

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MONTGOMERY COUNTY,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 97-6331
	:	
MICROVOTE CORPORATION,	:	
CARSON MANUFACTURING COMPANY, INC.,	:	
and WESTCHESTER FIRE INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

JUNE 25, 2001

After a ten-day trial, the jury found Microvote Corporation ("Microvote") and Westchester Fire Insurance Company ("Westchester") liable to Montgomery County ("the County") for breach of the implied warranty of merchantability and fitness for particular purpose related to the sale of electronic voting machines in the amount of \$1,048,000.¹ Accordingly, the Court

¹The jury was asked to consider the following interrogatories:

I. Breach of Contract.

1. Do you find that Montgomery County ("the County") has proven by a preponderance of the evidence that Microvote Corporation ("Microvote") breached the contract dated May 24, 1994 and the addendum dated March 13, 1996?

II. Breach of Warranty.

1. Do you find that the County has proven by a preponderance of the evidence that Microvote breached its express warranties?

2. Do you find that the County has proven by a preponderance of

entered judgment in that amount for the County. Presently before the Court are Microvote's Post-trial Motions which include: (1) Motion to Amend Judgment; (2) Motion for Relief from Final Judgment; (3) Motion to Enter Judgment as a Matter of Law; and (4) Motion for a New Trial. For the reasons that follow, the Motions will be denied.

I. MOTION TO AMEND JUDGMENT TO REFLECT SETTLEMENT.

Federal Rule of Civil Procedure 59(a) and (e) allow a party to move the court for a new trial or to alter or amend a judgment. FED. R. CIV. P. 59(a) & (e). The Rule provides that any motion to alter or amend a judgment shall be filed no later than ten (10) days after entry of the judgment. In Burger King Corp. v. New England Hood & Duct Cleaning Co., No. 98-3610, 2000 WL 1539075 (E.D. Pa. Oct. 18, 2000), the court stated that:

A court may alter or amend a judgment "only if the movant clearly establishes either a manifest error of law or fact or presents newly discovered evidence." Diebitz v. Arreola, 834 F. Supp. 298, 302 (E.D. Wis. 1993)(citations and internal quotations omitted) (stating standard for Rule 59(e)); Evans, Inc. v. Tiffany & Co., 416 F. Supp. 224, 244 (N.D. Ill. 1976)(stating standard

the evidence that Microvote breached an implied warranty of merchantability?

3. Do you find that the County has proven by a preponderance of the evidence that Microvote breached an implied warranty of fitness for a particular purpose?

The jury answered "no" to interrogatories I.1 and II.1. and "yes" to interrogatories II.2 and II.3.

for Rule 59(a)). The decision to alter or amend is left to the sound discretion of the trial court. Diebitz, 834 F. Supp. at 302-03 (citations and internal quotations omitted). Such motions "are not intended merely to relitigate old matters nor are such motions intended to allow the parties to present the case under new theories." Id. at 302 (citations and internal quotations omitted); Evans, Inc., 416 F. Supp. at 244.

Id. at *1.

Microvote first moves for an amendment of the \$1,048,500 judgment pursuant to Rule 59(e) to reflect and give credit for the \$587,000 settlement between the County and Carson Manufacturing Company, Inc. ("Carson"), the manufacturer of the machines, so that the County will not receive more than \$1,048,000, the sum the jury determined the County had been damaged.² Thus, Microvote asks that the final judgment against Microvote be reduced to \$461,500, since the jury verdict is evidence of the total loss suffered by the County and the Carson settlement is evidence of partial satisfaction of that judgment. Microvote also provides affidavits from six jurors in which each juror attests that if they had knowledge about the Carson settlement or its amount, they would have voted to reduce the amount of the County's judgment.

²Because documents evidencing the terms of the settlement have not been submitted, this Court will take judicial notice, as requested by Microvote, of a newspaper article quoting the Montgomery County Solicitor that the amount of the settlement between Carson and the County was \$587,000. Peters v. Delaware River Port Auth. of Pa. and N.J., 16 F.3d 1346 (3d Cir. 1994).

Microvote argues that a party may be relieved from a judgment to the extent that the judgment has been partially satisfied. (Microvote's Mot. to Am. J. at 3)(citing Coleco Indus., Inc. v. Berman, 567 F.2d 569 (3d Cir. 1977), cert. denied, 439 U.S. 830 (1978); Reliable Tire Dists. Inc. v. Kelly Springfield Tire Co., 607 F. Supp. 361 (E.D. Pa. 1985); Temporaries, Inc. v. Krane, 472 A.2d 668 (Pa. 1984); S.J. Groves & Sons Co. v. Warner Co., 576 F.2d 524 (3d Cir. 1978)). Further, Microvote argues that a district court does not have discretion to require two satisfactions. (Id. at 4)(citing Sunderland v. City of Phila., 575 F.2d 1089 (3d Cir. 1978)).

The County first protests the admission and consideration of the juror affidavits, contending they are in violation of Federal Rule of Evidence 606(b).³ In a case in this

³Federal Rule of Evidence 606(b) states:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the

district where juror affidavits were produced, Triad Retail Partners v. Diemer, No. 88-3741, 1990 WL 4425 (E.D. Pa.), aff'd, 911 F.2d 719 (3d Cir. 1990), the court did not invade the "otherwise inviolate province of the jury based on juror affidavits concerning potential juror confusion." Id. at *2. In Triad, the plaintiffs submitted affidavits of five of the eight jurors indicating their intent to award the plaintiffs additional monies and the plaintiffs asked the court to amend the jury's verdict accordingly. Id. at *2. The Triad court denied the plaintiffs' motion to alter or amend the judgment to reflect the juror affidavits and held, pursuant to Federal Rule of Evidence 606:

[s]ince no evidence of extraneous prejudicial information is before the court, the court refuses to invade the otherwise inviolate province of the jury based on juror affidavits concerning potential juror confusion. Although plaintiffs' mathematical formula is facially attractive as a solution to possible inconsistencies, it is the product of ex parte post-verdict interviews between counsel and the jurors which are outside the deliberative process and beyond the contemplation of the jury system. The broader policy of protecting jury verdicts from overreaching by excessive inquiries overrides any potential clarification of what the jury's verdict may have meant in this case.

juror would be precluded from testifying be received for these purposes.

FED. R. EVID. 606(b).

Id. at *2. Likewise, this Court will not invade the province of the jury to alter or amend the verdict to reflect the juror affidavits because to do so would violate Federal Rule of Evidence 606.

The County's second argument in response to Microvote's Motion is that any consideration by this Court of the settlement between the County and Carson is erroneous because such settlement was not based solely on a breach of implied warranty theory as Microvote contends. Instead, the County states that the settlement reached actually:

achieved a finality to all of Montgomery County's claims against Carson, including, inter alia, the breach of express warranty claims, the breach of implied warranty claims, the fraud claims for both before and after the November 1995 election, which could have been reinstated after appeal, delay damages and other consideration. The negotiated agreement also involved other intangible factors, including but not limited to a business decision by the settling parties of the risks and the cost of a trial. These and other intangible factors do not bear any correlation to, and cannot be used to offset, the jury award.

(County's Mem. Law in Opp'n Microvote's Mot. New Trial at 2-3.)

Thus, the County argues that any set-off of this settlement amount is contrary to Pennsylvania law. However, the cases cited by the County involve comparative negligence claims and only one case states that the policies have more wide-ranging application

outside of the comparative negligence context.⁴

Microvote argues that the jury verdict is evidence of the total loss suffered by the County and the Carson settlement is evidence of partial satisfaction of that judgment. Microvote cites cases from the United States Court of Appeals for the District of Columbia Circuit, finding that except for punitive damages, a plaintiff can recover no more than the loss actually suffered. In Snowden v. D.C. Transit, 454 F.2d 1047 (D.C. Cir. 1972), for example, the jury in the trial court returned a verdict for the plaintiff in the amount of \$12,500. Id. at 1048. The defendant then filed a motion to reduce its judgment liability to the plaintiff by five thousand dollars, the amount of the settlement between the plaintiff and a co-defendant. Id. The trial court denied the motion, but the appellate court reversed, holding that the jury determined the full amount of the plaintiff's injuries as \$12,500 and she could recover no more. Id. at 1049. Because this matter is a contract dispute, Microvote argues that it is even more imperative for this Court to offset and give credit against the amount of damages determined by the jury and the amount of the Carson-County

⁴In Moran v. G. & W.H. Corson, Inc., 586 A.2d 416, 419-420 (Pa. Super. 1991), a tort case cited by the County to support its argument that the jury verdict does not serve to cap the total recovery a plaintiff may receive, the Superior Court rejected a wrongful death and survival action filed against manufacturers and suppliers of asbestos containing insulation materials.

settlement. To deny this motion, according to Microvote, would, in effect, enable the County to recover \$1,635,500, the sum of both the Carson-County settlement and the jury verdict. If this Court grants Microvote's Motion, however, the amount of recovery by the County would be \$461,500, the jury verdict less the Carson-County settlement.

The County argues that Microvote's recourse with respect to apportionment of liability is to "commence a contribution and/or indemnification action against Carson." Id. at 10. The County notes that two cases cited by Microvote in support of its set-off argument, Reliable Tire and Coleco, were decided under New Jersey law which, unlike Pennsylvania, has a state set-off statute. The County also factually distinguishes these cases. In Coleco, for example, the settling party was a third party defendant and the jury was able to fully adjudicate the plaintiff's claims to determine the liability of the settling defendant. See Coleco, 567 F.2d at 573. In Reliable Tire, the court stated that "Reliable's recovery . . . for breach of contract does not preclude its recovery . . . for tortious interference nor does it reduce the amount of the judgment in its favor." Reliable, 607 F. Supp. at 373. Ultimately, the Reliable court molded the verdict. Id.

The County further argues that permitting Microvote to offset what the jury determined was Microvote's liability to the

County would amount to a windfall for Microvote. This result would "contravene public policy favoring the settlement of disputes." (County's Mot. in Opp'n Post-trial Mots. at 11)(citations omitted). Both Microvote and Westchester, according to the County, waived any arguable right to an apportionment of the jury verdict when they did not request a specific apportionment of liability at trial and objected to such a determination by the jury. The County also argues that by strategically electing not to present any evidence at trial as a basis for any such jury interrogatory, Microvote and Westchester waived any set-off benefit from the Carson-County settlement.

Microvote objected at trial to Carson's submitted form of special interrogatories that sought an apportionment of liability for breach of express and implied warranties. (Id. at 13.) However, Microvote did not submit a jury interrogatory or instruction or object to the absence of one at trial. When a defendant fails to submit a jury interrogatory or instruction, or fails to object to the absence of one, it waives the issue for post-trial motions or appeal. McDermott v. Party City Corp., 11 F. Supp.2d 612, 622-23 (E.D. Pa. 1998); Bauder v. Philadelphia, Bethlehem & New England R.R. Co., No. 96-7188, 1998 WL 633651, at *5-6 (E.D. Pa. Aug. 28, 1998), aff'd, 189 F.3d 463 (3d Cir. 1999); Commonwealth v. Jones, 375 A.2d 63, 65-66 (Pa. Super. 1977); FED. R. CIV. P. 51. The County argues that "[t]he failure

to tender a jury instruction or special interrogatory to allocate damages, or to object to the absence of such an apportionment interrogatory among the defendants is a waiver of that issue.” (County’s Mot. in Opp’n Post-trial Mot. at 14)(citation omitted).

In Frankel v. Burke’s Excavating, Inc., 269 F. Supp. 1007 (E.D. Pa. 1967), aff’d, 397 F.2d 167 (3d Cir. 1968), the court held that alleged defects in special interrogatories could not be the basis for a new trial when counsel had not pointed out the alleged defects to the court during trial. Id. at 1012-1013. According to the County, because neither Microvote nor Westchester took any action relating to the settling Defendant Carson’s apportionment of liability at trial, their failure to act was a waiver of any claim for set-off. (County’s Mot. in Opp’n Post-trial Mot. at 15)(citing Rocco v. Johns-Manville Corp., 754 F.2d 110, 115 (3d Cir. 1985)). The County correctly argues that because neither Microvote nor Westchester submitted an apportionment of liability jury interrogatory, requested a specific jury instruction relating to joint and several liability, nor presented any evidence at trial that would support such a jury finding, they waived any arguable claim for a setoff.⁵ Finally, Microvote may have recourse in a

⁵Although Westchester incorporated all of Carson Manufacturing Company’s submissions, some of which may have contained a specific jury instruction in this area, Westchester

contribution/indemnification action with Carson. Thus, Microvote's Motion to Amend Judgment to Reflect Settlement will be denied.

II. MOTION FOR RELIEF FROM FINAL JUDGMENT.

As an alternative to its Motion to Amend Judgment pursuant to Rule 59(e), Microvote also moves for relief pursuant to Federal Rule of Civil Procedure 60(b)(5) and asks this Court to enter an Order to reduce the amount of the judgment by the amount of the satisfaction or discharge of the County's settlement with Carson. Rule 60(b)(5) provides, in pertinent part, that "[o]n motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment . . . for the following reasons: (5) the judgment has been satisfied, released or discharged." FED. R. CIV. P. 60(b)(5). Microvote argues that the County, in accepting the \$587,000 from Carson, had full knowledge of the principle of law prohibiting double recoveries and giving credit for settlements. Thus, when the County decided to accept the \$587,000 from Carson, it knew that it would face a petition for reduction of the amount of the Carson settlement from whatever amount the jury might return. Microvote therefore contends that it is entitled to an Order pursuant to Rule 60(b)(5) reducing the amount of the judgment

did not argue that this Court should submit a specific instruction to that effect, therefore it waived any arguable claim for a setoff.

entered.

Microvote also states that “[i]t is appropriate for the Court to take cognizance of the fact that the judgment entered in this case has been ‘satisfied’ or ‘discharged’ by action of Montgomery County in accepting a \$587,000 [settlement] with Carson.” (Microvote’s Mot. Relief from Final J. at 6.) The County, in response, classifies Carson as a volunteer since “[u]nder Pennsylvania law, if the released party is not a joint tortfeasor, he is considered a volunteer. In that circumstance, the amount paid for the release is not deducted from the recovery against a nonreleased party.” (County’s Mem. Law in Opp’n Post-trial Mots. at 8)(quoting Rocco, 754 F.2d at 115 and Weber v. GAF Corp., 15 F.3d 35, 37 (3d Cir. 1994)). Because the jury did not adjudge Carson to be a tortfeasor, the County argues that the money received by the County in settlement could not affect its entitlement to damages against Microvote and Westchester, the non-settling Defendants. Id. The theories cited by the County are based upon tort principles, and are therefore distinguishable from the instant action for breach of contract and breach of warranty. Nonetheless, for the same reasons as cited in Section I, infra, this Court will deny Microvote’s Rule 60(b)(5) Motion.

III. MOTION TO ENTER JUDGMENT AS A MATTER OF LAW.

Microvote next moves for judgment as a matter of law. This type of post-judgment relief should be granted very

sparingly, and only "if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury could reasonably find liability." LePage's Inc. v. 3M, No. 97-3983, 2000 WL 280350, at *1 (E.D. Pa. Mar. 14, 2000)(citing Walter v. Holiday Inns, Inc., 985 F.2d 1232, 1238 (3d Cir. 1993) and quoting Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993)(citing Wittekamp v. Gulf & W. Inc., 991 F.2d 1137, 1141 (3d Cir. 1993))). Indeed, "[a]lthough a scintilla of evidence is not enough to sustain a verdict of liability, . . . the question is 'whether there is evidence upon which a jury could properly find a verdict for [the prevailing] party.'" Id. (quoting Lightning Lube, Inc., 4 F.3d at 1166) (citing Walter, 985 F.2d at 1238 and quoting Patzig v. O'Neil, 577 F.2d 841, 846 (3d Cir. 1978)).

Microvote moves, pursuant to Rule 50(b), for judgment as a matter of law, renewing its prior Rule 50 motions made at the conclusion of the County's case in chief and following the presentation of all of the evidence. The Court reserved ruling on those Motions, eventually denied them and allowed the case to be decided by the jury. Microvote now contends that it is entitled to judgment as a matter of law because the Pennsylvania Uniform Commercial Code expressly provides that the parties may enter into contractual modifications or limitations of remedies

arising from the potential for breach of warranty. In support of its Motion, Microvote examines 13 Pa. C.S.A. section 2719(a)(1) which provides:

Subject to the provisions of subsections (b) and (c) and of section 2718 (relating to liquidation or limitation of damages; deposits): (1) The agreement may provide for remedies in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division, as by limiting the remedies of the buyer to return of the goods and repayment of the price, or to repair and replacement of non-conforming goods or parts.

13 Pa. C.S.A. § 2719(a)(1). According to Microvote, the County contracted to limit its remedy to repair and replacement of the Microvote machines as set forth in the May 25, 1994 contract between the parties.⁶ From this contract language, Microvote maintains that the County agreed that its remedy was limited to repair and replacement. Microvote further contends that, because

⁶Microvote cites the following contract language:

It is further agreed that in case any of the said materials, equipment and/or supplies furnished and delivered under this contract are rejected by the authorized or proper County Agent as unsuitable or unfit, such materials, equipment, and/or supplies so rejected shall be removed at once by (Microvote) and other materials, equipment and/or supplies of the proper kind and quality, and fully up to the requirements of this contract, furnished in place thereof
. . .

(5/24/94 Contract.)

the County was the party that prepared the contract and included the repair and replacement provision, the contract must be construed against it. Microvote notes that, under Pennsylvania law, limitation of damages may be imposed, even if the limitation was not expressly negotiated. Hornberger v. Gen. Motors Corp., 929 F. Supp. 884 (E.D. Pa. 1996)(examining implied warranties in automobile lease transaction). Moreover, limitation clauses are not disfavored under Pennsylvania law, especially when they are contained in contracts between informed entities dealing at arm's length. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195 (3d Cir. 1995)(applying arm's length standard in contract dispute between real estate developer and architectural firm over enforceability of limitation of liability clause).

Although Microvote also states that it agreed with the County to limit the County's remedies to repair and replacement, it notes that the evidence showed that Microvote repaired the machines which had problems and stood ready to repair any additional machines with problems. Microvote maintains that it fulfilled its obligations under the sales contract and under the holding in Eimco Corp. v. Joseph Lombardi & Sons, 162 A.2d 263 (Pa. Super. 1960). In Eimco, the Pennsylvania Superior Court held that the limitation of liability was sufficient to protect the manufacturer and seller from claims by the buyer, particularly where the manufacturer replaced damaged parts and

restored machines to operation, without charge, fulfilling its obligation under the terms of the sale. Id. at 266. Under the facts of this action, and guided by the Eimco court, Microvote argues that it did not breach the only remedy agreed to by the parties.

Microvote also argues that its machines operated within the variations permitted by the contract with the County and thus were merchantable under the Pennsylvania Commercial Code, 13 Pa. C.S.A. section 2314(b)(4), which specifies the merchantability standards for goods sold and requires that the goods "run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved." 13 Pa. C.S.A. § 2314(b)(4). Microvote argues that because its machines met the Federal Election Commission standards, they met the merchantability standards of Pennsylvania as a matter of law. Thus, Microvote contends that the jury's finding that the machines were not merchantable under the implied warranty instruction given to them was factually and legally incorrect under section 2314 of the Pennsylvania UCC. Subsection 2314(c) also provides that other implied warranties may arise from a course of dealing or usage of trade "unless excluded or modified under section 2316," which states, in subsection 2316(b)(3), that "an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade." 13 Pa.

C.S.A. § 2316(b)(3).

Finally, Microvote argues that the jury instructions on implied warranties were confusing, as confirmed by the jurors' three notes to the Court asking various questions. Two of those notes, the first and the third, asked questions related to implied warranties. Because the jury was confused on the subject of implied warranty, according to Microvote, it rendered a verdict contrary to Pennsylvania law, which allows parties to limit the remedies of warranties by contract.

The County claims that this renewed Rule 50 Motion must be denied because Microvote has not met its burden of demonstrating that the record is deficient of the minimum quantity of evidence from which a jury could reasonably afford the County relief. The overwhelming evidence, according to the County, is more than sufficient to support the jury verdict against Microvote on the breach of implied warranty claim. The County notes that Carson's machines were altered by Microvote and the jury determined that the voting system was defective. Thus, according to the County, Carson may have an action against Microvote for indemnification of its settlement. The County argues that an order setting off the County's judgment against Microvote to the extent of the settlement reached with Carson would be a judicial adjudication of indemnification between Microvote and Carson without any evidence and without all the

parties, and such result is prohibited by law. Thermo King Corp. v. Strick Corp., 467 F. Supp. 75 (W.D. Pa.), aff'd, 609 F.2d 503 (3d Cir. 1979); Martinique Shoes, Inc. v. New York Progressive Wood Heel Co., 217 A.2d 781 (Pa. Super. 1966)(involving action by indemnitee against indemnitor to recover amounts paid to third party in settlement of action by third party against indemnitee for breach of warranty).

To be entitled to judgment as a matter of law pursuant to Rule 50, defendants must demonstrate that the record is "critically deficient of that minimum quantity of evidence from which a jury might reasonably afford relief." McErlane v. Nat'l R.R. Passenger Corp., No. 92-6759, 1994 WL 45027, at *1 (E.D. Pa. Feb. 10, 1994), aff'd, 46 F.3d 1117 (3d Cir. 1994)(citing Aloe Coal Co. v. Clark Equip. Co., 816 F.2d 110, 113 (3d Cir. 1987)); Windsor Shirt Co. v. New Jersey Nat'l. Bank, 793 F. Supp. 589, 595 (E.D. Pa. 1992), aff'd, 989 F.2d 490 (3d Cir. 1993). Moreover, a motion for judgment as a matter of law can be granted where, viewing the evidence in the light most favorable to the non-moving party, "there is insufficient evidence from which a jury could reasonably find liability." Warren ex rel. Orlando v. Reading Sch. Dist., 82 F. Supp.2d 395, 397 (E.D. Pa. 2000) (citations omitted). The County argues that the record in this case contains overwhelming evidence that supports the jury award against Microvote for breach of implied warranties, and mandates

denial of Defendants' Motion for judgment as a matter of law.

In analyzing whether to grant a new trial based on an erroneous jury charge, the court must consider the jury instructions as a whole to determine whether they are misleading or inadequate. McErlane, 1994 WL 45027, at *3 (citing Savarese v. Agriss, 883 F.2d 1194 (3d Cir. 1988)). Where, as a whole, the charge was a fair reading of the law, the motion for new trial must be denied. Id. The County contends that the jury was properly appraised of the law regarding breach of implied warranty, but argues that the verdict must be molded to reflect the proper measure of breach of warranty damages in the amount of \$2,743,500. The County also advances this argument in its Motion to Mold the Jury Verdict (Dkt. No. 391), and this Court will address it in a decision on that Motion.

This Court disagrees with Microvote's analysis of the contract terms because it is unclear whether the parties agreed to limit the damages which could be sought by the County for breach of warranty. Moreover, we agree with the County that there was sufficient evidence of machine breakdown presented to support a jury finding of breach of implied warranties. In addition, the jury charge, as a whole, was a fair reading of the law. Thus, Microvote's renewed Rule 50 Motion is denied.

IV. MOTION FOR NEW TRIAL.

Under the Federal Rule of Civil Procedure 59, the trial

court has "considerable discretion in determining whether to grant a new trial." Goodwin v. Seven-Up Bottling Co. of Phila., No. 96-2301, 1998 WL 438488, at *3 (E.D. Pa. July 31, 1998)(citing FED. R. CIV. P. 59 and Klein v. Hollings, 992 F.2d 1285, 1289-90 (3d Cir. 1993)). When evaluating a motion for a new trial on the basis of trial error, the Court must first determine whether an error was made in the course of trial, and then must determine "whether that error was so prejudicial that refusal to grant a new trial would be 'inconsistent with substantial justice.'" Farra v. Stanley-Bostitch, Inc., 838 F. Supp. 1021, 1026 (E.D. Pa. 1993)(citations omitted). "Absent a showing of 'substantial' injustice or 'prejudicial' error, a new trial is not warranted and it is the court's duty to respect a plausible jury verdict." Goodwin, 1998 WL 438488, at *3 (citation omitted). A court can only exercise its discretion to grant a new trial because the verdict was against the weight of the evidence when the failure to do so would result in injustice, or would shock the conscience of the court. Windsor Shirt Co., 793 F. Supp. at 595 (citations omitted).

Microvote moves for a new trial pursuant to Federal Rules 50(b) and 59 because it claims that on the basis of the jury's finding of breach of implied warranties of merchantability and fitness for a particular purpose, the jury was clearly confused and possibly came within a singular instruction of

finding zero damages for the County. This conclusion is based upon the jury's two questions to the Court prior to rendering its verdict. The County contends, in response, that this renewed Motion for a New Trial is without merit because Microvote fails to aver with any specificity the nature of its objection to the jury charge on implied warranties. According to the County, the alleged juror confusion from the jury charge led to a favorable result for Microvote by preventing the jury from awarding the County its full damages claimed for breach of implied warranties.

Based upon the foregoing, Microvote has failed to show that there was an error in the charge or that any prejudice resulted therefrom. We will therefore deny Microvote's Motion for a New Trial.

VI. CONCLUSION.

For the reasons set forth above, Microvote's Post-trial Motions are denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MONTGOMERY COUNTY,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 97-6331
	:	
MICROVOTE CORPORATION,	:	
CARSON MANUFACTURING COMPANY, INC.,	:	
and WESTCHESTER FIRE INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 25th day of June, 2001, upon consideration of Microvote's Motion to Amend Judgment Pursuant to Rule 59, or Alternatively to Relieve Microvote from Final Judgment, or to Enter Judgment as a Matter of Law under Rule 50(b), or for New Trial (Dkt. No. 387), and Montgomery County's Response thereto, it is hereby ORDERED that said Motions are DENIED.

BY THE COURT:

Robert F. Kelly,

J.