs' stock being worth substantially less than had

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[2] Defendant C.J. Douglas died on December 4, 2015. David Douglas, as Independent Executor of the Estate of C.J. Douglas (the "Estate") was substituted in his place. The Estate did not actively defend at trial and has not joined in this Motion.

[3] The jury found in favor of Defendant Clean Coal on Count III- Violation of Florida Statute § 687.4011. Count III was a claim by the Plaintiffs that Clean coal violated its statutory duty when it refused to honor Plaintiffs' requests to register the transfer of their Clean Coal shares from restricted to unrestricted shares.

they been able to sell during the period between February 2009 and March 2010.

At trial, Plaintiffs argued that the measure of damages due them as a result of the fraudulent and negligent misrepresentations of the Defendants was an amount equal to their lost profits. The jury was instructed that these damages were the amount of money the Plaintiffs would have been able to receive had they been able to remove the restrictive legends from their Clean Coal stock and sell their shares in the public marketplace when they first attempted to do so, less any applicable set-off amounts.

II. ANALYSIS

"An award of lost profits cannot be based on mere speculation or conjecture." *North Dade Community Development Corp. v. Dinner's Place, Inc.*, 827 So.2d 352, 353 (Fla. 3d DCA 2002). Put another way, "unless the fact-finder is presented with evidence which will enable it to determine damages for lost profits with a reasonable degree of certainty, rather by means of speculation and conjecture, the claimant may not recover such damages." *Himes v. Brown & Co. Sec. Corp.*, 518 So. 2d 937, 938-39 (Fla. 3d DCA 1987) (citations omitted). This is true, "even where the defendant by his own wrong has prevented a more precise computation [of damages], the jury may not render a verdict based on speculation or guesswork." *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264, 66 S.Ct. 574, 579-80, 90 L.Ed. 652, 679 (1946).

In order to prove lost profits based upon the improper delay of the Defendants in removing the restrictions from Plaintiffs' stock, Plaintiffs must prove with reasonable certainty (1) the date upon which all the shares would have been sold on the open market had the restrictions been lifted as requested and (2) the value or price that Clean Coal stock would have traded for on that day. Lost profits can then be calculated by determining the amount of money Plaintiffs would have received had they been allowed to sell their stock in 2009, less the amount of money they actually received from the sale of the stock in 2010.

At trial, Plaintiff claimed that they first requested removal of the restrictive legends on their fifteen million shares of Clean Coal stock on February 18, 2009, but were refused.[4] Mr. Soffin testified that he "would have sold [his] shares immediately, as soon as [he]was able to." [5] Defendants claim that the likelihood of the Plaintiffs being able to sell all of their stock in a single day on February 10, 2009, or any other date for that matter, is little more than wishful thinking. First, they argue that Defendants did not possess all of the necessary documentation

[4] They also claimed to have made further unsuccessful attempts on April 3, 2009; May 14, 2009; July 24, 2009; and October 2o, 2009.

[5] However, on cross-examination, he conceded that he had previously testified that he could not say what date he was going to sell his shares. (Trial Tr. at 387:23-25; 388:1-8)

to present to FAST as a condition precedent for removal of the restrictions, including a valid legal opinion letter. Further, once the restrictions were removed, the shares would have to be presented or deposited with a broker before the shares could be sold. The CEO of Clean Coal, Robin Eaves ("Eaves"), testified that obtaining all of the documentation and depositing them with a broker would probably require a minimum of four or five days. (Trial Tr. at 424:5-12). Mr. Soffin testified that the Plaintiffs possessed all of the necessary documents each time they requested to remove the restrictive legends from the Clean Coal stock (Trial Tr. at 186:6-12, 188:13-24, 193:15-22, 198:6-10, 207:20-24, 219:9-15, 230:7-13, 290:10-13 and 353:16-22). Even Eaves conceded that once the requisite documents are provided, the stock could be sold instantaneously (Trial Tr. 424:9). Given the conflicting testimony and affording the Defendants every reasonable inference, the court finds that the jury could have properly concluded that Defendants had provided or attempted to provide [6] FAST with all necessary documentation in order to lift the restrictive conditions from the Clean Coal stock on February 10, 2009.

That is not the end of the inquiry, however. Of greater concern is whether there is competent evidence that all fifteen million shares could have been immediately sold or absorbed by the market on any one of the days in question. Plaintiffs put on little or no proof on this important issue, instead they relied primarily on the OTC Market Spreadsheets, which demonstrated that the average daily volume of Clean Coal shares traded between February and October of 2009 was a mere 3,642 per day. It does not require expert testimony to conclude that at that trading volume it would be impossible to liquidate fifteen million shares within a single day on the public market.

Assuming, *arguendo*, Plaintiffs somehow met their burden by proving that the market could have somehow absorbed in a single day of trading fifteen million shares of Clean Coal stock during the relevant time period in 2009, there is absolutely no way to gauge or determine with any degree of certainty what the price of those shares would be on any one day. Typically, unloading or "dumping" a large block of stock into a limited marked depresses the price that can be obtained. "[O]rdinarily a large block of stock cannot be offered for sale on the market and turned into 'cash' as readily as a small number of shares might be; … when the supply (offerings) of a particular security is greater than the market demand for the particular shares, the market will go down …." *Florida Nat. Bank of Jacksonville v. Simpson*, 59 So.2d 751, 769 (Fla. 1952).

[6] There was testimony that Plaintiffs repeatedly offered their documents to Clean Coal and FAST but that their documents were refused.

Plaintiffs counter by arguing that they presented evidence that during a four-day period in February 2010, the market absorbed a 17-fold increase in daily trading volume, during which time the price of Clean Coal's stock "more than sextupled." (Plaintiffs' Memorandum at 3). However, the daily trading volume in February of 2010 is hardly relevant to the daily trading volume that existed a year earlier in February of 2009, when market conditions were different. Moreover, the fact that the market reacted in such a volatile fashion only underscores the difficulty and inherent uncertainty in attempting to predict the effect of such a massive infusion of stock into a small and limited market such as existed in February of 2009. The stock price may soar or it may tank. Nobody can tell.

The jury's own verdict reflects that it was a product of guesswork and conjecture. There is no support in the record for an award of $810,306.72 for lost profits, a fact admitted to by both counsel during oral argument on the Motion for JNOV and reflected in Plaintiffs' own Motion for Additur, wherein they concede that the amount of money damages awarded to Plaintiffs is inadequate, in part, because it "was arrived at by speculation and conjecture". (Motion for Additur at 3). The jury is not at fault, however, as there was no expert or other specific, objective, or non-speculative evidence presented by the Plaintiffs that would allow them to calculate lost profits with any degree of precision or reliability.

III. CONCLUSION

The court is well-aware of the sanctity normally accorded to a jury's verdict and is loath to interfere or set-aside their decision.[7] Yet, this court is duty bound to do so in those rare instances, such as this, where the verdict is not supported by competent, substantial evidence. *Lindon v. Dalton Hotel Corp.*, 49 So.3d 299, 303 (Fla. 5th DCA 2010) ("A motion for directed verdict or JNOV should be granted only if no view of the evidence could support a verdict for the nonmoving arty and the trial court therefore determines that no reasonable jury could render a verdict for that party.") Plaintiffs inability to present to the jury evidence that would enable it to determine damages for lost profits within a reasonable degree of certainty, free from speculation and conjecture, requires that this court deny them recovery.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that:

1. Defendants' Motion for Judgment Notwithstanding the Verdict is GRANTED.

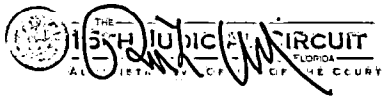
[7] As Defendants correctly point out, the Plaintiffs' position in regards to the inviolability of the jury's verdict is somewhat disingenuous. On the one hand, they argue in their Memorandum that for purposes of the Motion for JNOV, neither the Defendants nor the court should "second-guess" the jury's verdict. On the other hand, they assert in their Motion for Additur that the court should throw out the jury's award as inadequate and increase it by more than $20,000,000.00.

Plaintiffs shall take nothing by this action and Defendants shall go hence without day.

2. Plaintiffs' Motion for Additur is MOOT and is, therefore, DENIED.

3. The court reserves jurisdiction for the purpose of determining attorneys' fees and costs, if any.

DONE and ORDERED in chambers in Palm Beach County, Florida, this 1st day of August, 2017.



RICHARD L. OFTEDAL
Circuit Judge

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