

# Presiding Juror

CAUSE NO. CC-13-03572-E

FILED  
JOHN F. WARREN  
COUNTY CLERK  
DALLAS COUNTY, TEXAS

2016 MAR 10 PM 1:15  
IN THE COUNTY COURT

OLIVER MEDINA, ET AL  
Plaintiffs,

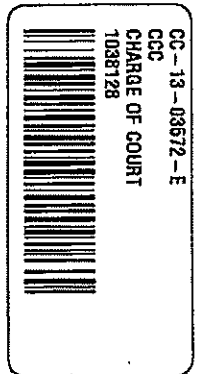
v.

JK ARBORS OF LAS COLINAS, LLC  
Defendant.

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AT LAW NO. 5

DALLAS, TEXAS



## CHARGE OF THE COURT

### 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 cell phone or any other electronic device during your deliberations for any reason.

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.

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 five of the six jurors. The same five jurors must agree on every answer. Do not agree to be bound by a vote of anything less than five 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.

A fact may be established by direct or circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses 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.

## QUESTION 1

Did The Arbors of Las Colinas LLC commit fraud against Oliver Medina?

Fraud occurs when--

1. there is a false representation of a past or existing material fact, and
2. the false representation is made to a person for the purpose of inducing that person to enter into a contract, and
3. the false representation is relied on by that person in entering into that contract.

or

Fraud occurs when--

1. a party makes a false promise to do an act, and
2. the promise is material, and
3. the promise is made with the intention of not fulfilling it, and
4. the promise is made to a person for the purpose of inducing that person to enter into a contract, and
5. that person relies on the promise in entering into that contract.

A party's conduct includes the conduct of another who acts with the party's authority or apparent authority.

Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

You are instructed that the Lease Agreement between the parties did not negate the reliance element required in this Question. Therefore, do not answer "No" based solely on a belief or argument that the contract did not allow the plaintiff to rely on statements made by The Arbors of Las Colinas LLC or another who was acting with its authority or apparent authority.

Answer "Yes" or "No":

Answer: YES

## QUESTION 2

Did The Arbors of Las Colinas LLC commit fraud against Richard E. Simpson?

Fraud occurs when--

1. there is a false representation of a past or existing material fact, and
2. the false representation is made to a person for the purpose of inducing that person to enter into a contract, and
3. the false representation is relied on by that person in entering into that contract.

or

Fraud occurs when--

1. a party makes a false promise to do an act, and
2. the promise is material, and
3. the promise is made with the intention of not fulfilling it, and
4. the promise is made to a person for the purpose of inducing that person to enter into a contract, and
5. that person relies on the promise in entering into that contract.

A party's conduct includes the conduct of another who acts with the party's authority or apparent authority.

Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

You are instructed that the Lease Agreement between the parties did not negate the reliance element required in this Question. Therefore, do not answer "No" based solely on a belief or argument that the contract did not allow the plaintiff to rely on statements made by The Arbors of Las Colinas LLC or another who was acting with its authority or apparent authority.

Answer "Yes" or "No":

Answer: YES

*If you unanimously answered "Yes" to Question 1, then answer the following question.  
Otherwise, do not answer the following question.*

**QUESTION 3**

Do you find by clear and convincing evidence that The Arbors of Las Colinas LLC had actual awareness of the falsity of the representation or promise you found to be fraud in Question 1?

Actual awareness may be inferred where objective manifestations indicate a person acted with actual awareness.

"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.

Answer "Yes" or "No":

Answer: YES

*If you unanimously answered "Yes" to Question 2, then answer the following question.  
Otherwise, do not answer the following question.*

**QUESTION 4**

Do you find by clear and convincing evidence that The Arbors of Las Colinas LLC had actual awareness of the falsity of the representation or promise you found to be fraud in Question 2?

Actual awareness may be inferred where objective manifestations indicate a person acted with actual awareness.

"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.

Answer "Yes" or "No":

Answer: YES



*Answer the following question only if you unanimously answered "Yes" to Question 3. Otherwise, do not answer the following question.*

*To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.*

#### QUESTION 5

Did The Arbors of Las Colinas LLC secure from Oliver Medina the execution of a document affecting property by deception?

"Securing the execution of a document by deception" occurs when a person causes another person to sign any document affecting property, and does so by deception, with the intent to defraud or harm any person.

A person acts with intent with respect to the nature of its conduct their conduct or to the result of their conduct when it is the conscious objective or desire to engage in conduct or cause the result.

A party's conduct includes the conduct of another who acts with the party's authority or apparent authority.

Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

"Deception" means creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment or another in the transaction, and that the actor does not believe to be true.

Answer "Yes" or "No":

Answer: YES

*Answer the following question only if you unanimously answered "Yes" to Question 3. Otherwise, do not answer the following question.*

*To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of five or more jurors. Otherwise, you must not answer the following question.*

#### QUESTION 6

Did The Arbors of Las Colinas LLC secure from Richard Simpson the execution of a document affecting property by deception?

"Securing the execution of a document by deception" occurs when a person causes another person to sign any document affecting property, and does so by deception, with the intent to defraud or harm any person.

A person acts with intent with respect to the nature of its conduct their conduct or to the result of their conduct when it is the conscious objective or desire to engage in conduct or cause the result.

A party's conduct includes the conduct of another who acts with the party's authority or apparent authority.

Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority or, (2) through lack of ordinary care, bestows on another such indications of authority that lead a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

"Deception" means creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment or another in the transaction, and that the actor does not believe to be true.

Answer "Yes" or "No":

Answer: YES

If you answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

### QUESTION 7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Oliver Medina for his damages, if any, that were proximately caused by such fraud?

Damages are "proximately caused" when the fraud is a substantial factor in bringing about the loss or injury, and without which the loss or injury would not have occurred. Losses that arrive after fraudulent conduct occurs are recoverable if those losses are reasonably foreseeable and directly traceable to a misrepresentation that fraudulently induced the plaintiff to enter into a contract. Therefore, you are instructed to consider all losses that were proximately caused by the fraud relied upon in deciding to enter into the contract and that result naturally from that fraud. There may be more than one proximately cause of an event.

Consider the following elements of damages, if any, and none other.

*A) The actual value of the belongings lost in his apartment that are in fact replaceable;*

and

*B) The intrinsic value of belongings lost in his apartment that are not replaceable.*

Items whose primary value is sentimental cannot be replaced. The loss such items is compensated by measuring the lost items' intrinsic value, rather the actual value or the cost of replacement or the price a buyer would pay for the items on the open market. Intrinsic value, therefore, is not established by market forces, but rather its personal or sentimental value to the plaintiff.

Items that can be replaced are compensated by determining the actual value of the item immediately before it was destroyed. The actual value of items such as household goods and wearing apparel, where there is no recognized market value, is determined by considering the original cost, cost of replacement, and testimony concerning the use to which the property was put, as well as any other reasonably relevant facts.

The actual value of all other replaceable items is determined by measuring the item's market value immediately before it was destroyed, where there is a ready market for such items. The market value is the amount a buyer who desires to buy but is under no obligation to buy, would pay to a willing seller who desires to sell but is under no obligation to sell.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

1. [*Element A*] sustained in the past.

Answer: \$ 71,500

2. [*Element B*] sustained in the past.

Answer: \$ 10,000

*If you answered "Yes" to Question 2, then answer the following question. Otherwise, do not answer the following question.*

### QUESTION 8

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Richard Simpson for his damages, if any, that were proximately caused by such fraud?

Damages are "proximately caused" when the fraud is a substantial factor in bringing about the loss or injury, and without which the loss or injury would not have occurred. Losses that arrive after fraudulent conduct occurs are recoverable if those losses are reasonably foreseeable and directly traceable to a misrepresentation that fraudulently induced the plaintiff to enter into a contract. Therefore, you are instructed to consider all losses that were proximately caused by the fraud relied upon in deciding to enter into the contract and that result naturally from that fraud. There may be more than one proximate cause of an event.

Consider the following elements of damages, if any, and none other.

*A) The actual value of the belongings lost in his apartment that are in fact replaceable;*

and

*B) The intrinsic value of belongings lost in his apartment that are not replaceable.*

Items whose primary value is sentimental cannot be replaced. The loss such items is compensated by measuring the lost items' intrinsic value, rather the actual value or the cost of replacement or the price a buyer would pay for the items on the open market. Intrinsic value, therefore, is not established by market forces, but rather its personal or sentimental value to the plaintiff.

Items that can be replaced are compensated by determining the actual value of the item immediately before it was destroyed. The actual value of items such as household goods and wearing apparel, where there is no recognized market value, is determined by considering the original cost, cost of replacement, and testimony concerning the use to which the property was put, as well as any other reasonably relevant facts.

The actual value of all other replaceable items is determined by measuring the item's market value immediately before it was destroyed, where there is a ready market for such items. The market value is the amount a buyer who desires to buy but is under no obligation to buy, would pay to a willing seller who desires to sell but is under no obligation to sell.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer separately in dollars and cents for damages, if any.

1. [*Element A*] sustained in the past.

Answer: \$ 138,000

2. [*Element B*] sustained in the past.

Answer: \$ 100,000

If you answered "Yes" to Question 1, answer the following question.

### QUESTION 9

What is a reasonable fee for the necessary services of Oliver Medina's attorneys in this case?

Factors that you may consider in determining the amount of an award of attorneys' fees are:

- a. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
- b. The likelihood that the acceptance of the particular employment will preclude other employment by the attorneys.
- c. The fees customarily charged in the locality for similar legal services.
- d. The nature and complexity of the case.
- e. The amount of money involved and the result obtained.
- f. The experience, reputation, and ability of the attorneys performing the services.
- g. Whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.

Answer separately in the blank following each element, in dollars and cents, if any, for the following:

- |     |  |                      |
|-----|--|----------------------|
| (1) | For preparation and trial:   | \$ <u>106,165.12</u> |
| (2) | For an appeal to the Court of Appeals:                               | \$ <u>20,000</u>     |
| (3) | If a Petition for review is filed in the Supreme Court of Texas:     | \$ <u>7,500</u>      |
| (4) | If the Petition for review in the Supreme Court of Texas is granted: | \$ <u>7,500</u>      |

If you answered "Yes" to Question 2, answer the following question.

### QUESTION 10

What is a reasonable fee for the necessary services of Richard Simpson's attorneys in this case?

Factors that you may consider in determining the amount of an award of attorneys' fees are:

- h. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
- i. The likelihood that the acceptance of the particular employment will preclude other employment by the attorneys.
- j. The fees customarily charged in the locality for similar legal services.
- k. The nature and complexity of the case.
- l. The amount of money involved and the result obtained.
- m. The experience, reputation, and ability of the attorneys performing the services.
- n. Whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.

Answer separately in the blank following each element, in dollars and cents, if any, for the following:

- |  |                      |
|--|----------------------|
| (1) For preparation and trial:   | \$ <u>106,165.12</u> |
| (2) For an appeal to the Court of Appeals:                               | \$ <u>20,000</u>     |
| (3) If a Petition for review is filed in the Supreme Court of Texas:     | \$ <u>7,500</u>      |
| (4) If the Petition for review in the Supreme Court of Texas is granted: | \$ <u>7,500</u>      |



**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. Unless otherwise instructed, you may answer the questions on a vote of five jurors. The same five jurors must agree on every answer in the charge. This means you may not have one group of five jurors agree on one answer and a different group of five jurors agree on another answer.
2. If five jurors agree on every answer, those five jurors sign the verdict. If all six 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 six of you agreeing on some answers, while only five of you agree on other answers. But when you sign the verdict, only those five who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 3, 4, 5 and 6 explaining how to answer those questions. Please follow the instructions. If all six of you answer those questions, you will need to complete a second verdict certificate for those questions.

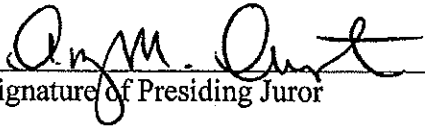
Do you understand these instructions? If you do not, please tell me now.

  
\_\_\_\_\_  
Judge Presiding

**Verdict Certificate**

Check one:

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

  
Signature of Presiding Juror

Amy M. Austin  
Printed Name of Presiding Juror

Our verdict is not unanimous. Five of us have agreed to each and every answer and have signed the certificate below.

Signature:

Name Printed:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_
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- \_\_\_\_\_
- \_\_\_\_\_

If you have answered Questions 3, 4, 5, or 6, then you must sign this certificate also.

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

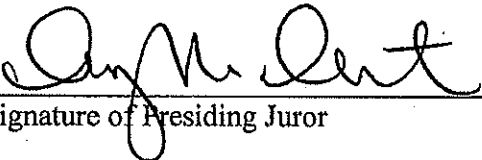
Answer "Yes" or "No" as to whether the jury was unanimous:

Question 3: Yes

Question 4: Yes

Question 5: Yes

Question 6: Yes

  
Signature of Presiding Juror

Amy M. Austin  
Printed Name of Presiding Juror

Presiding Juror

CAUSE NO. CC-13-03572-E

OLIVER MEDINA, ET AL  
Plaintiffs,

v.

JIK ARBORS OF LAS COLINAS, LLC  
Defendant.

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IN THE COUNTY COURT

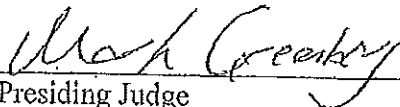
AT LAW NO. 5

DALLAS, TEXAS

ADDITIONAL CHARGE OF THE COURT

MEMBERS OF THE JURY:

In discharging your responsibility on this jury, you will observe all the instructions that have been previously given to you.

  
\_\_\_\_\_  
Presiding Judge

You must unanimously agree on any award of exemplary damages. If you do not unanimously agree, do not answer the following question.

#### ADDITIONAL QUESTION 1

What sum of money, if any, if paid now in cash, should be assessed against *The Arbors of Las Colinas LLC* and awarded to *Oliver Medina* and/or *Richard Simpson* as exemplary damages, if any, for the conduct found in response to previous Question 3 and/or 4?

"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 *The Arbors of Las Colinas LLC*.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of *The Arbors of Las Colinas LLC*.

Answer in dollars and cents, if any.

Answer: \$ 1.25 million

*If, in your answer to Additional Question 1, you entered any amount of exemplary damages, then answer the following question. Otherwise, do not answer the following question.*

**ADDITIONAL QUESTION 2**

How do you apportion the exemplary damages between Oliver Medina and Richard Simpson?

Answer by stating a percentage in whole numbers for each person named below. The percentages you find must total 100 percent.

1. Oliver Medina                      50 %

2. Richard Simpson                    50 %

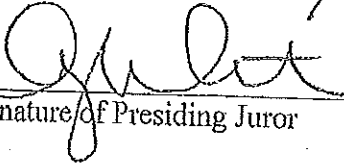
Total                                      100 %

Verdict Certificate

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

Answer "Yes" or "No" as to whether the jury was unanimous:

mb  
Additional Question 1 <sup>d2</sup> yes

  
\_\_\_\_\_  
Signature of Presiding Juror

Amy M. Austin  
\_\_\_\_\_  
Printed Name of Presiding Juror