IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

GARY ALEXANDER Individually, and as Administrator of the Estate of BETTY JEAN ALEXANDER, Deceased,	)	
Plaintiffs,	)	Civil Action File Number:
v.	)	15-A-2421-5
EGBE HERITAGE INVESTMENT, INC; AMERICAN GRACE HEALTH CARE SERVICES, INC.; GOLDEN ROSE OF POST OAK, LLC; and JOHN DOE CORPORATIONS 1-5 all d/b/a BRITTANY HOUSE AT KINCAID; TAPESTRY HOSPICE, LLC; JAQUELINE DORSEY; UDY MOSES; TERRI ARISMAN, R.N.; SHERRY MCCARTHY, R.N.; STACY DORNER, R.N.; GREGORY T. RAINWATER, M.D.; DAVID WOGHIREN; and ESTHER WOGHIREN,	)	
Defendants.	)	

ORDER

Having been tried before a jury, the Honorable David P. Darden presiding, this case now comes before the Court on the Plaintiff's Request that a Judgment be entered in its favor. Having conducted a post-trial hearing, and having reviewed the Jury's verdict form, the Plaintiff's Motion, the relevant legal authority, and the contents of the entire file, the Court hereby finds and decides as follows:

This is a wrongful death action arising from the death of Betty Jean Alexander on July 4, 2013, which was brought by her son, Plaintiff Gary Alexander, against the Defendants who were charged with her care. Ms. Alexander suffered from dementia, and at the time of the incident was bed bound and non-ambulatory. At trial the Plaintiff's showed that Ms. Alexander suffered

a fracture of her right arm, which precipitated her decline and eventual death. The injury occurred presumably when an attempt was made to move Ms. Alexander either to or from her bed by two Certified Nursing Assistants (CAN), Defendants Jacqueline Dorsey and Udy Moses and Non-Party hairdresser, Sue Torres-Painter. At the time, Jacqueline Dorsey worked for Defendant American Grace Health Care Services, Inc., a corporate entity that did business as Brittany House, the Senior Care home where Ms. Alexander resided. Corporate Defendants David Woghiren and Esther Woghiren owned and operated Brittany House at the time of the incident. Defendant Tapestry House was the hospice care company assigned to care for Ms. Alexander within Brittany House since Ms. Alexander needed more care than Brittany House provided. CNA Udy Moses, Nurse Terri Arisman, and Dr. Gregory T. Rainwater, who was dismissed prior to trial, worked for Tapestry House and cared for Ms. Alexander at the time of the incident. At trial all of the Defendants were represented and present, except for Defendant Jacqueline Dorsey, who despite having been served at her new residence in Austin, Texas, never filed an answer, and never hired an attorney to represent her in this matter. As such, Ms. Dorsey was technically in default, but no default judgment was ever entered against her.

At trial the Jury found in favor of the Plaintiff and against Defendants by placing an X beside the Defendants they felt were negligent. Marked with an X were:
American Grace Health Care Services, Inc. d/b/a Brittany House and/or Brittany House at Kincaid, Jacqueline Dorsey, Tapestry Hospice, LLC based on Terri Arisman's fault, David Woghiren and Esther Woghiren. Only Tapestry Hospice, LLC based on Udy Moses's fault was not checked. The Jury then awarded the Plaintiff damages in the amount of $1,000,000.00. On the second page of the verdict form the jury assigned the percentage of fault beside each Defendant's name. American Grace/Brittany House-45%, Jacqueline Dorsey-0%, Sue Torres-Painter-0%, Tapestry Hospice, LLC based on Terri Arisman, "R.N.'s" fault-10%, Tapestry

Hospice, LLC based on Udy Moses' fault-0%, David Woghiren-17%, Esther Woghiren-13% and Dr. Rainwater-15%. The percentages of fault totaled 100%. The Honorable David P. Darden examined the verdict form and had the courtroom clear to read it, after which he published the verdict to counsel. The Court then thanked the jury for their service, announced their dismissal and sent them to the jury room so they might receive discharge paperwork. None of the attorneys for the defense asked the Judge to hold the Jury for polling on the fact that the Jury had found Jacqueline Dorsey negligent on the first page, and 0% at fault on the second page. After the Jury was dismissed, Defense counsel asked the Court to rule on the sufficiency of the verdict given what it alleged was a discrepancy. In response, the Court set the case down for a hearing so that all parties might present their arguments on whether the verdict was inconsistent and should be set aside as null and void or whether the Court could enter judgment in favor of the Plaintiff. Prior to the hearing, Plaintiff requested by Motion that a Judgment be entered in its favor in accordance with the verdict form.

O.C.G.A. § 9-12-4 on the Construction of verdicts states, "Verdicts shall have a reasonable intendment and shall receive a reasonable construction. They shall not be avoided unless from necessity." Id. In other words, "this Court must view all of the evidence and every presumption arising therefrom most favorably toward upholding the jury's verdict." Davis v. Johnson, 280 Ga. App. 318, 321 (2006), citing to Nationwide Mut.Fire Ins. Co. v. Wiley, 220 Ga. App. 442, 443, 469 SE2d 302, (1996). Furthermore, "it is well settled that a strong presumption exists in favor of the validity of jury verdicts." Davis at 321, citing to Ledee v. Devoe, 250 Ga. App. 15, 21, 549 SE2d 167 (2001). Additionally, the burden is on the party attacking the verdict to show the verdict's invalidity. Calhoun v. Babcock Bros. Lumber Co., 199 Ga. 171, 176 (1945). "Where a verdict is ambiguous and susceptible of two constructions, one of which would uphold it, and one of which would defeat it, it will not on this account be set

aside, but will be given a construction which will uphold it." Id. citing to Atlantic & Birmingham Ry. Co. v. Brown, 129 Ga. 622, 59 S.E. 278 (1907). Lastly, "the trial court may construe a verdict, which is not explicit in its terms, in the light of the pleadings, the issues made by the evidence, and the charge." City of Columbus v. Barngrover, 250 Ga. App. 589, 595 (2001).

Counsel for Defendants argued at the post-trial hearing that the verdict was facially inconsistent. Counsel further contended while Defendant may have the burden to prove said inconsistency, Plaintiff has the burden of proving Plaintiff's claims and did not do so because fault, as set out on the verdict form, is not synonymous with liability for negligence or damages. See Couch v. Red Roof Inns, Inc., 291 Ga. 359, 362 (2012). They argued that the explicit percentage of zero for Jacqueline Dorsey's fault indicateed that she was not negligent, yet on the first page of the verdict form the jury has marked her as one of the Defendants they found against. Therefore, the defense maintained this is a contradictory verdict which is repugnant and void and no valid judgment can be entered thereon.

Plaintiff countered that the verdict is not facially inconsistent, and that there is nothing in the apportionment statute that requires a jury to apportion fault at 1% or higher to a negligent Defendant, just so long as the percentages add up to 100%, which they do in this case. Lastly, they maintained, the Defense waived its right to contest the verdict by failing to ask the Court to hold the Jury until they could be questioned about the alleged inconsistency. Therefore, Plaintiff argued the Court should enter Judgment in favor of the Plaintiffs and award damages to it in accordance with the percentages of fault determined by the jury.

The Court noted in the post-trial hearing that it found it significant that during jury deliberations, the jury questioned the Court as to *respondeat superior* fault. Essentially, the jury asked whether they could transfer the liability of an employee\agent to an employer\principal. The Court answered in the affirmative. Given that exchange, it is apparent to the Court that this

is what the jury decided in this instance. They held American Grace/Brittany House, and the owners of Brittany House at fault, *but not their employees*. In the case of Pickron v. Garrett, 73 Ga. App. 61, 65 (1945) the Appellate Court looked at whether a verdict that ruled for the Plaintiff against two of the Defendants (the Garretts), but not the third (Burgin) was inconsistent. In Pickron, the exonerated Defendant was the principal trespasser who openly admitted he had cut the timber in dispute. The other Defendants were deemed liable, yet they sold the timber to the exonerated Defendant as his agents. So the Court asked how can the agents be liable if the Principal is not. They determined it could not be so, and therefore decided that the verdict was inconsistent and must be set aside. The case at bar differs from Pickron because, although the jury ruled for the Plaintiffs, both the principal (American Grace) and the agent (Jacqueline Dorsey) were found liable. The jury only failed to allocate fault as to the employee/agent, Jacqueline Dorsey. Therefore, due to this difference the Court believes it can construe the verdict. The evidence showed Jacqueline Dorsey was the uncontroverted agent of American Grace, but due to the jury's application of the concept of *respondeat superior,* American Grace as employer, is liable for its employee's negligence. The Court also notes that Ms. Dorsey, a named Defendant, did not file an answer to the Complaint, did not hire counsel, appeared at no pre-trial hearings, did not appear at trial, and was not, in fact, called as a witness by either Plaintiff or Defendants.

In determining the proper interpretation of a jury verdict and to remove ambiguity, the trail court may question the jury prior to dispersal in order to clarify the jury's intent. Surles v. Cornell Corr. Of Cal., Inc., 290 Ga. App. 260, 265-266, 659 S.E.2d 683 (2008). This was not done in this case. Furthermore, the Defense did not request that the jury be polled before the Court released them. The Plaintiff contends that the Defendants have therefore waived their right to object. It is well settled that objections to the form of the verdict returned by the jury

must be made in the trial court at the time the verdict is returned or they are deemed waived. See Dickey v. Clipper Petroleum, Inc., 280 Ga. App. 475, 480 (2006). Also, "in the absence of a verdict form requiring the jury to specify how it [found the defendants liable], the method by which a jury reaches a particular verdict is not a matter of which this Court can take judicial cognizance." Bloodworth v. Bloodworth, 277 Ga. App. 387, 389 (2006).

The Court finds that the jury's verdict was not inconsistent and void, and that a proper construction shows that the jury sought to impose liability, but not damages upon Jacqueline Dorsey. Furthermore, if the Defendants felt the verdict was inconsistent, the time to object was at the time it was read by the clerk and published to counsel, and before the Court released the jury. Therefore, the Court finds that the Defendants have waived their right to challenge the verdict. This action having come before the court and a jury, and the issues having been duly tried, and the jury having duly rendered its verdict on September 27, 2019, it is HEREBY ORDERED AND ADJUDGED that Plaintiffs recover from Defendant American Grace Health Care Services, Inc. the sum of $450,000.00, with interest thereon at the rate of 8% percent as provided by law, and Plaintiffs' costs of action; that Plaintiffs recover from Defendant David Woghiren the sum of $170,000.00, with interest thereon at the rate of 8% percent as provided by law, and Plaintiffs' costs of action; that Plaintiffs recover of Defendant Esther Woghiren the sum of $130,000.00, with interest thereon at the rate of 8% percent as provided by law, and Plaintiffs' costs of action; that Plaintiffs recover of Defendant Tapestry Hospice, LLC the sum of $100,000.00, with interest thereon at the rate of 8% percent as provided by law, and Plaintiffs' costs of action.

SO ORDERED, this 14 day of November, 2019.

DAVID P. DARDEN, JUDGE
STATE COURT OF COBB COUNTY