

Chris Daniel
District Clerk

NOV 18 2016

Time: _____
Harris County, Texas
By _____
Deputy _____

CAUSE NO. 2010-25097

KATHY HARPST, ET AL.,
Plaintiffs,

v.

GEORGE FLEMING AND FLEMING
AND ASSOCIATES, L.L.P.,
Defendants.

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189TH JUDICIAL DISTRICT

P13

Jury Charge

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. I will give you a number where others may contact you in case of an emergency.

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.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witness who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

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 ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

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.

Unofficial Copy Office of Chris Daniel District Clerk

"F&A" means the law firm Fleming & Associates, LLP (now known as) Fleming, Nolen & Jez, LLP.

QUESTION 1

Did George Fleming and F&A comply with their fiduciary duty to the plaintiffs?

As the plaintiffs' attorneys, George Fleming and F&A owed the plaintiffs a fiduciary duty. To prove that they complied with their duty, George Fleming and F&A must show:

1. the transactions in question were fair and equitable to the plaintiffs; and
2. George Fleming and F&A made reasonable use of the confidence that the plaintiffs placed in them; and
3. George Fleming and F&A acted in the utmost good faith and exercised the most scrupulous honesty toward the plaintiffs; and
4. George Fleming and F&A placed the interests of the plaintiffs before their own and did not use the advantage of their position to gain any benefit for themselves at the expense of the plaintiffs; and
5. George Fleming and F&A fully and fairly disclosed all important information to plaintiffs concerning the transactions.

Answer "Yes" or "No" for each plaintiff

Kathy Harpst

YES

Stephanie Hatfield

YES

Lagean Medearis
(f/k/a Frost)

YES

Shannon Malm

YES

Fredia Rice

YES

Jo'Quita Sanders
(f/k/a Bearden)

YES

QUESTION 2

Did F&A fail to comply with the fee agreements with the plaintiffs by charging expenses that were unreasonable?

Answer "Yes" or "No" for each plaintiff.

Kathy Harpst

No

Stephanie Hatfield

No

Lagean Medearis
(f/k/a Frost)

No

Shannon Malm

No

Fredia Rice

No

Jo'Quita Sanders
(f/k/a Bearden)

No

Unofficial Copy Office of Chris Daniel District Clerk

If your answer to Question 1 is "No" for any plaintiff, or if your answer to Question 2 is "Yes" for any plaintiff, then answer the following question for that plaintiff. Otherwise, do not answer the following question.

QUESTION 3

What sum of money, if any, if now paid in cash, would fairly and reasonably compensate the plaintiffs for their damages, if any, that were proximately caused by such conduct?

Consider the element of damages in Section A, and none other, for each plaintiff. Do not add any amount for interest on damages, if any. Answer separately in dollars and cents for damages, if any.

A. The amount of unreasonable expenses, if any, which were charged to that plaintiff.

Kathy Harpst

Stephanie Hatfield

Lagean Medearis
(f/k/a Frost)

Shannon Malm

Fredia Rice

Jo'Quita Sanders
(f/k/a Bearden)

If your answer to Question 1 is "No" for any plaintiff, or if your answer to Question 2 is "Yes" for any plaintiff, then answer the following question for that plaintiff. Otherwise, do not answer the following question.

QUESTION 4

Did any of the plaintiffs listed below waive their claims against George Fleming and/or F&A for charging them unreasonable expenses, if any?

Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming that right.

Answer "Yes" or "No" as to each plaintiff in each column.

	George Fleming	F&A
Kathy Harpst	_____	_____
Stephanie Hatfield	_____	_____
Lagean Medearis (f/k/a Frost)	_____	_____
Shannon Malm	_____	_____
Fredia Rice	_____	_____
Jo'Quita Sanders (f/k/a Bearden)	_____	_____

Only if you unanimously answered "No" to Question 1 for any plaintiff, answer the following question for that plaintiff. Otherwise, do not answer the following question.

To answer "Yes" to any part of 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 5

Do you find by clear and convincing evidence that the harm to the plaintiff in Question 1 resulted from fraud?

"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.

"Fraud" 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.

Answer "Yes" or "No" for each plaintiff.

Kathy Harpst _____

Stephanie Hatfield _____

Lagean Medearis
(f/k/a Frost) _____

Shannon Malm _____

Fredia Rice _____

Jo'Quita Sanders
(f/k/a Bearden) _____

Only if you unanimously answered "Yes" to Question 5 for any plaintiff, answer the following question for that plaintiff. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION 6

What sum of money, if any, if paid now in cash, should be assessed against George Fleming and/or F&A and awarded to the plaintiffs below as exemplary damages, if any, for the conduct found in response to Question 1?

"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 George Fleming or F&A.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.

Answer in dollars and cents, if any, against either or both defendants.

	George Fleming	F&A
Kathy Harpst	<hr/>	<hr/>
Stephanie Hatfield	<hr/>	<hr/>
Lagean Medearis (f/k/a Frost)	<hr/>	<hr/>
Shannon Malm	<hr/>	<hr/>
Fredia Rice	<hr/>	<hr/>
Jo'Quita Sanders (f/k/a Bearden)	<hr/>	<hr/>

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. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict.
If eleven jurors agree on every answer, those eleven jurors sign the verdict.
If all twelve 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 twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or eleven who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 5 and 6 explaining how to answer those questions. Please follow the instructions. If all twelve 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.


JUDGE PRESIDING

Unofficial Copy Office of Chris Daniel District Clerk

Verdict Certificate

Check one:

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

____ Signature of Presiding Juror

____ 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.

	Signature	Name Printed
1.		CHRISTIAN PALMA
2.	Marvin Costello	Marvin Costello
3.	Reynaldo Avalos	Reynaldo Avalos
4.		Timothy E. Potts
5.	ADRIANA RIVERA	ADRIANA RIVERA
6.		Donna Section
7.	Karen Martinez	Karen Martinez
8.	Mark Barrera	Mark Barrera
9.	JOSE SIFONTES	
10.	Nancy C. Long	Nancy Long
11.		

Additional Certificate

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

YES

NO

Question 1 _____

Question 5 _____

Question 6 _____

Signature of Presiding Juror

Printed Name of Presiding Juror

Unofficial Copy Office of Chris Daniel District Clerk

FILED

Chris Daniel
District Clerk

DEC 16 2016

Time:

Harris County, Texas

By

Deputy

CAUSE NO. 2010-25097-A

KATHY HARPST, ET AL.,
Plaintiffs,

v.

GEORGE FLEMING AND FLEMING
AND ASSOCIATES, L.L.P.,
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

189TH JUDICIAL DISTRICT

P2

PC

(1-1)

(4-1)

(5-1)

(6-1)

(7-1)

(8-1)

9B

FINAL JUDGMENT

On November 7, 2016, this matter was called to trial. The plaintiffs are Kathy Harpst, Stephanie Hatfield, Lagean Medearis (f/k/a Frost), Shannon Malm, Fredia Rice, and Jo'Quita Sanders (f/k/a Bearden) (collectively "Plaintiffs"). The claims of these Plaintiffs were severed from the claims of the rest of the plaintiffs in the Rebecca Wilson case (Cause No. 2010-25097). The defendants are George Fleming and Fleming & Associates, L.L.P. (collectively "Defendants"). The parties announced ready, a jury panel was called, and a jury was selected, impaneled, and sworn. After the evidence was presented and the parties rested their cases, the Court submitted the case to the jury on November 18, 2016.

On November 18, 2016, the jury returned its verdict, which was accepted by the Court. The verdict is incorporated into this Final Judgment as if repeated verbatim. Defendants moved for entry of judgment on the verdict. The Court grants that motion.

Plaintiffs moved for judgment non obstante veredicto and requested that the Court disregard all of the jury's findings. The Court denies that motion.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

It is accordingly ORDERED, ADJUDGED, and DECREED that the Plaintiffs take nothing by reason of their claims against Defendants.

All costs of court are taxed against the Plaintiffs.

This is a Final Judgment disposing of all claims against all parties in this severed cause.

Signed: December 16, 2016

A handwritten signature in cursive script, appearing to read "Hilin R. Barbe", written over a horizontal line.

PRESIDING JUDGE

Unofficial Copy Office of Chris Daniel District Clerk