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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DUANE J. BRINDLE,
d/b/a Val-Tec,

Plaintiff,

CIV. 12-4172-KES

vs.

**FINAL
INSTRUCTIONS
TO THE JURY**

HAMPDEN ENGINEERING
CORPORATION,

Defendant.

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

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 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, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. This does not mean they are more important than my oral instructions. **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, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 3 – IMPEACHMENT

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

A witness may be discredited or impeached by:

1. Contradictory evidence
2. A showing that the witness testified falsely concerning a material matter
3. 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
 - a. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true.
 - b. 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 – BREACH OF CONTRACT

Brindle claims Hampden Engineering breached the “Letter of Understanding” by refusing to pay him commissions. You must determine if the contract was breached by Hampden Engineering.

You must determine:

First, what terms were agreed upon by Brindle and Hampden Engineering in the contract;

Second, whether Hampden Engineering breached its obligations and duties under the contract;

And third, the amount of money damages that will justly compensate Brindle for damages that were sustained as a result of the breach.

For Brindle to prevail on his claim for breach of contract, he must establish the above three elements by the greater convincing force of the evidence.

FINAL INSTRUCTION NO. 5 – DURATION

A contract may be terminated in accordance with its terms or by conduct of the parties.

FINAL INSTRUCTION NO. 6 – WRITTEN CONTRACT

The execution of a written contract supersedes all previous or contemporaneous oral negotiations or stipulations concerning its matter.

FINAL INSTRUCTION NO. 7 – DAMAGES

The measure of damages for a breach of contract is the amount which will compensate the aggrieved party for all detriment legally caused by the breach, or which, in the ordinary course of things, would be likely to result from the breach.

Damages for a breach of contract which are not clearly ascertainable in both their nature and origin are unrecoverable.


FINAL INSTRUCTION NO. 8 – DUTIES DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

1. Select a foreperson to preside over your discussions and to speak for you here in court.
2. 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.
3. 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.
4. 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.
5. 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.**
6. 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.
7. 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 March 26, 2014.


KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE