Johnny Knight v. Tracy Dandridge
2017-CP-18-00039

DUTIES OF JURY AND JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. IF ANY TESTIMONY WAS ORDERED STRICKEN FROM THE RECORD DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU THINK YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS, YOU MUST FORGET THAT IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.[1] A TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT ABOUT THE FACTS IN A CASE. SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, DO NOT THINK BY ANYTHING I HAVE SAID DURING THE TRIAL THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS.

PREPONDERANCE OF THE EVIDENCE

THE BURDEN OF PROOF IN THIS CASE IS BY A PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE. IT IS EVIDENCE WHICH, AS A WHOLE, SHOWS THAT THE FACT SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE.[2]

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[1] Day v. Kilgore, 314 S.C. 365, 444 S.E.2d 515 (1994).

[2] Metropolitan Stevedore Co. v. Rambo, 521 U.S. 121, 117 S. Ct. 1953, 138 L. Ed. 2d 327 (1997).

THIS CAN BE ILLUSTRATED BY IMAGINING A SET OF SCALES. WHEN THE CASE BEGINS, THE SCALES ARE EVEN. AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED, IF THE SCALES REMAIN EVEN OR IF THEY TIP EVEN SLIGHTLY IN FAVOR OF THE DEFENDANT, THEN THE PLAINTIFF HAS FAILED TO MEET THE BURDEN OF PROOF AND WOULD NOT BE ENTITLED TO RECOVER IN THIS CASE. IF, ON THE OTHER HAND, THE SCALES TIP EVEN SLIGHTLY IN FAVOR OF THE PLAINTIFF, THE PLAINTIFF WILL HAVE MET THE BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR THE PLAINTIFF.
THE PREPONDERANCE OF THE EVIDENCE IS NOT DETERMINED BY THE NUMBER OF WITNESSES. INSTEAD, IT MUST BE DETERMINED BY THE GREATER WEIGHT OF ALL OF THE EVIDENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.[3]

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.[4] IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE.[5] FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR CONJECTURE.[6]

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[3] State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

[4] State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

[5] Gastineau v. Murphy, 323 S.C. 168, 473 S.E.2d 819 (Ct. App. 1996), rev'd on other grounds, 331 S.C. 565, 503 S.E.2d 712 (1998).

[6] Holland v. Georgia Hardwood Lumber Co., 214 S.C. 195, 51 S.E.2d 744 (1949).

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU IT IS TRUE.[7]

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER THE WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS PREJUDICED TOWARD EITHER THE PLAINTIFF OR THE DEFENDANT, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AND THE WAY THE WITNESS ACTS ON THE WITNESS STAND.

BREACH OF CONTRACT

IN THIS CASE, BOTH THE PLAINTIFF AND DEFENDANT CLAIM THAT THE OTHER PARTY BREACHED A CONTRACT THAT EXISTED BETWEEN THE PARTIES. IN ORDER TO RECOVER FOR A BREACH OF CONTRACT, BOTH PARTIES MUST PROVE THE CLAIM BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE.

WRITTEN CONTRACT

WHEN THE CONTRACT IS IN WRITING, YOU MUST DETERMINE THE INTENTION OF THE PARTIES PRIMARILY FROM THE CONTENTS OF THE WRITTEN DOCUMENT ITSELF. THE INTENTION OF THE PARTIES MUST BE DETERMINED FROM THE ENTIRE AGREEMENT AND NOT FROM ANY PARTICULAR CLAUSE OR PROVISION.[8]

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[7] Small v. Pioneer Mach., Inc., 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).

[8] Parker v. Byrd, 309 S.C. 189, 420 S.E.2d 850 (1992).

WHEN THE WRITTEN CONTRACT IS CLEAR, ITS MEANING MUST BE DETERMINED BY THE CONTENTS OF THE DOCUMENT ALONE.[9]

IF THE CIRCUMSTANCES WARRANT, TERMS WHICH DO NOT CONTRADICT THE WRITTEN LANGUAGE OF THE CONTRACT MAY BE IMPLIED IN ORDER TO CARRY OUT THE INTENTIONS OF THE PARTIES.[10]

BREACH

SINCE BOTH PARTIES AGREE THAT THEY ENTERED INTO A BINDING CONTRACT, THE PARTIES MUST THEN SHOW BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT UNJUSTIFIABLY BREACHED THE CONTRACT. THE WORD BREACH MEANS THE FAILURE, WITHOUT LEGAL EXCUSE, TO PERFORM ANY PROMISE THAT FORMS THE WHOLE OR A PART OF THE CONTRACT. THIS INCLUDES THE REFUSAL OF A PARTY TO RECOGNIZE THE EXISTENCE OF THE CONTRACT OR THE DOING OF SOMETHING INCONSISTENT WITH THE EXISTENCE OF THE CONTRACT. A PARTY BREACHES A CONTRACT WHEN THAT PARTY DOES NOT PERFORM AS AGREED UNDER THE CONTRACT BY FAILING TO CARRY OUT A TERM, PROMISE, OR CONDITION OF THE CONTRACT.

TIME FOR PERFORMANCE OF CONTRACT

IF THERE IS A TIME SPECIFIED FOR PERFORMANCE OF THE CONTRACT, IT MUST BE PERFORMED WITHIN THE TIME SPECIFIED. HOWEVER, THE FACT THAT A CONTRACT CONTAINS A PROVISION FOR PERFORMANCE BY A CERTAIN TIME DOES NOT MEAN THAT IT MUST BE PERFORMED WITHIN THAT TIME PERIOD UNLESS THE PARTIES INTENDED FOR TIME TO BE OF THE ESSENCE. AN INTENTION TO MAKE TIME OF THE ESSENCE MUST BE CLEAR. IN DECIDING WHETHER TIME IS OF THE ESSENCE IN A CONTRACT, YOU SHOULD CONSIDER THE CONTRACT ITSELF ALONG WITH THE ACTIONS OF THE PARTIES AND THE CIRCUMSTANCES, CONDITIONS, AND PURPOSES OF THE PARTIES WITH REGARD TO THE CONTRACT.

WHERE TIME IS NOT ORIGINALLY OF THE ESSENCE IN THE CONTRACT, IT MADE BE MADE SO BY ONE PARTY GIVING NOTICE TO THE OTHER PARTY THAT THE PARTY WILL INSIST ON PERFORMANCE BY A CERTAIN DATE. HOWEVER, THE TIME ALLOWED BY THE NOTICE MUST BE REASONABLE. WHETHER THE TIME FOR PERFORMANCE IS REASONABLE IS A QUESTION FOR YOU TO DECIDE BASED ON THE CIRCUMSTANCES OF THIS PARTICULAR CASE.[11]

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[9] White v. White, 210 S.C. 336, 42 S.E.2d 537 (1947).

[10] Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 147 S.E.2d 481 (1966).

[11] Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct. App. 1989).

THE PLAINTIFF CANNOT RECOVER FOR BREACH OF CONTRACT FOR THE DEFENDANT'S FAILURE TO TIMELY PERFORM THE CONTRACT IF THE REASON FOR THE DELAY WAS THE FAILURE OF THE PLAINTIFF TO FULLY PERFORM HIS DUTIES UNDER THE CONTRACT.

DAMAGES

FINALLY, BOTH PARTIES MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THEY SUFFERED DAMAGES WHICH WERE PROXIMATELY CAUSED BY THE OTHER PARTY'S BREACH OF THE CONTRACT. THE PARTIES MUST PROVE DAMAGES BY THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE. THIS DOES NOT MEAN THAT THEY MUST PROVE DAMAGES TO A MATHEMATICAL CERTAINTY[12] OR PRODUCE EVIDENCE OF THE EXACT AMOUNT OF DAMAGES SUFFERED.[13] HOWEVER, THE AMOUNT OF DAMAGES CANNOT BE LEFT TO GUESSWORK OR SPECULATION.[14] INSTEAD, THE EVIDENCE PRESENTED BY THE PARTIES MUST BE ENOUGH TO ALLOW YOU TO DETERMINE THE AMOUNT OF DAMAGES WITH REASONABLE CERTAINTY AND ACCURACY.

DAMAGES FOR BREACH OF CONTRACT ARE THOSE THAT MAY FAIRLY AND REASONABLY BE CONSIDERED TO ARISE NATURALLY FROM THE BREACH OF CONTRACT ITSELF, OR THOSE THAT MAY BE REASONABLY SUPPOSED TO HAVE BEEN IN THE MINDS OF THE PARTIES AT THE TIME THE CONTRACT WAS MADE.

NEITHER PARTY MAY NOT RECOVER DAMAGES FOR BREACH OF CONTRACT UNLESS THEY SHOW THAT HE OR SHE HAS PERFORMED HIS PART OF THE CONTRACT, OR AT LEAST WAS ABLE, READY, AND WILLING TO PERFORM AT THE APPROPRIATE TIME.[15] THERE EXISTS IN EVERY CONTRACT AN UNSPOKEN, BUT LEGALLY ENFORCEABLE, PROMISE OF GOOD FAITH AND FAIR DEALING.[16]

ACTUAL DAMAGES

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[12] Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

[13] Jones v. Thomas & Hill, Inc., 265 S.C. 66, 216 S.E.2d 871 (1975).

[14] Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

[15] Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999).

[16] Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 473 S.E.2d 52 (1996).

ACTUAL DAMAGES ARE DAMAGES TO COMPENSATE THE PARTY AND PUT HIM OR HER, AS CLOSELY AS POSSIBLE, IN THE SAME POSITION HE OR SHE WAS IN BEFORE THE BREACH OF CONTRACT.[17] IN OTHER WORDS, ACTUAL DAMAGES ARE THE ACTUAL LOSSES AND EXPENSES WHICH THE PARTY HAS SUFFERED BECAUSE THE OTHER PARTY BREACHED THE CONTRACT.[18] GENERALLY, ACTUAL DAMAGES ARE THE OUT-OF-POCKET COSTS ACTUALLY PAID BY THE PARTY AS A RESULT OF THE BREACH OF CONTRACT AND THE GAIN ABOVE THE COSTS THAT WOULD HAVE BEEN REALIZED IF THE CONTRACT HAD BEEN PERFORMED.[19]

COUNTERCLAIM

THE DEFENDANT HAS BROUGHT A COUNTERCLAIM AGAINST THE PLAINTIFF. THIS MEANS THAT THE DEFENDANT NOT ONLY DENIED THAT SHE BREACHED THE CONTRACT, BUT ALSO SAYS THAT THE PLAINTIFF BREACHED THE CONTRACT AND THAT THE DEFENDANT SHOULD BE COMPENSATED BY THE PLAINTIFF.[20] THE DEFENDANT ALSO HAS THE BURDEN OF PROVING THE COUNTERCLAIM BY THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE.[21]

IF YOU DECIDE THAT THE DEFENDANT HAS NOT MET THE BURDEN OF PROVING THE PLAINTIFF BREACHED THE CONTRACT, BUT THAT THE PLAINTIFF HAS PROVEN THAT THE DEFENDANT BREACHED THE CONTRACT, YOU SHOULD RETURN A VERDICT INCLUDING DAMAGES FOR THE PLAINTIFF.

IF YOU FIND THAT THE PLAINTIFF HAS FAILED TO MEET THE BURDEN OF PROVING THE DEFENDANT BREACHED THE CONTRACT, BUT THAT THE DEFENDANT HAS PROVEN THAT THE PLAINTIFF BREACHED THE CONTRACT, YOU SHOULD RETURN A VERDICT INCLUDING DAMAGES FOR THE DEFENDANT.

IF YOU FIND THAT NEITHER PARTY HAS MET THE BURDEN OF PROVING THE OTHER PARTY BREACHED THE CONTRACT, YOU SHOULD RETURN A VERDICT FOR THE DEFENDANT.

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[17] Jones v. Bates, 241 S.C. 189, 127 S.E.2d 618 (1962).

[18] Holmes v. Nationwide Life Ins. Co., 273 S.C. 711, 258 S.E.2d 924 (1977).

[19] Collins Holding Corp. v. Landrum, 360 S.C. 346, 601 S.E.2d 332 (2004); South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990).

[20] Rule 13, SCRCP.

[21] Sunshine v. Furtick, 114 S.C. 32, 102 S.E. 784 (1920).

UNJUST ENRICHMENT

IN THIS CASE, THE PLAINTIFF ALSO CLAIMS THAT HE IS ENTITLED TO RECOVER UNDER THE THEORY OF UNJUST ENRICHMENT. A PARTY MAY BE UNJUSTLY ENRICHED WHEN IT HAS AND RETAINS BENEFITS OR MONEY WHICH IN JUSTICE AND EQUITY BELONG TO ANOTHER. TO RECOVER IN THE CONTEXT OF UNJUST ENRICHMENT, THE PLAINTIFF MUST SHOW (1) HE CONFERRED A NON-GRATUITUOUS BENEFIT ON THE DEFENDANT; (2) THE DEFENDANT REALIZED SOME VALUE FROM THE BENEFIR; AND (3) IT WOULD BE INEQUITABLE FOR THE DEFENDANT TO RETAIN THE BENEFIT WITHOUT PAYING THE PLAINTIFF FOR ITS VALUE.

WAIVER OF BREACH

THE DEFENDANT CLAIMS THAT, EVEN IF THERE WAS A BREACH OF CONTRACT, THE PLAINTIFF WAIVED THE RIGHT TO ENFORCE THE CONTRACT BY ACTIONS TAKEN AFTER THE ALLEGED BREACH OF CONTRACT. WHEN A PERSON WAIVES A RIGHT IT MEANS THAT THE PERSON INTENTIONALLY AND VOLUNTARILY GIVES UP THAT RIGHT WITH KNOWLEDGE OF ALL OF THE RELEVANT FACTS. ONCE A BREACH OF CONTRACT OCCURS, THE PLAINTIFF MUST ENFORCE HIS [HER] RIGHTS UNDER THE CONTRACT OR LOSE THEM.[1] IF YOU FIND THAT THE PLAINTIFF ACTED IN A MANNER WHICH MADE THE DEFENDANT BELIEVE THAT THE PLAINTIFF GAVE UP THE RIGHT TO PROSECUTE THE BREACH OF CONTRACT, YOU SHOULD RETURN A VERDICT FOR THE DEFENDANT.

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[1] Genesco, Inc. v. Palmetto Plaza Shopping Center, Inc., 274 S.C. 446, 265 S.E.2d 34 (1980).