

CAUSE NO. 48292

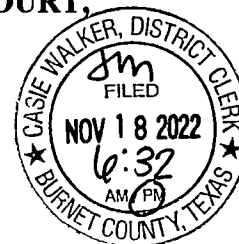
RENE FFRENCH, JOHN RICHARD DIAL, §  
STUART BRUCE SORGEN §  
*Intervenor Plaintiffs,* §

and as REPRESENTATIVES FOR §  
WINDERMERE OAKS WATER §  
SUPPLY CORPORATION §

v. §

FRIENDSHIP HOMES & HANGARS, LLC, §  
AND BURNET COUNTY §  
COMMISSIONERS COURT, §  
WINDERMERE OAKS WATER SUPPLY §  
CORPORATION ET AL. §  
*Defendants.* §

IN THE DISTRICT COURT,



33<sup>RD</sup> JUDICIAL DISTRICT

BURNET COUNTY, TEXAS

**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 discuss the case with other jurors only 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 on 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.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

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 my instructions.
4. If my 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.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. 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 told otherwise.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” 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.

7. 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.

8. Do not answer questions by drawing straws or by any method of chance.

9. 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.

10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority of the 12 jurors.

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.

**Presiding Juror:**

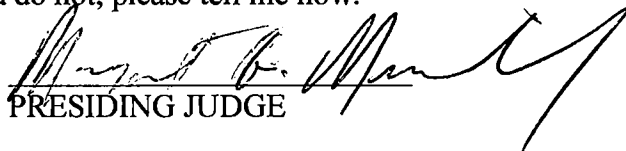
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. Have the complete charge read aloud if it will be helpful to your deliberations;
  - b. Preside over your deliberations, meaning 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 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 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 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 6 and 7 explaining how to answer those questions. Please follow the instructions. If all 12 of you answer those questions, you will need to complete a second verdict certificate for those questions.

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

  
PRESIDING JUDGE

**Definitions of Terms**

1. "WOWSC" means the Windemere Oaks Water Supply Corporation.
2. "FHH" means Friendship Homes & Hangars, LLC.
3. "Martin" means Dana Martin.
4. "Property" means the acreage conveyed to FHH by WOWSC which is at issue in this lawsuit.

5. "Sale Contract" means the Unimproved Property Contract dated December 19, 2015 between WOWSC and FHH.

**Instructions**

1. You are instructed that the WOWSC is a private non-profit corporation and is not a public entity. It is therefore not subject to any legal requirement that it put out for statutory competitive bidding any surplus property.
2. For purposes of this trial, it is conclusively established that the Board of Directors of Windermere Oaks Water Supply Corporation violated the Texas Open Meetings Act by not giving proper notice to the public before discussing and voting on the subject land contract at its December 19, 2015 and February 22, 2016 Board Meetings. After litigation, the violations of the Texas Open Meeting Act did not result in actions of the Board being declared void.
3. Under Texas statutory law, the fact that a director has a financial interest in a matter does not necessarily invalidate a related contract between that director and the corporation.

QUESTION 1:

Please answer "Yes" or "No" to each of the following questions.

- (a) Were the material facts as to Martin's relationship or interest in FFH and as to the Sale Contract or transaction disclosed to or known by the WOWSC's board of directors as of the December 19, 2015 board meeting? *H. B. A.*

Answer "Yes" or "No."

Answer: No

- (b) Was the Sale Contract or transaction fair to the WOWSC when approved by the board of directors?

In answering whether the Sale Contract or transaction was fair to the WOWSC, you should consider all circumstances surrounding the transaction.

Answer "Yes" or "No."

Answer: No

QUESTION 2:

In connection with the transaction to purchase the Property from WOWSC, did Dana Martin comply with her fiduciary duty as director of WOWSC?

To prove she complied with her fiduciary duty as a board member, Dana Martin must show:

1. The transaction was fair and equitable to the WOWSC;
2. Dana Martin made reasonable use of the confidence that WOWSC placed in her;
3. Dana Martin acted in the utmost good faith and exercised the most scrupulous honesty toward the WOWSC;
4. Dana Martin placed the interests of WOWSC before her own and did not use the advantage of her position to gain any benefit for herself at the expense of WOWSC; and
5. Dana Martin fully and fairly disclosed all important information to WOWSC concerning the transaction.

Answer "Yes" or "No."

Answer:           No

If you answered “No” for Question 2 AND answered “No” to both Question 1(a) and 1(b), then answer the following questions. Otherwise, do not answer any of the following questions.

QUESTION 3:

Is FHH responsible for the conduct of Dana Martin?

FHH is responsible for the conduct of Dana Martin if:

FHH was organized and operated as a mere tool or business conduit of Dana Martin and there was such unity between FHH and Dana Martin that the separateness of FHH had ceased and holding only Dana Martin responsible would result in injustice.

In deciding whether there was such unity between FHH and Dana Martin that the separateness of FHH had ceased, you are to consider the total dealings of FHH and Dana Martin, including:

1. The degree to which Dana Martin’s property had been kept separate from that of FHH;
2. The amount of financial interest, ownership, and control Dana Martin maintained over FHH;
3. Whether FHH had been used for personal purposes of Dana Martin; and
4. Whether FHH used Dana Martin for dishonesty of purpose or intent to deceive.

Answer “Yes” or “No.”

Answer: Yes

QUESTION 4:

Was FHH part of a conspiracy with Dana Martin that damaged the WOWSC?

To be part of a conspiracy, FHH and Dana Martin must have had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to the company. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

Answer "Yes" or "No."

Answer: Yes



If you answered "no" to Question 2, then answer the following Question. Otherwise do not answer the following Question.

QUESTION 5:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the WOWSC for its damages, if any, that were proximately caused by the conduct you found in Question 2 only?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one cause of an event.

If answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

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

Answer separately in dollars and cents for damages, if any.

The difference between the net amount, considering fair market value, the WOWSC would have received from a sale of the Property to an unrelated party at the time of the transaction and the net amount received by WOWSC at the time of the transaction.

Answer: \$ 70,000.<sup>00</sup>

The diminution in the value of the company's remaining property resulting from the transaction.

Answer: \$ 0.<sup>00</sup>

The interest expense paid by the company on relevant loans after the closing date.

Answer: \$ 0.<sup>00</sup>

Answer the following question only if you unanimously answered “No” to Question 2. Otherwise, do not answer the following question. To answer “Yes” to the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

#### QUESTION 6.

Do you find by clear and convincing evidence that the harm to WOWSC resulted from malice, fraud, or gross negligence?

“Malice” means a specific intent by Dana Martin to cause substantial injury or harm to WOWSC.

Fraud occurs when—

1. A party makes a material misrepresentation, and
2. The misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. The misrepresentation is made with the intention that it should be acted on by the other party, and
4. The other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means—

1. A false statement of fact, or
2. A promise of future performance made with an intent, at the time the promise was made, not to perform as promised, or
3. A statement of opinion based on a false statement of fact, or
4. A statement of opinion that the maker knows to be false, or
5. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

Fraud also occurs when—

1. a party fails to disclose a material fact within the knowledge of that party, and
2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
3. the party intends to induce the other party to take some action by failing to disclose the fact, and
4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

“Gross negligence” means an act or omission by Dana Martin,

1. Which when viewed objectively from the standpoint of Dana Martin at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. Of which Dana Martin has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

"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.

Answer "Yes" or "No."

Answer:     No

QUESTION 7.

Answer the following question only if you unanimously answered "Yes" to Question 6. Otherwise, do not answer the following question. You must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, if paid now in cash, should be assessed against Dana Martin as exemplary damages, if any, for the conduct found in response to Question 6?

"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:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of Dana Martin.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of Dana Martin.

Answer in dollars and cents, if any.

Answer: \_\_\_\_\_

VERDICT CERTIFICATE

{CHECK APPROPRIATE OPTION BELOW}

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

  
PRESIDING JUROR

Billy C. Nabors Jr.  
PRINTED NAME OF PRESIDING JUROR

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

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

Jurors' Signatures

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Jurors' Printed Names

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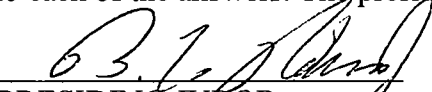
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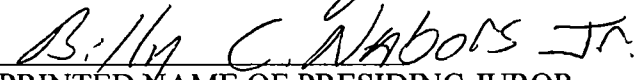
\_\_\_\_\_  
PRESIDING JUROR

\_\_\_\_\_  
PRINTED NAME OF PRESIDING JUROR

Additional Certificate

I certify that the jury was unanimous in answering the following questions: 6 and 7. All 12 of us agreed to each of the answers. The presiding juror has signed the certificate for all 12 of us.

  
PRESIDING JUROR

  
PRINTED NAME OF PRESIDING JUROR