COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss **SUPERIOR COURT**
ACTION NO. 09-1543-A

STEPHEN RICE

v.

MARK RAGSDALE and
AFFILIATED CENTRAL, INC.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff's Motion for New Trial follows a three-week jury trial that resulted in a unanimous verdict for defendant Affiliated Central, Inc. ("Affiliated") on the sole negligence count of the Complaint. Although the jury found that the evidence supported a finding of negligence on the part of Affiliated, it nevertheless concluded that such negligence was not a substantial contributing cause of the plaintiff's injuries. Instead, the jury assigned complete and unapportioned liability to co-defendant Mark Ragsdale, the individual who shot Mr. Rice in the erroneous belief that this police officer was an intruder in his home. By the present motion, plaintiff seeks to set aside the jury's verdict in favor of Affiliated, insisting that its factual finding of 'no causation' is so contrary to the weight of the evidence as to be unsustainable as a matter of law. The Court does not agree.

Mass. R. Civ. P. 59(a) affords the trial judge, in the exercise of sound discretion, the

prerogative to vacate a jury verdict and order a new trial when the verdict is so demonstrably belied by the weight of the evidence that it appears to have been "the product of bias, misapprehension or prejudice." Jamgochian v. Dierker, 425 Mass. 565, 571 (1997). Accord Turnpike Motors, Inc. v. Newbury Group, Inc., 413 Mass. 119, 127 (1992). In this regard, however, the Court may not substitute its own judgment for that of the jury, see Meyer v. Wagner, 57 Mass. App. Ct. 494, 500 (2003), and will not disturb a verdict merely because the result would have been different had the judge presided over the trial as its finder of fact. Clapp v. Haynes, 11 Mass. App. Ct. 895, 896 (1980) (rescript), rev. denied, 383 Mass. 890 (1981). A verdict will be set aside for a new trial only if such verdict is so manifestly at variance with the weight of the evidence as to suggest that the jury "failed to exercise an honest and reasonable judgment in accordance with the controlling principles of law." Robertson v. Gaston Snow, 404 Mass. 515, 520 (1989), quoting Hartmann v. Boston Herald-Traveller Corp., 323 Mass. 56, 60 (1948). Accord W. Oliver Tripp Co. v. American Hoechst Corp., 34 mass. App. Ct. 744, 748 (1993) (Court must be persuaded that "the verdict is so markedly against the weight of the evidence as to suggest that the jurors allowed themselves to be misled, were swept away by bias or prejudice, ... or failed to come to a reasonable conclusion").

The foregoing standards reflect the considerable deference that jury verdicts are due under our constitutional system. Only where judicial intrusion is required to avert a clear miscarriage of justice should allowance of a motion for new trial be granted. This is not such a case.

The Court notes at the outset that plaintiff has not contested the propriety of any of the liability-related instructions delivered to the jury. Instead, plaintiff argues that, having found Affiliated negligent (in some unspecified way), no reasonable jury could have failed to conclude

that such negligence played a substantial causative role in the shooting which produced Mr. Rice's injuries. The gravamen of plaintiff's argument is that, had Affiliated timely notified the Shrewsbury Police that the alarm to which Officer Rice was responding was false and that the homeowner was in fact situated safely in the residence, and/or had Affiliated timely notified Mr. Ragsdale that the police had been dispatched to his home to investigate a triggered alarm, the tragic events which followed Mr. Rice's entry into the Ragsdale home would not have taken place.

This argument, however, overlooks the fact that plaintiff advanced a variety of contentions in support of his negligence claim against Affiliated, and the jury was not called upon to specify which ones it credited and which it did not. The jury may thus have rejected the claim that industry practice and prudence required Affiliated to check a client's account history in real time prior to responding to alarm events, the purported security company negligence that most clearly allowed for the disconnection between police and homeowner that occurred in this case.[1] The jury may instead have credited any one of the alternate theories of negligence asserted against Affiliated – for example, the suggestion that Affiliated's call center operator improperly (and in violation of company policies) neglected to inform Mr. Ragsdale that the second alarm had been triggered in a different zone than the one that had been activated in the first. If that is the case, the jury's determination that the negligence of Affiliated did not substantially contribute to the shooting of Mr. Rice is entirely plausible and well supported by a common-sense construction of the evidence. Indeed, defendant Ragsdale himself, who had consumed a substantial amount of alcohol that day, testified that he did not at the time appreciate the significance of the zone-

[1]This was a proposition directly disputed by the testifying experts at trial.

triggering information displayed on the alarm keypad he re-set just prior to being contacted by Affiliated's operator. This surely permits the inference that, even had Affiliated provided him with this same information when its operator called the Ragsdale home, Mr. Ragsdale would not have understood it to signify that a separate alarm had been triggered warranting special attention. This would logically foreclose a finding of causation, consistent with the jury's verdict.[2]

Reinforcing this harmonization of the jury's verdict with the trial record is the overwhelming amount of evidence indicating that defendant Ragsdale was the party singularly responsible for the events which transpired on July 16, 2006. It was Ragsdale who tripped the home alarm in the first place; Ragsdale who failed to disarm the alarm with his security code in a timely fashion; Ragsdale who failed to answer multiple calls from Affiliated to his residence and cell phone during the first alarm event; Ragsdale who failed to appreciate the meaning of the slider door triggering a second alarm while he was re-setting the security system's keypad; Ragsdale who neglected to announce himself as the homeowner when he heard an unidentified person ascending the stairs toward his bedroom; Ragsdale who, even after having consumed a large amount of alcohol in the preceding hours, chose to access and operate a loaded firearm; and Ragsdale who, with no evidence that he in fact faced grave and otherwise unavoidable danger, shot blindly in a darkened room before verifying his target. In these extraordinary circumstances, the Court is not prepared to conclude that the jury could not reasonably have found that defendant

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[2]Plaintiff advanced other contentions of negligence, the crediting of which would not necessarily require a finding of substantial contributing cause in regard to the shooting of Officer Rice. For example, plaintiff presented a substantial amount of evidence to the effect that Affiliated's training of its call operators was inadequate. The jury might well have agreed that the defendant's new employee training program lacked the rigor appropriate to an alarm company; but such a finding would hardly dictate the conclusion that lack of training was a substantial contributing cause of plaintiff's injuries in this case.

Ragsdale alone was the legal cause of the shooting injuries suffered by Officer Rice.

The Court has considered the plaintiff's companion challenges to the jury's verdict, and finds them unpersuasive. There is no evidence that the snow days which intervened during the course of the trial worked any special unfairness on the plaintiff, and no evidence that the jury formed premature opinions regarding the merits of his claims. To the contrary, all counsel (and the Court) recognized that this was an exceptionally attentive jury. Its members asked thoughtful questions throughout the presentation of the evidence and in connection with its lengthy deliberations; and the record reflects no indication that the jury was either confused or biased in any way.

As for the suggestion that an audible disruption by Mr. Ragsdale during trial either distracted the jury from key testimony being given by the defendant's liability expert, or biased the jury against Mr. Ragsdale so completely that he became the sole focus of its hostility and thereby allowed Affiliated to evade its own responsibility, the Court declines to indulge this sort of speculation. The undersigned must acknowledge that it only vaguely recalls the circumstance plaintiff describes on this point. Plaintiff's counsel had repeatedly asked the defendant's expert a particular question, and the Court was moved to suggest that his examination in this regard was in the nature of "beating a dead horse." The Court does not recall hearing Mr. Ragsdale make the noise of a whinnying horse, and would without question have admonished him sternly for exhibiting such disrespect had it been so aware. There was no request for such an admonition, however, and it appears from the transcript that the Court misunderstood attorney Ballin's reference to having "heard a horse" as a humorous reference to the notion that his cross-examination of Mr. Fiore might have yielded more valuable evidence than had previously been

thought available (i.e., the horse is not dead after all). The undersigned did not understand attorney Ballin as being literal in this remark. Regardless, an isolated moment like the one described during a three-week jury trial simply will not bear the weight that plaintiff seeks to place upon it. If Mr. Ragsdale did cause the jury to dislike him, he had more than a little help from plaintiff's able counsel, who throughout the trial portrayed this defendant as a reckless inebriant who trifled with a dangerous handgun as though he were James Bond. As for the charge that Mr. Ragsdale distracted the jury from the critical testimony of Affiliated's liability expert, the evidence of record simply will not sustain such conjecture. Mr. Fiore was cross-examined at great length and with considerable repetition on all material points – the very thing which prompted the Court to suggest that attorney Ballin was flogging an expired equine. Even if Mr. Ragsdale did make the offensive neighing sound attributed to him, therefore, the Court cannot say that this produced the miscarriage plaintiff now claims. If plaintiff believed otherwise, it behooved him to seek a curative instruction in real time. To have waited until more than a year after entry of the verdict before raising this issue asks the Court to lock the barn door after its occupant's escape.

CONCLUSION AND ORDER

Our appellate courts have time and again emphasized that motions for judgment notwithstanding the verdict and for new trial should be granted "cautiously and sparingly." Netherwood v. AFSCME, 53 Mass. App. Ct. 11, 20 (2001). It is certainly true, as plaintiff argues, that the jury in this case heard a great deal of evidence from it which it *could* have found that negligence on the part of Affiliated was a substantial contributing cause of Officer Rice's injuries. These kinds of determinations in a negligence action, however, lie uniquely within the province of the jury. See O'Connor v. SmithKline Bio-Science Laboratories, 36 Mass. App. Ct. 360, 363, rev.

denied, 418 Mass. 1106 (1994). Where, as here, the jury which heard sharply conflicting testimony has chosen to resolve such conflicts against the party who bore the burden of persuasion in respect to them, the Court will not disturb its findings absent the most compelling circumstances. See Deerskin Trading Post, Inc. v. Spencer Press, Inc., 398 Mass. 118, 125 (1986) (denying motion for new trial: "Given the sufficiency of the evidence to warrant the verdict favoring [the plaintiff], the fact that there was some or even much evidence which would have warranted a contrary verdict is of no consequence."). The Court discerning no such circumstances in the case at bar, and certainly none suggesting that the jury's verdict was the product of bias, dereliction or misapprehension, the Plaintiff's Motion for New Trial is **DENIED**.

SO ORDERED.

By the Court (Robert B. Gordon, Justice)

Attest: _____
Joanne C. Herring
Assistant Clerk

Dated: July 8, 2015