

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL SURRETT,)	
)	
Plaintiff,)	Civil No. 8:00CV321
)	
vs.)	
)	
ADT SECURITY SYSTEMS,)	JURY INSTRUCTIONS
A Nebraska corporation,)	
)	
Defendant.)	

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING
INSTRUCTIONS.

INSTRUCTION NO. _____

Now that you have heard the evidence, the time has come to instruct you as to the law governing this case. You are to consider all of the instructions together, apply them as a whole to the facts as you find them to have been established by the evidence, and return your verdict accordingly.

You as jurors are the sole judges of the facts. No language used by the court in these instructions and no statements, conduct, remarks, or rulings of the court during the progress of the trial should be considered by you as an indication that the court has any opinion as to the facts of the case or what your verdict should be.

You are to follow the instructions now given you in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

INSTRUCTION NO. _____

This is a civil case brought by plaintiff, Michael Surret. The defendant in this case is ADT Security Systems.

Plaintiff was employed as a residential security system installer for defendant beginning in August of 1994. He was terminated from his job with defendant on December 15, 1998.

Thereafter, defendant also refused to allow plaintiff the opportunity to work for it as a subcontractor.

Plaintiff alleges defendant discriminated against him on the basis of his race by terminating him and refusing him the opportunity to perform as a subcontractor. Defendant denies this claim. Defendant asserts the reason it terminated plaintiff was because he consumed an alcoholic beverage at a residence after completing the installation of a security system on December 15, 1998.

INSTRUCTION NO. _____

During this trial, I permitted you to take notes. Many courts do not permit note-taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the context of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of all the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

INSTRUCTION NO. _____

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotion.

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The law makes no distinction between direct and circumstantial evidence, and either or both may be used by a party to prove a particular fact. The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about the case outside the courtroom.

INSTRUCTION NO. _____

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence so that all of it may be given weight. If you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. _____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was when received by you.

INSTRUCTION NO. _____

Certain testimony has been received into evidence from deposition transcripts. This is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. _____

In this case, the plaintiff is an individual and the defendant, ADT Security Systems, is a corporation. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no influence or presumption is to be drawn against the defendant that would be improper in a case between individuals. Both parties in this case are entitled to equal justice in your hands and to a fair and impartial consideration of the entire case.

INSTRUCTION NO. _____

A corporation can act only through its officers, employees, or other agents. Any acts or omissions of an officer, employee, or agent of a corporation are held in the law to be the acts or omissions of the corporation, and these acts or omissions are chargeable to and imputed to the corporation. Whenever in these instructions reference is made to acts or omissions of any party to this lawsuit, such reference should be construed to refer to the acts or omissions, if any, of its officers, employees, or agents.

INSTRUCTION NO. _____

Whenever a party must prove something they must do so by the preponderance or greater weight of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Whenever in these instructions the words “prove,” “proven,” or “established” are used in connection with any matter, they shall be construed to mean that the matter referred to must be established by the preponderance of the evidence.

INSTRUCTION NO. _____

Your verdict must be for plaintiff on his termination claim if both of the following elements have been proved by the preponderance of the evidence:

First, defendant discharged plaintiff; and

Second, plaintiff's race was a determining factor in defendant's decision.

If either of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant on this claim and you need not proceed further in considering this claim of racial discrimination.

INSTRUCTION NO. _____

Your verdict must be for plaintiff on his subcontractor claim if both of the following elements have been proved by the preponderance of the evidence:

First, defendant refused to allow plaintiff to work as a subcontractor following his termination; and

Second, plaintiff's race was a determining factor in defendant's decision.

If either of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant on this claim and you need not proceed further in considering this claim of racial discrimination.

INSTRUCTION NO. _____

As used in these instructions, plaintiff's race was a "determining factor" if plaintiff's race played a role in the defendant's decision to terminate plaintiff, or in not allowing him to work as a subcontractor for it. However, plaintiff's race need not have been the only reason for defendant's decision to terminate plaintiff.

INSTRUCTION NO. _____

You may find that plaintiff's race was a determining factor in defendant's decisions to terminate plaintiff and not to allow him to work as a subcontractor for defendant if it has been proved by the preponderance of the evidence that defendant's stated reason or reasons for its decision are not the true reasons, but are a "pretext" to hide race discrimination.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction _____, then you must answer the following question: Has it been proved by the preponderance of the evidence that defendant would have terminated plaintiff regardless of his race?

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction _____, then you must answer the question: Has it been proved by the preponderance of the evidence that defendant would have refused plaintiff the opportunity to work as a subcontractor following his termination regardless of his race?

INSTRUCTION NO. _____

You may not return a verdict for plaintiff just because you might disagree with defendant's decisions or believe such decisions to be harsh or unreasonable.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction No. _____ and if you answer “no” in response to Instruction No. _____ *then* you must award the plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find the plaintiff sustained as a result of the defendant’s decision to terminate plaintiff. Plaintiff’s claim for damages on the termination claim includes two distinct types of damages and you must consider them separately.

First, you must determine the amount of any wages the plaintiff would have earned in his employment with defendant, if he had not been terminated, for the time period of December 15, 1998 through today’s date, *minus* the amount of earnings and benefits that the plaintiff received from other employment during that time.

Second, you must determine the amount of any other damages sustained by the plaintiff, such as emotional distress, inconvenience or mental anguish associated with his termination. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction No. _____ and if you answer “no” in response to Instruction No. _____, *then* you must award the plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find the plaintiff sustained as a result of the defendant’s decision to not allow plaintiff to work as a subcontractor for ADT. Plaintiff’s claim for damages on the subcontractor claim includes two distinct types of damages and you must consider them separately.

First, you must determine the amount of any wages the plaintiff would have earned if he had not been allowed the opportunity to work as a subcontractor for the defendant for the time period of December 15, 1998 through today’s date, *minus* the amount of earnings and benefits that the plaintiff received from other employment during that time.

Second, you must determine the amount of any other damages sustained by the plaintiff, such as emotional distress, inconvenience or mental anguish associated with defendant’s refusal to allow him to perform as a subcontractor. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

INSTRUCTION NO. _____

You are also instructed that plaintiff has a duty under the law to "mitigate" his damages – that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find by the preponderance of the evidence that plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction No. _____, and if you answer “no” in response to Instruction No. _____, *and/or* if you find in favor of plaintiff under Instruction No. _____, and if you answer “no” in response to Instruction No. _____, *but* you find that plaintiff’s damages have no monetary value, then you must return a verdict for plaintiff in the nominal amount of One Dollar (\$1.00).

INSTRUCTION NO. _____

In addition to actual damages, mentioned in the previous instructions, the law permits the jury under limited circumstances to award an injured person punitive damages.

If you find in favor of plaintiff under Instruction No. _____ and if you answer “no” in response to Instruction No. _____; *and / or*

if you find in favor of plaintiff in Instruction No. _____ and if you answer “no” in response to Instruction No. _____, *then*

you must decide if plaintiff acted with malice or reckless indifference to plaintiff's right not to be discriminated against on the basis of his race. Defendant acted with malice or reckless indifference if it has been proved by the preponderance of the evidence that ADT knew that its decision or decisions were in violation of the law prohibiting discrimination based on a person's race, or acted with reckless disregard of that law.

If you find that defendant acted with malice or reckless disregard, then, in addition to any actual damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or to deter defendant and others from like conduct in the future. Whether to award plaintiff punitive damages, and the amount of those damages, are within your discretion.

INSTRUCTION NO. _____

In arriving at an amount of damages you cannot arrive at a figure by taking down the estimate of each juror as to an amount of damages and agreeing in advance that the average of those estimates shall be your amount of damages.

INSTRUCTION NO. _____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is

incorrect. You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

INSTRUCTION NO. _____

The verdict must represent the considered judgment of each juror.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine 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 evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. _____

Submitted to you with these instructions is a verdict form with several questions. The verdict you give must be unanimous. After you have agreed and appropriately signed the interrogatories in accordance with the directions contained therein, inform the jury officer outside the room.

Dated this _____ day of September, 2001.

RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT

NOTE: Complete the following paragraph by writing in the name required by your verdict.

On the race discrimination claim of plaintiff, Michael Surret, as submitted in

Instruction Nos. _____ and _____, we find in favor of:

(Plaintiff Michael Surret)

Or

(Defendant ADT Security Systems, Inc.)

You may answer for defendant only if you found in its favor on both of the specifically noted instructions. You may answer in favor of plaintiff if you found in his favor in answering either instruction.

NOTE: Proceed to the next set of questions only if the above finding is, in whole or in part, in favor of plaintiff. If the above finding is in favor of defendant, have your foreperson sign and date this form because you have completed your deliberations.

If you found in favor of plaintiff, please indicate the claim / claims on which he prevailed.

_____ Termination claim (Instruction No. 12)

_____ Subcontractor claim (Instruction No. 13)

If you found in favor of plaintiff on the termination claim, then answer the following question:

Has defendant proved by the preponderance of the evidence that it would have made its decision to terminate plaintiff regardless of his race?

_____ Yes

_____ No

If you found in favor of plaintiff on the subcontractor claim, then answer the following question:

Has defendant proved by the preponderance of the evidence that it would have refused to allow plaintiff to work as a subcontractor regardless of his race?

_____ Yes

_____ No

NOTE: Complete the following paragraphs only if your answer to one or both of the preceding questions is “no.” If you answered “yes” to both of the preceding questions, or “yes” to one of the questions and did not answer the other, then have your foreperson sign and date this form because you have completed your deliberations.

Termination Claim

We find plaintiff’s lost wages and benefits from his loss of employment with ADT through the date of this verdict to be:

\$_____ (stating the amount or, if none, write the word “none”).

We find plaintiff’s other damages associated with his termination, excluding lost wages and benefits, to be:

\$_____ (stating the amount, or, if none, write the word "none").

Subcontractor claim

We find plaintiff's lost wages and benefits from the defendant's refusal to allow him to work as a subcontractor through the date of this verdict to be:

\$_____ (stating the amount or, if none, write the word "none").

We find plaintiff's other damages associated with the defendant's refusal to allow him to work as a subcontractor, excluding lost wages and benefits, to be:

\$_____ (stating the amount, or, if none, write the word "none").

Punitive damages

We assess punitive damages against defendant, as submitted in Instruction No. _____, as follows:

\$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

