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Order on Motion for JNOV (Macke v. Cadillac
Jack Inc.)

Elizabeth E. Long
Fulton County Superior Court

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trouble or expense, as is necessary to support his claim for attorney fees under O.C.G.A. § 13-6-11. For the reasons set forth below, the Court hereby **DENIES** Zions' motion.

“A motion pursuant to O.C.G.A. § 9-11-50(b) for judgment notwithstanding the verdict may be granted only when, without weighing the credibility of the evidence, there can be but one reasonable conclusion as to the proper judgment; where there is conflicting evidence, or there is insufficient evidence to make a ‘one-way’ verdict proper, judgment notwithstanding the verdict should not be awarded.” Fertility Technology Resources, Inc. v. Lifetek Medical, Inc., 282 Ga.App. 148 (2006). “In considering a motion [for judgment notwithstanding the verdict], the court must view the evidence in the light most favorable to the party who secured the jury verdict.” Mills v. Norfolk Southern Ry. Co., 242 Ga.App. 324 (1999).

Zions contends that the evidence presented by Mr. Macke at trial was insufficient for a finding of bad faith or a finding that no bona fide controversy existed between the parties to justify the jury's award of attorneys' fees.

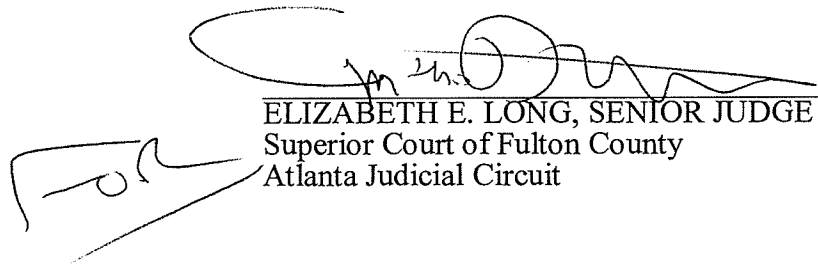
“A plaintiff is entitled to recover attorney fees under OCGA § 13-6-11 only if he can establish that the defendant has acted in bad faith in the underlying transaction. Therefore, the element of bad faith relates to the defendant's conduct in entering into the contract or pertains to the transaction and dealings out of which the cause of action arose, not to the defendant's conduct after the cause of action arose. Even slight evidence of bad faith can be enough to create an issue for the jury.” Fertility Technology Resources, 282 Ga.App. at 153.

Thus, if there was even slight evidence of bad faith in the underlying transaction on the part of Zions, this Court should uphold the jury's verdict on the issue of attorneys' fees. At trial, (1) Mr. Macke testified that he told Zions that he needed time to cure. (2) An email from the loan officer was admitted which indicated that he knew of the right to cure. (3) Several months later,

Zions sent Mr. Macke another notice giving him an opportunity to cure the default. Clearly, there was some slight evidence of bad faith in Zions' refusal to provide a cure period in the default process.

The Court finds that this evidence was sufficient to authorize the jury to conclude that Zions acted in bad faith in the dealings out of which the cause of action arose. Accordingly, the Court finds no basis to set aside the jury's award of attorneys' fees under O.C.G.A. § 13-6-11.

SO ORDERED this 3rd day of December, 2012.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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