

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
NOV 21 2014
[Signature]
CLERK

KYLE SOLTESZ,)	CIV. 11-5012-JLV
)	
Plaintiff,)	
)	
vs.)	SUPPLEMENTAL
)	INSTRUCTIONS
)	TO THE JURY
RUSHMORE PLAZA CIVIC)	
CENTER, a political subdivision of)	
the City of Rapid City, and)	
CITY OF RAPID CITY, a political)	
subdivision of the State of South)	
Dakota,)	
)	
Defendants.)	
)	

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VERDICT FORM

INSTRUCTION NO. 32 - EQUALLY IMPORTANT INSTRUCTIONS

Members of the jury, I will now take a few minutes to give you additional instructions explaining the law which applies to this case. All instructions, both those I gave you earlier and these instructions, are equally binding on you and must be followed. You must consider my instructions as a whole and not single out some instructions and ignore others.

INSTRUCTION NO. 33 - MATTERS TO BE DISREGARDED

It is your duty as jurors to determine the facts, and you must do this from the evidence produced here in open court. This consists of the testimony of the witnesses and the exhibits which have been received. This evidence is governed by various rules of law. Under these rules, it was my duty to rule on the admissibility of the evidence from time to time. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit which was not received in evidence or any testimony which I ordered stricken. You must put such matters out of your mind. You must not consider anything you may have heard or read about this case other than the evidence produced here in open court.

INSTRUCTION NO. 34 - CLAIMS REMOVED

Plaintiff's claim for punitive damages and defendants' claims for fraudulent misrepresentation and punitive damages are no longer part of this case, so you will not decide those claims. Why those claims are not part of the case cannot concern you. You should decide the case based solely on the evidence on the remaining claims before you and my instructions.

INSTRUCTION NO. 35 - WAIVER

When considering the defendants' breach of lease claim as set out in Instruction No. 25, you must consider the following:

Mr. Soltesz alleges the defendants' breach of lease claim is barred by the doctrine of waiver.

You must consider whether the defendants waived their right to bring a breach of lease claim against and recover damages from Mr. Soltesz by voluntarily and intentionally acting, with full knowledge of the facts, in a way contrary to enforcing their rights. To find waiver there must be a showing of a clear, unequivocal and decisive act or acts showing an intention by the defendants to give up their existing rights. There can be no waiver unless the defendants intended to give up their rights and Mr. Soltesz understood their intent to do so. If the defendants waived their rights they cannot recover damages based on those rights. Mr. Soltesz must prove by the greater convincing weight of the evidence that the defendants waived their rights.

If you find Mr. Soltesz has proved by the greater convincing weight of the evidence that the defendants waived their rights, then the defendants cannot recover on their breach of lease claim. If you find Mr. Soltesz did not prove by the greater convincing weight of the evidence that the defendants waived their rights, then waiver is not a defense to the breach of lease claim.

INSTRUCTION NO. 36 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view of reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself, but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views and change your opinion if you are convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence. You may conduct your deliberations as you choose. You may take all the time you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be

selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be resolved at some later time.

INSTRUCTION NO. 37 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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

Second, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, 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.

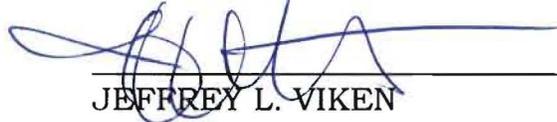
Third, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict must be unanimous.** Nothing I said or did was intended to suggest what your verdict should be—that is entirely for you to decide.

The verdict form is simply the written notice of the decision you reach in this case. You will take this form to the jury room. When you have unanimously agreed on the verdict, the foreperson will fill in the form, sign and date it and advise the court security officer that you have reached a verdict.

You will then return to the courtroom where your verdict will be received and announced.

Dated November 21, 2014.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'J. Viken', is written over a horizontal line.

JEFFREY L. VIKEN
CHIEF JUDGE