

NO. 2017DCV3081

AV8RC AIRCRAFT SERVICE, LLC,
Plaintiff/Counter-Defendant,

V.

BRAD WELCH,
Defendant/Counter-Plaintiff.

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IN THE DISTRICT COURT

384TH JUDICIAL DISTRICT

OF EL PASO COUNTY, TEXAS

FILED
NORMA FAVELA BARCELLEAU
DISTRICT CLERK
2022 MAY 10 PM 6:04
EL PASO COUNTY, TEXAS
Norma Favela Barcelleau

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may **only** discuss the case with other jurors when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

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Here are the instructions for answering the question.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of these instructions.
4. If these instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.

The term “**preponderance of the evidence**” means the greater weight of credible evidence presented 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 of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

6. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
7. Do not answer questions by drawing straws or by any method of chance.

8. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
9. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
10. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

QUESTIONS

Instruction on Formation of Agreement

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

Instruction on Time of Compliance

Compliance with an agreement must occur within a reasonable time under the circumstances unless the parties agree that compliance must occur within a specified time and the parties intended compliance within such time to be an essential part of the agreement.

In determining whether the parties intended time of the compliance to be an essential part of the agreement, you may consider the nature and purpose of the agreement and the facts and circumstances surrounding its making.

Basic Question—Existence of an agreement

Please answer yes to only one of the following questions, if any.

QUESTION 1

Did *AV8RC* and *Brad Welch* agree that N150PR would have work performed on it, to include wing replacement, wing cleaning and other maintenance?

Answer "Yes" or "No." Answer: YES

QUESTION 2

Did *AV8RC* and *Brad Welch* agree that N150PR would have work performed on it, to include wing replacement, wing cleaning and other maintenance for \$7,000; and the rudder trim, rudder pulley, and circuit breakers at \$60 per hour?

Answer "Yes" or "No." Answer: NO

Basic Question—Compliance

QUESTION 3

Did *Brad Welch* fail to comply with *the agreement*?

Answer "Yes" or "No." Answer: YES

QUESTION 4

Did *AV8RC* fail to comply with the agreement?

Answer "Yes" or "No." Answer: NO

QUESTION 5

Who failed to comply with the agreement first?

Answer "*AV8RC*" or "*Brad Welch*."

Answer: WELCH

Defenses—Basic Question

If you answered “Yes” to Question 3, then answer the following question. Otherwise, do not answer the following question.

QUESTION 7

Was Brad Welch’s failure to comply excused?

Failure to comply by Brad welch is excused if the following circumstances occurred:

- a. by words or conduct AV8RC made a false representation or concealed material facts, and
- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
- c. with the intention that Brad welch would rely on the false representation or concealment in acting or deciding not to act; and

2. Brad Welch

- a. did not know and had no means of knowing the real facts and
- b. relied to *his* detriment on the false representation or concealment of material facts.

Was Brad Welch’s failure to comply excused?

Answer “Yes” or “No.” Answer: NO

Damages

Question on Contract Damages

If you answered "Yes" to Questions 1 then answer the following question. Otherwise, do not answer the following question.

QUESTION 9

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate AV8RC for its damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any. Answer separately in dollars and cents for damages, if any.

Do not include in your answer any amount that you find AV8RC could have avoided by the exercise of reasonable care.

1. Damages for breach of contract by Brad Welch. Answer: ~~\$~~ 12,000.00
2. Damages for storage of aircraft that were incurred by AV8RC. Answer: 0

Question on Contract Damages

If you answered "Yes" to Question 2 then answer the following question. Otherwise, do not answer the following question.

QUESTION 11

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate *Brad Welch* for his damages, if any, that resulted from such failure to comply?

Consider the following elements of damages, if any, and none other.

Do not add any amount for interest on damages, if any. Answer separately in dollars and cents for damages, if any.

Do not include in your answer any amount that you find *Brad Welch* could have avoided by the exercise of reasonable care.

1. Damages for breach of contract by *AV8RC*. Answer: Ø
2. Reasonable and necessary expenses for *Brad Welch* to perform the repairs and work necessary to complete the spar strap install. Answer: Ø
3. Reasonable and necessary expenses for *Brad Welch* to perform the repairs and work necessary to repair damages caused by *AV8RC*. Answer: Ø

PRESIDING JUROR

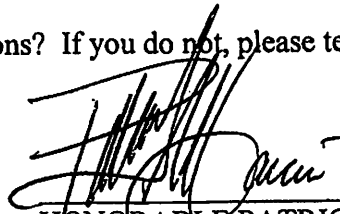
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors.
The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

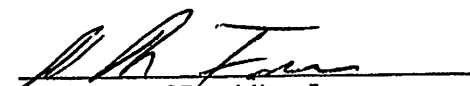


HONORABLE PATRICK GARCIA
Presiding Judge, 384th District Court

VERDICT CERTIFICATE

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer.
The presiding juror has signed the verification for all twelve of us.


Signature of Presiding Juror

John Ruben Farnes
Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have signed to each and every answer
and have signed the certificate below.

Our verdict is not unanimous. Ten of us have signed to each and every answer and
have signed the certificate below.

Signatures

Names Printed

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
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