

Original

CAUSE NO. 2008-CI-09929

HIDDEN FOREST HOMEOWNERS
ASSOCIATION

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IN THE DISTRICT COURT

VS.

224TH JUDICIAL DISTRICT

JAMES K. HERN

BEXAR COUNTY, TEXAS

CHARGE OF COURT TO JURY

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations:

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court; that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answer.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

7. The Court gives you these instructions because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

8. The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

9. When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

10. Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No."

11. The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

12. "Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

13. "Malice" means a specific intent by a party to cause substantial injury or harm to another party.

14. "Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. To be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

15. Do not discuss anything about this case, or even mention it to anyone whomsoever, or in the presence of others including your spouse, partner or significant other. Do not allow anyone to mention it in your hearing until you are discharged as jurors or excused from this case. The bailiff is ordered to inform me of all such reports by jurors.

16. Do not post or read about the case or subject matter of the case or persons in the case on blogs, internet news sites or social media including but not limited to Wikipedia,

MySpace, Twitter or facebook. You can post that you are on jury duty and how long you expect to be on jury duty. That is ALL you are allowed to write or test about. You cannot post anything about whether a verdict has or will be reached or when a verdict has or will be reached or announced in court.

17. Do not read or send text messages in the courtroom. Do not have cell phones, blackberries or any other device you may use to communicate with others on while you are in the courtroom. While you are deliberating your cell phones, blackberries and any other device you may use to communicate with others will be removed from the jury room.

QUESTION 1

Did Defendant Hern materially breach the Restrictions (Exhibit 1) by failing to tender or pay the assessments on his home in Hidden Forest on or before they became due?

Answer "Yes" or "No."

We, the jury, answer: yes

If you answered "yes" to Question No. 1, answer Question No. 2.

QUESTION 2

What sum of money, if paid now in cash, would reasonably compensate Hidden Forest Homeowners Association for its damages by way of annual assessments, together with interest, and costs, if any, resulting from Defendant Hern's failure to tender or pay monies for assessments owed by Hern?

Answer in dollars in cents, if any. Do not consider attorneys fees or court costs in connection with answering this question.

We, the jury, answer: \$ 946.71

If you answered "yes" to Question No. 1, then answer Question 3. If you answered "no" to Question No. 1, then do not answer Question No. 3.

QUESTION 3

What is a reasonable fee for the necessary services of Hidden Forest Homeowners Association's attorneys in representing Plaintiff regarding its claim against Defendant Hern for materially breaching the Restrictions?

Factors to consider in determining the reasonableness of attorney's fee award are:

- the time and labor involved;
- the novelty and difficulty of the questions involved;
- the skill required to perform the legal services properly;
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services;
- and
- whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer in dollars and cents, if any, for the following:

For preparation and trial ANSWER: \$ 728.00

For appeal to the court of appeals ANSWER: \$ 10,250.00

For appeal to the Texas Supreme
Court ANSWER: \$ 2,500.00

QUESTION 4

Did Hidden Forest Homeowners Association materially breach the Restrictions as to Mr. Hern in connection with section 8 (page 6-7) of the Restrictions (Exhibit 1)?

Answer "Yes" or "No."

ANSWER: yes

If you answered "yes" to Question No. 4, answer Question No. 5. If you did not answer "Yes" to Question 4, then do not answer Question 5, but instead proceed directly to Question 6.

QUESTION 5

What is a reasonable fee for the necessary services of Mr. Hern's attorney in representing him regarding Hidden Forrest Homeowners' materially breaching such Restrictions?

Factors to consider in determining the reasonableness of attorney's fee award are:

- the time and labor involved;
- the novelty and difficulty of the questions involved;
- the skill required to perform the legal services properly;
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer in dollars and cents, if any, for the following:

For preparation and trial ANSWER: \$ 11,000.00

For appeal to the court of appeals ANSWER: \$ 6,250.00

For appeal to the Texas Supreme Court ANSWER: \$ 2,500.00

QUESTION 6

Did Hidden Forest Homeowners Association through its agents and/or attorneys engage in unreasonable collection practices against Mr. Hern?

Answer "Yes" or "No."

ANSWER: YES

If you answered "yes" to Question No. 6, answer Question No. 7. If you did not answer "Yes" to Question 6, then do not answer Question 7

QUESTION 7

What sum of money, if paid now in cash, would reasonably compensate Mr. Hern for his damages proximately caused by such unreasonable collection practices?

Answer in dollars in cents, if any. Do not consider court costs or interest. You may consider Mr. Hern's attorneys fees reasonably and necessarily incurred in responding to such practices as damages if such fees were incurred as a proximate cause of such unreasonable collection practices.

We, the jury, answer \$ 11,000.00

Answer Question 8 only if you unanimously answered "Yes" to Question 7; otherwise, do not answer Question 8.

QUESTION 8

Do you find by clear and convincing evidence that the damages or harm to Mr. Hern resulting from Plaintiff's unreasonable collection practices resulted from malice?

Answer "Yes" or "No."

ANSWER: No

If you answered "Yes" to Question 8 unanimously, then answer Question 9; otherwise, do not answer Question 9.

QUESTION 9

What sum of money, if any, if paid now in cash, should be assessed against the Plaintiff and awarded to Mr. Hern as exemplary damages?

You must unanimously agree on the amount of any award of exemplary damages. "Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

- the nature of the wrong;
- the character of the conduct involved;
- the degree of culpability of the defendant;
- the situation and sensibilities of the parties concerned;
- the extent to which such conduct offends a public sense of justice and propriety; and
- the net worth of the defendant.

Answer in dollars and cents, if any.

ANSWER: \$ _____

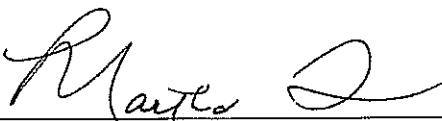
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror—

1. to preside during your deliberations;
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;
4. to vote on the questions;
5. to write your answers to the questions in the spaces provided; and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



Honorable Martha Tanner, JUDGE PRESIDING