

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 2419

DENNIS D. CHISUM, individually and
derivatively on behalf of JUDGES
ROAD INDUSTRIAL PARK, LLC;
CAROLINA COAST HOLDINGS, LLC;
and PARKWAY BUSINESS PARK,
LLC,

Plaintiff,

v.

ROCCO J. CAMPAGNA; RICHARD J.
CAMPAGNA; JUDGES ROAD
INDUSTRIAL PARK, LLC; CAROLINA
COAST HOLDINGS, LLC; and
PARKWAY BUSINESS PARK, LLC,

Defendants.

**ORDER ON DEFENDANTS' MOTION
FOR APPROPRIATE RELIEF**

1. THIS MATTER is before the Court on Defendants Rocco J. Campagna and Richard J. Campagna's (the "Campagnas") Motion for Appropriate Relief (the "Motion"), requesting that the Court relieve them from certain aspects of the Final Judgment (the "Judgment"), (ECF No. 264), pursuant to Rule 60 of the North Carolina Rules of Civil Procedure ("Rule(s)").

2. This litigation involves a dispute between three members of three North Carolina limited liability companies: Judges Road Industrial Park, LLC ("Judges Road"); Parkway Business Park, LLC ("Parkway"); and Carolina Coast Holdings, LLC ("CCH"), who went into business together to develop commercial real estate. The

Court adopts the facts as recited by the Supreme Court of North Carolina in *Chisum v. Campagna*, 376 N.C. 680 (2021).

3. A jury trial of this case took place from 6 August 2018 through 16 August 2018 in the Superior Court of New Hanover County on Plaintiff's derivative claims for breach of fiduciary duty and constructive fraud on behalf of Judges Road and Parkway, Plaintiff's individual claims for civil conspiracy, and his individual claims for failure to pay distributions.¹ Certain issues of fact underlying Plaintiff's claims for declaratory judgment were also submitted to the jury.

4. On 15 August 2018 the jury returned its verdict. The jury found the Campagnas liable to Parkway for compensatory damages of \$257,514.00 and punitive damages of \$150,000.00. The jury also found the Campagnas liable to Judges Road for compensatory damages of \$2.00 and punitive damages of \$600,000.00. The jury awarded Chisum unpaid distributions from Parkway and Judges Road of \$10,695.00 and \$3,927.00, respectively. On 11 October 2018 the Court entered a final judgment based on the verdict. (Final Judg., ECF No. 264.)

5. As part of its judgment, the Court ordered that Judges Road and Parkway be dissolved. (Final Judg.)

6. Almost three years later, the Campagnas ask the Court to declare that the jury's award of damages includes and satisfies the Campagnas' responsibility to

¹ At trial, the presiding Judge directed a verdict at the close of the evidence for Defendants and dismissed Plaintiff's claims regarding CCH. The Supreme Court reversed this decision and remanded Plaintiff's claims regarding that entity to this Court for trial. *Chisum v. Campagna*, 376 N.C. 680 (2021).

repay transfers of money the Campagnas characterized at trial as “loans” to them from their businesses. (Mot. Appropriate Relief, ECF No. 337.) For the reasons stated below, the Court DENIES the Motion.

ANALYSIS

7. The evidence at trial included tax records and voluminous other financial documents of Parkway and Judges Road. (ECF No. 238, Joint Exs. 14–18, 23, 24; ECF No. 239, Pl.’s Exs. 178, 214.) These financial documents included general ledgers detailing every financial transaction of the businesses from 2010 through 2017. (ECF No. 238, Joint Exs. 5, 14, 23.) Plaintiff used these records to elicit testimony from Richard Campagna and from the accountant for the LLCs, Milton R. Hardison (“Hardison”), about transfers of money made by Parkway and Judges Road to the Campagnas for various personal expenses. At trial, Defendants characterized these transfers as loans; however, Hardison testified that he was not aware of any documentation supporting Defendants’ assertion that the transactions characterized as loans were, in fact, loans. (Trial Tr. pp. 975:11–982:1, ECF No. 358.)

8. Defendants did not request that the jury answer interrogatories with respect to this issue pursuant to Rule 49, nor did they object to the issues as framed on the verdict sheet provided to the jury. Furthermore, although Rule 51 gave them the opportunity, Defendants did not request that the Court instruct the jury regarding the treatment of the alleged loans in its damages award, nor did they object to the Court’s instructions on damages on this basis. Following the verdict, Defendants did not raise a question regarding whether the jury included the alleged

loans in its damage calculations, despite multiple post-trial motions. (ECF Nos. 268, 270, 272, 274, 276.) They did not raise the issue in October 2018 when the Court entered its orders empowering a receiver for the two LLCs. (ECF Nos. 265, 266.) Nor did Defendants appeal the loan issue to the Supreme Court of North Carolina.

9. Now, however, after the Supreme Court of North Carolina has reviewed and affirmed all but the dismissal of Plaintiff's claims regarding CCH, Defendants seek to establish that the jury's verdict extinguished their responsibility to repay any loans they took from Judges Road and Parkway. They move for relief from the Judgment under Rules 60(b)(5)–(6), contending that the doctrines of *res judicata*, election of remedies, judicial estoppel, and collateral estoppel bar the LLCs from attempting to collect those loans in the dissolution process.

10. Plaintiff responds, *inter alia*, that the jury's verdict did not award any damages stemming from loans because, among other reasons, the Campagnas admitted they owed the money. Plaintiff responds further that even if the composition of the jury's award was capable of being determined, the Campagnas' Motion, filed almost three years after the verdict, simply comes too late. On this point, the Court agrees.

11. Rule 60(b) provides that a court may relieve a party from a final judgment when “[t]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;” or for “[a]ny

other reason justifying relief from the operation of the judgment.” N.C.G.S. § 60(b)(5)–(6).

12. Importantly, however, “[t]he motion shall be made within a reasonable time.” *Id.*; see also *Brady v. Town of Chapel Hill*, 277 N.C. 720, 723 (1971).

13. Whether a motion is timely depends on the circumstances of the particular case. *McGinnis v. Robinson*, 43 N.C. App. 1, 8 (1979) (citing 7 *Moore’s Federal Practice*, ¶ 60.27[3] at 383 (2d ed. 1979)). The trial court is afforded discretion to determine what is reasonable. See *Jenkins v. Richmond County*, 118 N.C. App. 166, 169 (1995) (holding that plaintiffs’ motion made a year after the dismissal of their appeal was not made within a reasonable time and reversing the order of the trial court granting plaintiffs relief); *Brown v. Windhom*, 104 N.C. App. 219, 221 (1991) (holding that the trial court did not abuse its discretion in concluding that one year was not a reasonable time to bring a motion for relief under Rule 60(b)).

14. Here, the Court finds that the Campagnas could have, and should have, raised their concern regarding whether and which loans were considered by the jury as damages at a much earlier stage in the litigation. As stated above, there were numerous opportunities for the Campagnas to seek clarification about whether the jury considered loans in its verdict. See, e.g., *Nickels v. Nickels*, 51 N.C. App. 690, 692-93 (1981), *cert. denied*, 303 N.C. 545 (1981) (holding that a motion made 23 months after judgment was entered was not made within a “reasonable time”).

15. Even were the motion determined to be timely, however, the Court would not conduct the requested autopsy. Attempting to unravel the jury’s verdict in

this instance is a fool's errand. *See, e.g., Town of Beech Mt. v. Genesis Wildlife Sanctuary, Inc.*, 247 N.C. App. 444, 470 (2016) (“[W]here it is unclear exactly how the jury reached its overall figure, the trial court does not abuse its discretion in denying a motion to amend the verdict if the jury’s verdict was consistent with [the claimant’s] evidence[.]”), *aff’d*, 369 N.C. 722 (2017) (citation and quotation marks omitted). Indeed, the words of the Supreme Court of this State spoken almost a century ago apply with equal force today:

The verdict of a jury is a solemn deliberation. The system is often spoken of as the ‘Bulwark, or palladium, of our liberty.’ In the centuries of its existence no better form has ever been suggested, or perhaps ever will be, for the trial of causes. When a verdict is rendered, it imports verity. What is done in the jury room should be jealously guarded by the jurors who try the case, and it is doubtful propriety to discuss their deliberations outside of the jury room after the verdict is rendered. Their verdict should be above suspicion.

S.J. Bartholomew & Co. v. Parrish, 186 N.C. 81, 85 (1923) (citation omitted).

16. Defendants, themselves, recognize the difficulty of their position, at least when it comes to trying to interpret the nominal compensatory damages award to Judges Road. Tellingly, they admit, “[i]t is folly to attempt to interpret the jury’s decision,” and they call the reasons for the jury’s decision a “mystery left eternally in the jury room.” (Defs’ Reply Sup. Mot. Appropriate Relief 11, ECF 342.)²

17. In sum, given the ample time and opportunities the Campagnas had to clarify the jury’s thinking regarding these loans, coupled with the sanctity afforded a jury’s final verdict in our justice system, the Court will not attempt to determine the

² It is worth noting, however, that the jury awarded Judges Road \$2.00 in compensatory damages. Logic suggests that loans were not subsumed in this *de minimis* amount.

thought process that went into the jury's decision. Accordingly, the Court concludes in its discretion that the Motion was not made within a reasonable time, and it is DENIED on that basis.³

18. With respect to the balance of requested relief, the Court finds the Motion to be premature, and the requested relief is DENIED without prejudice to either party to move at a later date once the Receiver has completed the claims process.

IT IS SO ORDERED, this the 30th day of September, 2021.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases

³ At a hearing on the Motion, Defendants argued that the Court should exercise its power pursuant to N.C.G.S. §1-507.22 to declare that loans are subsumed in the jury's verdict. The Court declines to use its authority in the manner requested.