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NYSCEF DOC. NO. 154

INDEX NO. 62770/17
To commence the statutory time period for appeals as
of right (R.C.E.V. 44), which is to be filed to 03/04/2019
copy of this order, with notice of entry, upon all parties.

Disp ___ Dec _x_ Seq. Nos. _6-7_ Type _misc. _

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X
TURFSCAPES, LLC,

Plaintiff,

-against-

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DECISION AND ORDER

THE LANDTEK GROUP, INC., ERICH GOLF, LLC,
IRVINGTON UNION FREE SCHOOL DISTRICT and
HANOVER INSURANCE COMPANY,

Defendants.
-----X

The following papers numbered 1 to 5 were read on these
motions:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit and Exhibits	1
Notice of Cross-Motion, Affirmation and Exhibits	2
Affidavit in Support	3
Memorandum of Law in Opposition and in Support	4
Reply Affirmation and Exhibit	5

There are two post-verdict motions before the Court in this
action. As background, the Court previously held that Irvington
Union Free School District ("Irvington")¹ entered into a contract
with defendant The Landtek Group, Inc. ("Landtek") for various
improvements to its fields and facilities. Landtek entered into

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a subcontract with defendant Erich Golf, LLC ("Erich"). Erich then entered into a sub-subcontract with plaintiff. After trial, the jury found that Landtek owed plaintiff \$519,369 for the East Field component of the project. This is the amount that plaintiff sought at trial. The parties agreed to submit the issue of interest to the Court.

Landtek's motion seeks to set aside the portion of the verdict that awarded plaintiff \$519,369, contending that \$260,869 is the appropriate amount of damages. Plaintiff's motion seeks to fix the date of pre-verdict interest at February 21, 2017, and setting pre-verdict, post-verdict, and post-judgment interest at one percent per month pursuant to General Municipal Law § 106-b(2) and General Business Law § 756-b(1)(b).

"Under CPLR 4404(a), a trial court has the discretion to order a new trial 'in the interest of justice' (CPLR 4404[a]). In considering whether to exercise its discretionary power to order a new trial based on errors at trial, the court must decide whether substantial justice has been done, whether it is likely that the verdict has been affected and must look to its own common sense, experience and sense of fairness rather than to precedents in arriving at a decision." *Lariviere v. New York City Transit Auth.*, 131 A.D.3d 1130, 1132, 17 N.Y.S.3d 153, 155 (2d Dept. 2015). It is well-settled that the standard for setting aside a jury verdict is "whether the evidence so

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preponderates in favor of the movant that the verdict could not have been reached upon any fair interpretation of the evidence. Resolution of the motion does not involve a question of law, but rather requires a discretionary balancing of many factors. Moreover, great deference is accorded to the fact-finding function of the jury, and determinations regarding the credibility of witnesses are for the factfinders, who had the opportunity to see and hear the witnesses." *Vatalaro v. Cty. of Suffolk*, 163 A.D.3d 891, 892, 81 N.Y.S.3d 444, 446 (2d Dept. 2018).

Landtek claims that the jury erred by making an "arithmetic inconsistency when compared to the weight of the evidence," in that the jury failed to deduct \$376,500 that it already paid, as well as the additional amounts of \$28,000 to be paid to Erich and the \$48,000 paid in settlement. However, the document to which Landtek cites in support of its position shows that the \$376,500 was paid to Erich, not plaintiff. Plaintiff's expert testified that the appropriate amount of damages was \$519,369.08, and explained exactly how he had arrived at this number. Plainly, the jury agreed that this number was correct, and rejected Landtek's position. A review of these papers demonstrates that "there was a valid line of reasoning and permissible inferences from which the jury could reach the conclusion" that it did.

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Gore v. Cardany, 2018 WL 6627037, at *2 (2d Dept. Dec. 19, 2018).

Accordingly, the Court denies Landtek's motion in its entirety.


As for plaintiff's motion, the Court begins by observing that Landtek does not appear to oppose plaintiff's request that the Court find that the applicable date on which interest begins to accrue is February 21, 2017, the date that plaintiff asserts is the date of breach. The Court thus grants this aspect of the motion. With respect to plaintiff's contention that the Court should ignore CPLR § 5004, which provides for 9% interest per annum, and instead apply General Municipal Law § 106-b(2) and General Business Law § 756-b(1)(b), for an interest rate of 1% per month, the Court notes that plaintiff cites no caselaw for this proposition. Research has not revealed any cases that would require the Court to apply any other interest rate other than the standard 9%. The Court thus denies this aspect of the motion.

Plaintiff shall submit a proposed Judgment to the Judgment Clerk, on notice, in the amount of \$519,369.08, plus interest at the rate of 9%, from February 21, 2017.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York

FEBRUARY 25, 2019


HON. LINDA J. JAMIESON
Justice of the Supreme Court

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