

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0012

THE SHAW GROUP INC.

VERSUS

DEAN L. MCINNIS

Judgment Rendered: November 2, 2012

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 526,217

Honorable Wilson Fields, Judge Presiding

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BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

McCleendon, J. dissents and assigns reasons.

*TMH
V6W/bjms*

HIGGINBOTHAM, J.

The Shaw Group Inc. (Shaw) appeals a trial court judgment entered after a jury trial that awarded Dean L. McInnis the sum of \$10,000.00 and denied all claims made by Shaw. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

This suit arises out of a dispute between Shaw and McInnis relating to McInnis's employment with Shaw until he was terminated on September 27, 2004. In 2002, Shaw CEO James Bernhard, Jr. arranged an interview for McInnis with the President of Shaw Environmental and Infrastructure, Thomas A. Barfield, Jr. (R. 404, 699) Following the interview, Shaw Environmental and Infrastructure offered McInnis employment at a salary of \$134,000.00 per year, with an interest free loan of \$25,000.00, that would be forgiven if McInnis remained employed at Shaw for a period of two years. (R. 407-408) On July 1, 2002, McInnis signed a document, which included the terms of his salary and provisions for the loan, accepting the position of Director of Business Development for Shaw Environmental and Infrastructure. (Plaintiff's Exhibit 1)

Shaw anticipated that McInnis, who owned several environmental companies, could use his business relationships to create business for Shaw Environmental and Infrastructure. (R. 410-411, 657) Barfield indicated that "there were discussions about how we would compensate him for the work he ... brought over from his old business, and the clients he could transition to us and develop for us" and "over the course of probably the next year and half or so, [Shaw was] looking at how [McInnis] was performing." (R. 411)

In the latter part of 2003, McInnis inquired about compensation for bringing business to Shaw. (R. 411) Barfield indicated that at that time, he recalled discussions about the relationships McInnis had brought to Shaw "and the magnitude of those relationships in terms of revenue...and it could be in the six

million dollar range.”¹ (R. 428) McInnis was asking for additional compensation in the \$400,000.00 range. (R. 411)

Barfield discussed the additional compensation request McInnis had made with Scott LaGrange, Chief Financial Officer of Shaw Environmental and Infrastructure, “to get an idea whether that was in fact...supported by the facts and the numbers.” (R. 413, 466, Defendant’s Exhibit 7) Following his discussions with LaGrange, Barfield indicated that he “agreed to give [McInnis a \$250,000.00] payment in the form of a loan,” which would be forgiven over the course of three years. (R. 413) Barfield acknowledged that the payment “was a form of compensation for [McInnis] bringing business relations to us as he came over to work with us...[s]ubject to the loan provisions.” (R. 417) Barfield did not recall whether he ever personally told McInnis that Shaw understood the \$250,000.00 payment to be a loan or whether he had instructed LaGrange to inform McInnis about the conditions of the payment. (R. 416)

In an e-mail from LaGrange to Barfield dated December 3, 2003, in which McInnis was sent a courtesy copy, LaGrange confirmed that the “deal you made with ... [McInnis is a \$250,000.00] employee loan to be forgiven 1/3 over 3 years.” (Plaintiff’s Exhibit 4) On December 4, 2003, McInnis indicated in a responsive e-mail that he and Mr. Barfield “did agree to the \$250,000[.00] as compensation for my companies’ book of business” but “never spoke about this being an ‘employee loan.’” (Plaintiff’s Exhibit 4)

On December 31, 2003, LaGrange tendered to McInnis a check in the amount of \$250,000.00. (R. 479) No documents, loan agreements, or promissory notes were given to McInnis in conjunction with the payment. (R. 851-52) LaGrange did not speak with McInnis regarding the conditions of payment, but

¹ Barfield also acknowledged that the six million dollar figure was a revenue number and did not reflect the associated costs, so the number does not “reflect anywhere near six million dollars of profit for Shaw.” (R. 428)

indicated that he wrote "loan" on the check stub prior to giving the check to McInnis. (R. 479) LaGrange, however, was unsure whether the stub with this notation was attached to the check when he gave it to McInnis. (R. 479)

On February 27, 2004, McInnis received a memorandum from Shaw, which indicated that the \$250,000.00 payment was an interest-free loan "and [would] be forgiven on July 30, 2005, contingent upon [his] employment with the Company and [his] commitment to execute a promissory note." (Plaintiff's Exhibit 8) The memorandum also indicated that should McInnis resign or be terminated for cause between August 1, 2004 and July 30, 2005, he would be required to reimburse Shaw for one-half of the loan amount.² McInnis was subsequently presented a promissory note, which he refused to sign on multiple occasions. (R. 888)

On September 27, 2004, Shaw avers that it terminated McInnis for cause.³ Shaw filed suit against McInnis for \$118,076.50, representing suit for repayment of one-half of the \$250,000.00 (or \$125,000.00), minus a bonus in the gross amount of \$10,000.00 (net of \$6,923.50), which Shaw admitted was owed to McInnis. (R. 7-9) McInnis then reconvened against Shaw for payment of an additional \$150,000.00 as the balance of a lump sum compensation agreement, and a separate \$40,000.00 bonus that McInnis alleged he was promised by Shaw. (R. 19)

A week-long jury trial was held in May 2011. Following deliberations, the jury answered the jury verdict form as follows:

1. Do you find that [Shaw] and [McInnis] entered into an agreement under which [McInnis] would be paid \$250,000[.00], which would be treated as a loan such that [McInnis] could be required to pay back all or a portion of it to [Shaw]?

Yes _____ No ✓

² The memorandum also provided that if McInnis resigned or was terminated for cause prior to August 1, 2004, he would have to reimburse the full amount of the loan.

³ McInnis opines that Shaw did not have cause to terminate him, but this issue is not before us on appeal.

(If your answer to Question #1 is "yes" then proceed to Question #2.)
(If your answer to Question #1 is "no" then proceed to Question #3.)

2. Do you find that [McInnis] is required to reimburse [Shaw] the sum of \$118,076.50, because [McInnis] was terminated for cause.

Yes _____ No _____

(Proceed to Question [#]4.)

3. Do you find that [Shaw] and [McInnis] failed to have a "meeting of the minds" as to the reason for the \$250,000[.00] payment, which requires [McInnis] to reimburse [Shaw] the sum of \$118,076.50?

Yes √ No _____

(Proceed to Question [#]4.)

4. Do you find that [Shaw] and [McInnis] entered into an agreement for [Shaw] to pay [McInnis] any sum, in addition to the \$250,000[.00] payment made to [McInnis] for his business or his business relationships that he brought to [Shaw]?

Yes _____ No √

(If your answer to Question #4 is "yes" then proceed to Question #5.)
(If your answer to Question #4 is "no" then proceed to Question #6.)

5. Please enter the amount of the sum in addition to the \$250,000[.00] payment that [Shaw] agreed to pay to [McInnis].

\$ _____

(Proceed to Question [#]6.)

6. Do you find that [Shaw] is obligated to pay [McInnis] a bonus that has not been paid to him or otherwise credited against any amount that [McInnis] owes [Shaw]?

Yes √ No _____

(If your answer to Question #6 is "yes" then proceed to Question #7.)
(If your answer to Question #6 is "no" then sign the bottom of the form, and notify the bailiff.)

7. Please enter the amount of the unpaid or uncredited bonus [Shaw] is required to pay to [McInnis].

\$ 10,000.00

(R. 354-355) After the verdict form was read into the record, neither party polled the jurors, and the court dismissed the jury without further inquiry as to the verdict.

(R. 5)

On June 7, 2011, both parties submitted competing written judgments to the trial court. (R. 356, 360) Shaw's proposed judgment awarded Shaw \$118,076.50 and awarded McInnis \$10,000.00. McInnis's proposed judgment awarded McInnis \$10,000.00 and dismissed Shaw's claims against him. Prior to signing one of the judgments, the trial court brought to the attention of the parties a letter it received from the jury foreman.⁴ At a status conference held thereafter, the court made it clear that it was going to revisit the jury interrogatories and then sign a judgment accordingly.⁵ (R. 931-36)

On June 27, 2011, the trial court signed McInnis's proposed judgment, which dismissed with prejudice all claims of Shaw, ordered Shaw to pay McInnis the sum of \$10,000.00, and assessed all costs against Shaw. (R. 356-57) Shaw subsequently filed the instant appeal to seek review of the trial court's judgment, assigning the following errors:

1. The trial court erred in signing a judgment entirely inconsistent with the jury's verdict form, thereby invalidating the jury's verdict following a week-long jury trial.
2. The trial court erred when it considered post-trial correspondence from a juror that attempted to impeach the jury's verdict, which is forbidden by law.

⁴ The foreman indicated that the jurors' intention was for McInnis not to repay any amount to Shaw, but that one of the questions on the jury verdict form may have been misinterpreted by the jury.

⁵ Specifically, the trial court indicated:

Both parties have submit[ted] a judgment to the court. I have not yet signed either judgment. Before I sign the judgment, I wanted to bring this to the attention of the parties. The court will revisit the jury verdict form to at least have some assurance in the court's mind as to which [judgment] to sign. And then the court will sign off on a [judgment]. (R. 935)

DISCUSSION

The court is required to inform the parties within a reasonable time prior to their argument before the jury of the special verdict form and instructions it intends to submit to the jury, and the parties shall be given a reasonable opportunity to make objections. La. Code Civ. P. art. 1812(B). The court is required to enter judgment in conformity with the jury's answers to these special questions and according to applicable law. La. Code Civ. P. art. 1812(D). Additionally, following a trial by jury, the court is required to prepare and sign a judgment in accordance with the jury's verdict. La. Code Civ. P. art. 1916(A). Except for determining whether certain types of irregularities have occurred, the law does not permit inquiry into the thought processes by which a jury reached a verdict. **Cosie v. Aetna Cas. & Sur. Ins. Co.**, 527 So.2d 1105, 1107 (La.App. 1st Cir. 1988).

Shaw avers that the trial court substituted its own opinion for the jury's original verdict when it signed McInnis's proposed judgment, which Shaw contends was inconsistent with the jury verdict form. Specifically, Shaw points to interrogatory number three wherein the jury concluded that there was no "meeting of the minds" as to the reason for the \$250,000[.00] payment, which requires [McInnis] to reimburse [Shaw] the sum of \$118,076.50." Shaw maintains that this interrogatory clearly entitles it to a judgment of reimbursement. Further, Shaw contends that the trial court improperly considered a post-trial letter from the jury foreman that impeached the jury's original verdict. Shaw concludes that the trial court's judgment should be reversed and judgment should be rendered by this court in accord with the jury's verdict.

We note that La. Code Civ. P. art. 1812(D) requires the trial court to enter judgment in accord with the jury's verdict. See **Panyanouvong v. T & H Convenience Store, Inc.**, 97-2727, p. 3 (La.App. 1 Cir. 12/28/98), 734 So.2d 9, 12, writ denied, 99-1839 (La. 10/15/99), 748 So.2d 1148. Further, the trial court

could not consider the jury foreman's post-verdict letter in revisiting the interrogatories and deciding which judgment to sign. See Cosie, 527 So.2d at 1107. However, the record reflects that neither party objected to the jury verdict form or the reading of the verdict. Additionally, neither party filed a motion for new trial or requested a judgment notwithstanding the verdict with the trial court.⁶ Rather, the only pleading filed after the trial court entered judgment was Shaw's motion to appeal. McInnis, with the trial court signing a judgment in his favor, did not appeal. Therefore, the sole issue currently before this court is whether the trial court signed a judgment in accordance with the jury verdict.

At trial, Shaw acknowledged that a principal cause of the \$250,000.00 payment was to compensate McInnis for "bringing business relations to [Shaw]." (R. 417) Shaw contends that the payment was to be made in the form of a loan designed to ensure McInnis's employment with Shaw over a two-year period whereas McInnis alleged that the payment was an unconditional tender. The jury rejected Shaw's position that the payment was a loan, and Shaw has not challenged this finding on appeal.

In finding that there was no "meeting of the minds" as to the reasons for the \$250,000.00 payment, the jury may have concluded that Shaw intended the payment to be subject to the two-year loan provision, but that McInnis was not aware of this intent. Although Shaw may have intended the payment to be a loan, the only indication that McInnis received notice prior to accepting the \$250,000.00 was a courtesy copy of the December 3rd e-mail communication between LaGrange and Barfield. In response to this e-mail, McInnis informed LaGrange that the payment was not a loan, but rather "compensation for my companies' book of business." (Plaintiff's Exhibit 4) Thereafter, prior to delivering the check to

⁶ Louisiana Code of Civil Procedure article 1972(3) requires that a new trial be granted when the jury has behaved improperly so that impartial justice has not been done.

McInnis, Shaw apparently never informed him that the payment was a loan. Moreover, at the time Shaw gave McInnis the check, it did not present him with any promissory note or other agreement evidencing a loan, as it had previously done in regards to the \$25,000.00 advance. As candidly admitted by LaGrange, Shaw failed in this "particular deal ... It was not properly documented." (R. 490)

Therefore, even assuming that Shaw's principal cause for the \$250,000.00 payment to McInnis was to loan him money to ensure McInnis's future employment with Shaw, McInnis was not aware that this was Shaw's primary objective. Rather, McInnis, based on negotiations with Shaw, understood that the payment was primarily for his book of business.

Although Shaw asserts that there are inconsistencies in the jury verdict and in the form itself, we find that to interpret the jury verdict form in the manner asserted by Shaw would lead to an internal inconsistency in the jury's award. Interrogatory number one asks the jury to decide if Shaw and McInnis had an agreement that would require McInnis to pay back all or any portion of \$250,000.00 for a loan from Shaw. The jury unequivocally responded "No" and was then referred to Interrogatory number three, asking if Shaw and McInnis failed to have a meeting of the minds which would have required McInnis to reimburse Shaw. The jury responded "Yes," an answer that is consistent with the "No" answer to Interrogatory number one, in that McInnis was not required to pay Shaw any amount. Then the jury went on to decide that McInnis was entitled to a bonus of \$10,000.00 that had not already been paid or credited to him. Consequently, the only award given by the jury was a \$10,000.00 bonus to McInnis.

Thus, we conclude that the written judgment entered by the trial court was not contrary to the jury verdict form since it ordered Shaw to pay to McInnis the sum of \$10,000.00, plus costs, and dismissed Shaw's claims against McInnis. Given that the trial court's judgment was rendered in accordance with the jury's

conclusions, we need not address Shaw's arguments regarding the post-trial correspondence submitted by the jury foreperson. Furthermore, in view of the fact that Shaw never objected to the jury verdict form or the reading of the verdict, nor made any post-trial motions regarding the alleged inconsistencies in the jury findings, we affirm the trial court's judgment.⁷ See La. Code Civ. P. art. 1793(C). Shaw's assignments of error are without merit.

CONCLUSION

For the foregoing reasons, the trial court's June 27, 2011 judgment is affirmed. Costs of this appeal are assessed to The Shaw Group, Inc.

AFFIRMED.

⁷ The failure to object to the jury interrogatories or the jury verdict form precludes Shaw from raising that issue on appeal. See **Marroy v. Hertzak** 2011-0403 (La. App. 1st Cir. 9/14/11), 77 So.3d 307, 311-12; **Edwards v. New Zion Apartments Ltd. Partnership**, 36,081 (La. App. 2d Cir. 10/25/02), 830 So.2d 517, 522, writ denied, 2002-3249 (La. 3/14/03), 839 So.2d 45. See also **Daigle v. White**, 544 So.2d 1260, 1262 (La. App. 4th Cir. 1989).

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VERSUS

DEAN L. MCINNIS

McCLENDON, J., dissents and assigns reasons.

I respectfully dissent insofar as the majority concludes that the judgment entered was in accord with the jury verdict form.

In answer to jury interrogatory number three the jury found a failure to have a meeting of the minds "which requires Dean L. McInnis to reimburse The Shaw Group Inc. the sum of \$118,076.50." A plain reading of this jury interrogatory answer mandates McInnis to reimburse Shaw the sum of \$118,076.50.¹ This mandate cannot be negated by the majority's flawed analysis. Louisiana Code of Civil Procedure article 1812D requires the trial court to enter judgment in accord with the jury's verdict. See Panyanouvong v. T&H Convenience Store, Inc., 97-2727, p. 3 (La.App. 1 Cir. 12/28/98), 734 So.2d 9, 12, writ denied, 99-1839 (La. 10/15/99), 748 So.2d 1148. Accordingly, the trial court erred in failing to sign a judgment awarding Shaw the sum of \$118,076.50.

Although McInnis asserts that there are inconsistencies in the jury verdict and in the form itself, review of these issues and the analysis of the alleged inconsistency are premature until such time as the trial court enters a judgment in accord with the jury verdict form. Therefore, the majority clearly errs in speculating as to the jury's possible thought process, in an attempt to resolve

¹ Significantly, the trial court, after reading a post-verdict letter from the jury foreman, stated that it was going to "revisit the jury verdict form" before deciding which judgment to sign. This letter was improperly considered by the trial court.

what the majority considers to be an inconsistent jury interrogatory. Following the rendition of a judgment conforming to the verdict form, the parties can file post-trial motions or seek appellate review from this court regarding defects in the jury form itself.