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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JERRY JANVRIN,
d/b/a J&J Trucking,

Plaintiff,

vs.

CONTINENTAL RESOURCES, INC.,
an Oklahoma Corporation,

Defendant.

CIV. 14-4124-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION AND DEFINITIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my oral instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 2 – BURDEN OF PROOF

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

In determining whether or not an issue has been proved by the greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 3 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 4 – CORPORATION AS PARTY

The fact that one of the parties to this action is a corporation is immaterial. In the eyes of the law, a corporation is an individual party to the lawsuit, and all parties are entitled to the same impartial treatment.

FINAL INSTRUCTION NO. 5 – CORPORATE EMPLOYEES

A corporation can act only through its officers, employees, and agents. Any act or omission of an officer, employee, or agent within the scope of his or her employment is the act or omission of the corporation for which he or she was then acting.

FINAL INSTRUCTION NO. 6 – INTERFERENCE WITH BUSINESS
RELATIONSHIP – ELEMENTS

To establish that Continental Resources is liable for interference with a business relationship, Jerry Janvrin must prove the following by the greater convincing force of the evidence:

One, that a valid business relationship existed between Jerry Janvrin and CTAP, Inc.;

Two, that Continental Resources, at the time the acts complained of were committed, knew of this business relationship, or should have known about it;

Three, that Continental Resources' conduct was an intentional and unjustified act of interference that was improper;

Conduct is intentional when a person acts or fails to act for the purpose of causing injury or knowing that injury is substantially certain to occur.

Knowledge or intent may be inferred from the person's conduct and the surrounding circumstances.

You should consider the following factors in determining whether Continental's conduct was improper;

- a. The nature of Continental Resources' conduct;
- b. Continental Resources' motive
- c. Jerry Janvrin's interests with which Continental Resources' conduct interfered;
- d. The interests Continental Resources sought to be advanced by its conduct;
- e. The interest of our society in balancing the need to protect the freedom of action of Continental

Resources and the business relationship between Jerry Janvrin and CTAP;

1. Continental Resources has the right to refuse to do business with Jerry Janvrin and to exclude Jerry Janvrin from its property.
 2. But Continental Resources cannot improperly interfere with Jerry Janvrin's business interest with CTAP.
- f. The proximity or remoteness of Continental Resources' conduct to the interference Jerry Janvrin complains of; and
 - g. The nature of the relationship among Jerry Janvrin, CTAP, and Continental Resources.

Four, the interference was the legal cause of the harm sustained; and

The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a natural and probable sequence of the act complained of. Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. Continental's conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of Jerry Janvrin's injury.

Five, as a result of Continental's conduct, Jerry Janvrin suffered damage.

If you find that Jerry Janvrin has proven all five elements by the greater convincing force of the evidence, you should return a verdict in favor of Jerry Janvrin. If Jerry Janvrin has not proven all five elements by the greater convincing force of the evidence, your verdict must be for Continental Resources.

FINAL INSTRUCTION NO. 7 – ACTUAL DAMAGES

If you decide for Janvrin on the question of liability on his claim for interference with a business relationship, you must then fix the amount of money that will reasonably and fairly compensate him for any of the following elements of loss or harm proved by the evidence to have been legally caused by Continental Resources' conduct, whether such loss or harm could have been anticipated or not, namely:

1. The earnings Jerry Janvrin has lost, if any, from February 19, 2014 through April 1, 2015.

Whether this element of damages has been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture.

You are also instructed that Jerry Janvrin has a duty under the law to “mitigate” his damages — that is, to exercise reasonable care, diligence, and effort under the circumstances to minimize his damages. Continental Resources has the burden of demonstrating that Jerry Janvrin did not mitigate his damages. Therefore, if you find by the greater weight of the evidence that Jerry Janvrin failed to take reasonable care, diligence, and effort to minimize his damages, you must reduce his damages by the amount he reasonably could have avoided if he had taken such measures.

FINAL INSTRUCTION NO. 8 – DAMAGES – PREJUDGMENT INTEREST – TORT
AND CONTRACT

Any person who is entitled to recover damages is entitled to recover interest from the day that the loss or damage occurred except:

1. Interest is not recoverable during a period of time where the liable party was prevented by law from paying the damages, or an act of the person entitled to the damages prevented the liable party from paying the damages, or
2. Interest is not recoverable on punitive damages, future damages, or intangible damages such as pain and suffering, emotional distress, loss of consortium, injury to credit, reputation or financial standing, loss of enjoyment of life, or loss of society and companionship.

You must decide:

1. the amount of damages (if any), and
2. the amount of damages that are subject to prejudgment interest (if any), and
3. the date or dates when the damages occurred.

If you return a verdict for Jerry Janvrin, you must indicate on the verdict form whether you find Jerry Janvrin is entitled to prejudgment interest, and if so, the amount of damages upon which interest is granted and the beginning date of such interest. Based upon your findings, the court will calculate the amount of interest Jerry Janvrin is entitled to recover.

FINAL INSTRUCTION NO. 9 –PUNITIVE DAMAGES

In addition to any actual damages that you may award to Jerry Janvrin on his claim for interference with a business relationship, you may also, in your discretion, award punitive damages if you find that he suffered injury to person or property as a result of the oppression or malice of Continental Resources. Jerry Janvrin has the burden of proof on the issue of punitive damages. The purpose of awarding punitive damages is to set an example and to punish Continental Resources.

“Oppression” is conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.

“Malice” is not simply the doing of an unlawful or injurious act; it implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations. Malice may be inferred from the surrounding facts and circumstances.

Actual malice is a positive state of mind, evidenced by the positive desire and intention to injure another, actuated by hatred or ill will toward that person. Presumed, or legal, malice is malice which the law infers from or imputes to certain acts. Legal malice may be imputed to an act if the person acts willfully or wantonly to the injury of the other in reckless disregard of the other’s rights. Hatred or ill will is not always necessary.

If you find that punitive damages should be awarded, then in determining the amount, you should consider the following five factors:

1. The intent of Continental Resources.

In considering Continental Resources’ intent, you should examine the degree of reprehensibility of its misconduct, including, but not limited to, the following factors:

- a. whether the harm caused was physical as opposed to economic;
- b. whether the tortious conduct evinced an indifference to, or reckless disregard of, the health or safety of others;
- c. whether the target of the conduct was vulnerable financially;
- d. whether the conduct involved repeated actions or was an isolated incident; and
- e. whether the harm was the result of intentional malice, trickery or deceit, or mere accident.

2. The amount awarded in actual damages.

In considering this factor, you should consider:

- a. whether Jerry Janvrin has been completely compensated for the economic harm caused by Continental Resources; and
- b. the relationship between the harm suffered by Jerry Janvrin and the punitive damages award;

The amount of punitive damages must bear a reasonable relationship to the actual damages.

3. The nature and enormity of the wrong.
4. Continental Resources' financial condition.
5. All of the circumstances concerning Continental Resources' actions, including any mitigating circumstances which may operate to reduce, without wholly defeating, punitive damages.

You may not consider any one factor alone, but should consider all five factors in determining the amount, if any, of an award.

FINAL INSTRUCTION NO. 10 – PUNITIVE DAMAGES AGAINST PRINCIPAL FOR
AGENT’S TORTS

Punitive damages may be awarded against a principal because of an act by an agent only in the following circumstances:

1. The principal or a managerial agent authorized the doing and the manner of the agent’s act; or
2. The agent was unfit and the principal or a managerial agent was reckless in employing or retaining the agent; or
3. The agent was employed in a managerial capacity and was acting in the scope of employment; or
4. The principal or managerial agent of the principal ratified or approved the agent’s act.

FINAL INSTRUCTION NO. 11 – DUTIES DURING DELIBERATIONS

In conducting deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.


Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in

writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated January 12, 2017.


KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

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DEFENDANT'S PROPOSED INSTRUCTION NO. 1 —
INTERFERENCE WITH BUSINESS RELATIONSHIP

Jerry Janvrin d/b/a J&J Trucking ("Janvrin") alleges Continental Resources, Inc. ("Continental") improperly interfered with Janvrin's business relationship with CTAP, Inc. To establish that Continental is liable for interference with a business relationship, Janvrin must prove the following by a greater convincing force of the evidence:

- (1) A valid business relationship existed between Janvrin and CTAP, Inc.;
- (2) Continental, at the time the acts complained of were committed, knew of this business relationship, or should have known about it;
- (3) The conduct of Continental was an intentional and unjustified act of interference that was improper;
- (4) The interference was the legal cause of the harm sustained; and
- (5) As a result of Continental's conduct, Janvrin suffered damage.

Authority: SDPJI 20-190-10 (2015); *Selle v. Tozser*, 2010 S.D. 64, ¶ 15, 786 N.W.2d 748, 753; RESTATEMENT (SECOND) OF TORTS §§ 766 & 766B.

1/11/17
Refused
K. Schreier

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DEFENDANT'S PROPOSED INSTRUCTION NO. 2 —
INTENTIONAL—DEFINITION

Interference is “intentional” if the actor desires to bring such interference about or if the actor knows that the interference is certain or substantially certain to occur as a result of its conduct.

Authority: RESTATEMENT (SECOND) OF TORTS §§ 766 cmt. j & 766B cmt. d.

*1/11/17
Refused
K. Schreier*

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DEFENDANT'S PROPOSED INSTRUCTION NO. 6 —
RIGHT TO EXCLUDE OTHERS FROM PROPERTY

Continental has the absolute right to exclude Janvrin from its property. The mere exercise of this right cannot constitute tortious interference.

Authority: *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978) (“One of the main rights attaching to property is the right to exclude others”); *Posa, Inc. v Miller Brewing Co.*, 642 F. Supp. 1198, 1204-06 (E.D.N.Y. 1986) (finding defendant was not liable for tortious interference for notifying distributors that plaintiff was not an approved carrier and would not be permitted on Miller property because Miller was exercising its privileges or rights to exclude others from its property and to freely select with whom it will do business); *Standard Fruit & S.S. Co. v. Putnam*, 290 So. 2d 612, 614-15 (Miss. 1974) (finding defendant not liable for tortious interference because defendant had the right to exclude the truck driver plaintiff from its premises).

1/11/17
Refused
K. Schreier