

SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY

**PRESENT:**

HON. JERRY GARGUILO  
SUPREME COURT JUSTICE

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EAST HAMPTON UNION FREE SCHOOL  
DISTRICT,

Plaintiff,

-against-

SANDPEBBLE BUILDERS, INC.,

\_\_\_\_\_  
Defendant.

ORIG. RETURN DATE: 10/5/16  
FINAL SUBMITTED DATE: 10/12/16  
MOTION SEQ#012 MD  
MOTION SEQ#014 WDN duplicate of 012

**PLAINTIFF'S ATTORNEY:**

PINKS ARBEIT BOYLE & NEMETH  
140 FELL COURT, STE 303  
HAUPPAUGE, NY 11788  
631-234-4400

**DEFENDANT'S ATTORNEY:**

ESSEKS, HEFTER & ANGEL ESQS.  
108 EAST MAIN ST, POB 279  
RIVERHEAD, NY 11901  
631-369-1700

The Plaintiff (East Hampton) Petitions the Court by way of motion for an order pursuant to CPLR § 4404(a) setting aside the verdict and directing that judgment be entered in favor of the Plaintiff or, in the alternative, for a new trial, on the grounds that the verdict is contrary to the weight of the evidence and contrary to the law, and in the interest of justice and for such other and further relief as this Court may deem just and proper, together with costs of this motion.

The Defendant, Sandpebble Builders, Inc., (Sandpebble) opposes the Petition in all respects.

In making this determination the Court has considered the following:

1. Plaintiff's Notice of Motion For New Trial or Judgment Notwithstanding Verdict with supporting documents, inclusive of Exhibits A through M; and
2. Defendant's Affirmation In Opposition To Plaintiff's Motion For New Trial or Judgment Notwithstanding Verdict with supporting documents, inclusive of Exhibits A through I and Memorandum of Law In Opposition To Plaintiff's Motion To Set Aside Verdict.

Following a jury trial that commenced on May 10, 2016, the jurors were provided a seven-question verdict sheet prepared by the Court. A review of the verdict sheet showed the jurors unanimously agreed in the following respects: (a) Sandpebble filed a Notice of Claim within three (3) months from when its claim accrued and filed its counterclaim within one (1) year from the time that claim arose; (b) the project contemplated by the parties' Agreement dated April 2002 was not abandoned in favor of an alleged new project; (c) the Plaintiff, East Hampton was in breach of the April 2002 Agreement with Sandpebble; (d) Sandpebble sustained damages as "a result of the breach of contract" by East Hampton<sup>1</sup> (FNI); and (e) the jury calculated damages pursuant to section 9.6 of the April 2002 Agreement awarding Sandpebble damages in the sum of Seven Hundred Fifty Five Thousand Seven Hundred Sixty Seven Dollars and Forty One Cents (\$755,767.41).

Plaintiff's Petition seeks an order and/or orders based upon all of the scenarios contemplated by Civil Practice Law and Rule 4404(a).

As pointed out by Professor Siegel at New York Practice, 5th Edition, Practitioner Treaty Series § 406-Motion for New Trial on the "Weight of the Evidence"

There are really three different situations to be distinguished, among which the new trial based on the weight of the evidence is the middle one:

The first situation requires the court to keep hands off, merely confirming the verdict and directing that judgment be entered on it: there are issues of fact that can be resolved either way and it is for the jury to resolve them. If the facts give rise to conflicting inferences, for example, it is for the jury to draw the inferences. If the issue is one of credibility, it is for the jury to determine who is telling the truth. If reasonable minds may differ, in short, it is for the jury to determine who prevails. Most verdicts fall into this category.

East Hampton acknowledges that in order to set aside the verdict as a matter of law not supported by sufficient evidence, the court must conclude that there "is simply no valid

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<sup>1</sup>FNI . Based upon the answers to the verdict sheet interrogatories one (1) through five (5), the jury was not required to respond-answer question six (6).

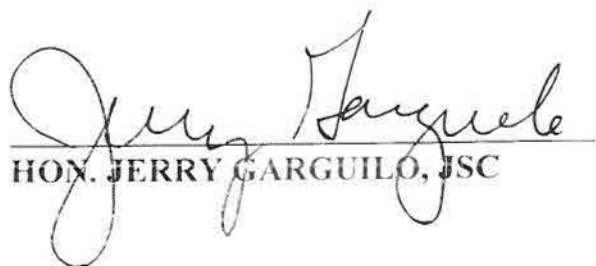


line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial." "The test is not whether the jury erred in weighing the evidence, but whether any viable evidence existed to support the verdict." To set aside the verdict as against the weight of the evidence, the Court must conclude that "the jury could not have reached its verdict on any fair interpretation of the evidence."

The Jury was presented with a September 19, 2006 letter in which East Hampton informed Sandpebble that "its services were no longer required" and demanded the return of relevant project documents in Sandpebble's possession. Defendant contends this was a key document at trial and established that until that date, the District had not rejected or terminated the parties' Agreement. The jury reasonably and rightfully concurred that this was the termination event. Another piece of evidence introduced to corroborate "termination" or lack thereof was an e-mail from Michael Libor, East Hampton's lead counsel in charge of the project, which forms the subject matter of the dispute. That letter was sent to Michael Gaultieri, East Hampton's Superintendent and is dated May 24, 2006. That document contains an admission from East Hampton's lead counsel that "the April 2002 agreement has never been terminated." In the face of the May 24, 2006 e-mail, the Plaintiff's Petition must be **DENIED** as it represents viable, if not conclusive evidence, regarding the time of termination and/or breach. The verdict is confirmed. Defendant shall enter judgment on it. The Court having considered the parties' remaining arguments and finds same to be without merit.

The foregoing constitutes the decision and **ORDER** of the Court.

**Dated: November 28, 2016**

  
HON. JERRY GARGUILO, JSC