

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:00CV-155-H

DONALD SMITH, et. al.

PLAINTIFFS

V.

JOSEPH SOHM

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that

you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

In this case, one of the plaintiffs is a corporation. The mere fact that one of the parties is a corporation does not mean it is entitled to any lesser consideration by you. All litigants are equal before the law, and corporations, are entitled to the same fair consideration as you would give any other individual party.

In this case it is Plaintiffs' responsibility to persuade you that Plaintiffs' claims are more likely true than not. If Plaintiffs fail to persuade you on every essential element of Plaintiffs' claims, then you should find for the Defendant on that claim.

The law to be applied in this case is Section 1983 of Title 42 of the United States Code which makes it unlawful for any person acting under color of state law to deprive another person or entity of the rights, privileges and immunities secured or protected by the Constitution of the United States. Based on the evidence, you will have to determine whether it is more likely than not that Defendant Sohm violated Plaintiffs' constitutional due process or equal protection rights.

INSTRUCTION NO. 1

The Plaintiff Prestigious Homes has a due process right under the Fourteenth Amendment not to be subject to arbitrary or capricious government action. To find for Plaintiff Prestigious Homes you must be satisfied from the evidence as to each of the following:

- (1) Prior to February 28, 2000, Defendant Sohm delayed the issuance of building permits to Plaintiff Prestigious Homes; **and**
- (2) The delay, if any, was caused by Defendant Sohm's arbitrary and capricious acts; **and**
- (3) Defendant did these acts intentionally.

Although you have heard testimony about building permit applications by Prestigious Homes, other than the 8 applications in evidence, you shall not base your verdict on any such testimony. You may not consider any delay that may have occurred after February 28, 2000.

To find that an act is arbitrary and capricious you must believe that there is no rational basis for the challenged decision. An act is not arbitrary and capricious if it is possible to offer a reasonable explanation based on the evidence.

An act is intentional if it is done knowingly, that is, if it is done voluntarily and deliberately and not because of mistake.

If you find these three elements have been met, please answer Yes to Interrogatory No. 1 of the Verdict Form. Otherwise answer No.

INSTRUCTION NO. 2

Plaintiff Prestigious Homes and Plaintiff Don Smith also have the right to equal protection under the equal protection clause of the U.S. Constitution. Equal Protection protects against arbitrary classifications and requires that similarly situated persons be treated equally. To find for Plaintiff Prestigious Homes and/or Plaintiff Don Smith, you must be satisfied from the evidence as to each of the following:

- (1) Prior to February 28, 2000, Defendant Sohm treated Plaintiffs differently than other similarly situated individuals regarding the approval of building permits; **and**
- (2) There was no reasonable conceivable state of facts that could provide a rational basis for the different treatment; **and**
- (3) Defendant did these acts intentionally.

Although you have heard testimony about building permit applications by Prestigious Homes, other than the 8 applications in evidence, you shall not base your verdict on any such testimony. You may not consider any different treatment that occurred after February 28, 2000.

Intentionally has the same definition as used in Instruction No. 1.

If you find that all three of these elements have been met as to either Plaintiff, please answer Yes as to that Plaintiff on Interrogatory No. 2 of the Verdict Form. Otherwise answer No.

If you have answered Yes to either Interrogatory No. 1 or Interrogatory No. 2, please proceed to Instruction No. 3. Otherwise, you may return to the courtroom.

INSTRUCTION NO. 3

If you answered “Yes” to either Interrogatory No. 1 or Interrogatory No. 2 as to Plaintiff Prestigious Homes or Plaintiff Don Smith, you must award that Plaintiff nominal damages not to exceed one dollar.

Please record your verdict on Interrogatory No. 3 of the Verdict Form.

INSTRUCTION NO. 4

Plaintiffs are also seeking punitive damages against Defendant Sohm. The law permits the jury, under certain circumstances, to award punitive damages to an injured person. The purpose of such punitive damages is to punish the wrongdoer for some extraordinary misconduct, or to deter a defendant or others like him from committing such conduct in the future.

If you find that either Plaintiff is entitled to a verdict against Defendant, and you further find that the acts or omissions of Defendant were maliciously, or wantonly, or oppressively done, then you may add to the award of damages such amount as you shall unanimously agree to be proper, as punitive damages.

An act or failure to act is "maliciously" done, if prompted or accompanied by ill will, or spite, or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member.

An act or a failure to act is "oppressively" done, if done in a way or manner which injures, or damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of power, or by taking advantage of some weakness, or disability, or misfortune of another person.

Bear in mind that punitive damages are allowed only if you should first unanimously award either Plaintiff a verdict against Defendant. Also bear in mind, not only the conditions under which and the purposes for which the law permits an award for punitive damages to be made, but also the requirement of the law that the amount of such extraordinary damages, when awarded, must be fixed with calm discretion and sound reason, and must never be either awarded or fixed in amount because of any sympathy, bias, or prejudice with respect to any party to the case.

Please record your verdict on Interrogatory No. 4 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

Interrogatory No. 1:

Did Defendant Sohm violate Plaintiff Prestigious Homes's Fourteenth Amendment rights as defined in Instruction No. 1?

NO_____ YES_____

Interrogatory No. 2:

A. Did Defendant Sohm violate Plaintiff Prestigious Homes's Equal Protection rights as defined in Instruction No. 2?

NO_____ YES_____

B. Did Defendant Sohm violate Plaintiff Don Smith's Equal Protection rights as defined in Instruction No. 2?

NO_____ YES_____

Interrogatory No. 3:

If you answered YES to either Plaintiff in Interrogatory No.1 **or** Interrogatory No. 2, you must award nominal damages to that Plaintiff as explained in Instruction No. 3.

Prestigious Homes \$ _____

Don Smith \$ _____

Instruction No. 4:

If you determine to award punitive damages against Defendant Sohm, determine the amount of the damages in the manner set forth in Instruction No. 4:

\$ _____

FOREPERSON

Date: _____