

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INSTALLATION SERVICES, INC.,)	
)	
Plaintiff,)	
v.)	Case No. 04 C 6906
)	
ELECTRONICS RESEARCH, INC.,)	
)	
Defendants.)	

INSTRUCTIONS GIVEN TO THE JURY

Date: July 31, 2006

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy or prejudice to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

During the trial, written questions by some jurors were submitted for certain witnesses. You should consider testimony given in answer to a question submitted by a juror in the same matter as any other evidence. If you submitted a question that I did not ask, that was because I determined under the rules of evidence that the question should not be asked. You should not draw any conclusion from any such ruling, and you should not speculate on the possible answer to any question that was not asked.

In this case both parties are corporations. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

In determining the facts, you may consider only the evidence that I have admitted in this case. The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

During the trial, certain testimony was presented to you by reading depositions. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a the witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

A witness may be discredited or “impeached” by contradictory evidence; by, among other things, a showing that he or she testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’ testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for a lawyer to meet with any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Certain charts and models have been shown to you. Those charts and models are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

Whether a party is insured has no bearing whatever on any issue that you must decide. You must refrain from any inference, speculation, or discussion about insurance.

The parties and the claims

The plaintiff in this case is Installation Services, Inc., which I will refer to as ISI.

The defendant in this case is Electronics Research, Inc., which I will refer to as ERI.

ISI has made claims against ERI for defamation and interference with prospective economic advantage. In these instructions, I will describe what has to be proven on each of these claims.

ISI and ERI are corporations. Corporations can act only through their officers and employees. An act or omission of an officer or employee within the scope of his employment is considered to be the action or omission of the corporation by which he was employed.

General definitions

When I say a particular party must prove something by “a preponderance of the evidence,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

When I use the term “proximate cause,” I mean any cause that, in natural and probable sequence, produced the loss complained of.

Claim for defamation

To succeed on its defamation claim, ISI has the burden of proving the following by a preponderance of the evidence:

1. ERI made a false statement or false statements about ISI to someone else.
2. The false statement(s) attributed to ISI an inability to perform its work or a lack of integrity in the discharge of its work, or prejudiced ISI in its trade, profession, or business.

If you find that ISI did not prove each of these things by a preponderance of the evidence, then you must find for ERI on this claim, and you should not consider the remainder of this instruction.

If you find that ISI proved each of these things by a preponderance of the evidence, then you should go on to consider whether ERI has proved its defense of the statute of limitations.

A one year statute of limitations applies to this particular claim. ISI filed this suit against ERI on October 27, 2004.

To succeed on its statute of limitations defense, ERI must prove by a preponderance of the evidence that, more than one year before October 27, 2004: (a) ISI knew or reasonably should have known it had suffered an injury, and (b) ISI knew or reasonably should have known the injury was wrongfully caused.

If you find that ERI has proved each of these things by a preponderance of the evidence, then you must find for ERI on this claim.

If you find that ERI did not prove each of these things by a preponderance of the evidence, then you must find for ISI on this claim.

Compensatory damages - defamation claim

If you find in favor of ISI on this claim, then you are to presume that ISI suffered damage to its reputation, and you must fix the amount of money that will reasonably compensate ISI for the presumed damage to its reputation caused by ERI. ISI is not required to prove actual damage to its reputation. You may, however, consider any evidence of actual damage in determining the amount of money to award on this claim.

Claim for interference with prospective advantage

To succeed on its claim for interference with prospective economic advantage, ISI must prove the following by a preponderance of the evidence:

1. A reasonable person in ISI's position would have had a legitimate expectation of entering into a valid business relationship with CBS for antenna work on the Hancock Building beyond that which was provided for in the letter agreement dated July 30, 2001 (entered into evidence as ISI's exhibit 21).
2. ERI had knowledge of ISI's expectation.
3. ERI intentionally and unjustifiably interfered with ISI's expectation. I will define the term "unjustifiably" in a moment.
4. ERI's interference caused the termination of ISI's expectation.
5. ISI was damaged as a result.

Interference is "intentional" if the defendant knows that interference with the plaintiff's expectation is substantially certain to occur as a result of his actions.

Interference is "unjustifiable" if the defendant acts for the sole or primary purpose of interfering with the plaintiff's expectation.

If you find that ISI did not prove each of these things by a preponderance of the evidence, then you must find for ERI on this claim, and do not consider the remainder of this instruction.

Compensatory damages - interference with prospective advantage claim

If you find for ISI on this claim, you must fix the amount of money that will

reasonably compensate ISI for any losses that it has proven were proximately caused by ERI by reason of ISI's loss of business expectancies. In this regard, damages must be based on the evidence in the case, and may not be awarded on the basis of speculation and conjecture.

To the extent you base any compensatory damage award on lost business opportunities, you must offset the award by any expenses that ISI would have incurred in pursuing those opportunities.

In addition, any damage award that you make to ISI may not include the sums that were contemplated in the July 30, 2001 letter agreement (ISI's exhibit 21), and thus you may not deduct from a damage award any amounts that ISI received from other parties in payment for the work contemplated in the July 30, 2001 agreement. The reason for this is that the claim that you are addressing is a claim for lost business opportunities, not a claim for loss of revenues under an existing contract.

Punitive damages

ISI also seeks an award of punitive damages on its claims.

If you find for ISI on either of its claims, and you find that ERI's conduct was willful and wanton and proximately caused injury to ISI, and if you believe that justice and the public good require it, you may, in addition to any other damages to which you find ISI entitled, award an amount which will serve to punish ERI and to deter it from similar conduct. These are called "punitive damages." The term "willful and wanton" conduct means a course of action that shows actual or deliberate intention to harm, or an utter indifference to or conscious disregard for the rights or interests of another.

Punitive damages, if you decide to award them, should be in an amount sufficient to fulfill the purposes of punitive damages that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of ERI's conduct;
- the impact of ERI's conduct on ISI;
- the relationship between ISI and ERI;
- the likelihood that ERI would repeat the conduct if an award of punitive damages is not made;
- the financial condition of ERI;
- the relationship of any award of punitive damages to the amount of any actual harm ISI suffered.

Final instructions

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the form, and all of you will sign it.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

VERDICT FORM

We, the jury, unanimously find as follows:

1. ISI's defamation claim against ERI:

_____ in favor of ISI

_____ in favor of ERI

2. ISI's interference with prospective advantage claim against ERI:

_____ in favor of ISI

_____ in favor of ERI

ISI's damages (to be considered only if you find in favor of ISI on one or both claims):

Compensatory damages: \$ _____

Punitive damages (if any): \$ _____

Presiding juror

Date: _____, 2006