

012 0207

NO. cc-08-05810-d

2009 OCT 20 AM 10:55
§ DALLAS COUNTY COURT AT LAW

MIDLAND FUNDING LLC

VS.

§ DALLAS COUNTY COURT AT LAW
§ NO. 4

CHRYSTAL A. SNOW

§ DALLAS COUNTY, TEXAS



LADLES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this Charge. In discharging your responsibility on this jury, you will observe all the instructions that have previously been given you. I shall now give you additional instructions that you should carefully and strictly follow during your deliberations:

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence and exhibits introduced for your consideration under the rulings of the Court; that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot, by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.
6. Unless otherwise instructed, you may answer a question upon the vote of only five jurors. If you answer more than one question upon the vote only five jurors, the same group of at five jurors must agree upon the answers to each of those questions

These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and Judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury;

then all of our time will have been wasted.

The presiding juror or any other juror who observes a violation of the courts instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in these instructions, the Jury Charge, or during trial, and those words vary from the commonly understood meaning (or you are given a proper legal definition), you are bound to accept that new definition in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." If the question directs you to give an answer other than "Yes" or "No," you must still base your answers on a preponderance of the evidence with respect to each matter inquired about in the question.

The term "PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony and other evidence introduced before you and admitted in this case. 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 proven by a "PREPONDERANCE OF THE EVIDENCE", you must find that the fact is more likely true than not true. Each of your answers must be based on a preponderance of the evidence unless you are otherwise instructed.

A fact may be established by direct evidence or circumstantial evidence or both. A fact is established by direct evidence when proven by the testimony of witness who observed actions or heard words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proven.

DEFINITIONS

“Consumer Debt” means an obligation primarily for personal, family, or household purposes arising from a transaction. A debt undertaken for commercial purposes that only indirectly provides personal, family, or household benefits is not a consumer debt.

“Contract” means an agreement that is both valid and enforceable as a contract. To form a valid contract that the parties must have the same understanding of the contract and all of its essential terms. To be enforceable, a contract must be reasonably definite and certain. In attempting to reach an agreement, one party may specify the time, manner or other requirements for the other party’s acceptance of the offer. If the offer is not accepted as prescribed, there is no contract. Any agreement by which one party retains a unilateral right to modify, delete or change a material term of the agreement without the consent of the other party lacks mutuality and is not a contract.

“Debt Collector” means as a person (or entity) who directly or indirectly engages in collecting or soliciting for collection consumer debts for a creditor. Debt collectors include creditors themselves and third-party debt collectors.

“Express Agreement” means a contract, either written or oral, which contains the intentions of the parties involved stated in words or writings (and not inferred by their conduct).

“Mental Anguish” means the emotional pain, torment, and suffering experienced by Chrystal A. Snow because of the wrongful conduct of Midland Funding LLC.

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QUESTION NO. 1

1-A Did MIDLAND FUNDING LLC attempt to collect a disputed consumer debt from CHRYSTAL A. SNOW by causing her telephone to ring repeatedly and continuously?

ANSWER ("Yes" or "No"): Yes

If 1-A was answered "Yes", answer 1-B.

If 1-A was answered "No", skip 1-B and answer Question No. 2.

1-B Will MIDLAND FUNDING LLC continue the conduct described in 1-A unless prohibited by Order of this Court?

ANSWER ("Yes" or "No"): Yes

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QUESTION NO. 2

2-A Did MIDLAND FUNDING LLC attempt to collect a disputed consumer debt from CHRYSTAL A. SNOW by making repeated and continuous telephone calls with the intent of harassing her?

ANSWER ("Yes" or "No"): Yes

If 2-A was answered "Yes", answer 2-B.

If 2-A was answered "No", skip 2-B and answer Question No. 3.

2-B Will MIDLAND FUNDING LLC continue the conduct described in 2-A unless prohibited by Order of this Court?

ANSWER ("Yes" or "No"): Yes

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QUESTION NO. 3

THERE IS NO QUESTION NO. 3. PROCEED TO QUESTION NO. 4

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QUESTION NO. 4

4-A Did MIDLAND FUNDING LLC use false representations to collect a disputed consumer debt from CHRYSTAL A. SNOW?

ANSWER ("Yes" or "No"): Yes

If 4-A was answered "Yes", answer 4-B.

If 4-A was answered "No", skip 4-B and answer Question No. 5.

4-B Will MIDLAND FUNDING LLC continue the conduct described in 4-A unless prohibited by Order of this Court?

ANSWER ("Yes" or "No"): Yes

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QUESTION NO. 5

5-A Did MIDLAND FUNDING LLC use deceptive means to collect a disputed consumer debt from CHRYSTAL A. SNOW?

ANSWER ("Yes" or "No"): yes

If 5-A was answered "Yes", answer 5-B.

If 5-A was answered "No", skip 5-B and answer Question No. 6.

5-B Will MIDLAND FUNDING LLC continue the conduct described in 5-A unless prohibited by Order of this Court?

ANSWER ("Yes" or "No"): yes

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QUESTION NO. 6

What sum of money, if paid now in cash, would reasonably compensate CHRYSTAL A. SNOW for actual damages (other than mental anguish), if any, suffered by her as a result of the conduct you found to have occurred in your answers to Questions 1, 2, 3, 4 and 5?

ANSWER ("NONE" or in Dollars and Cents): 250.00.

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QUESTION NO. 7

What sum of money, if paid now in cash, would reasonably compensate CHRYSTAL A. SNOW for her mental anguish, if any, suffered by her as a result of the conduct you found occurred in your answers to Questions 1, 2, 3, 4 and 5?

Under Texas Law, Ms. Snow must show a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger. Ms. Snow must present direct evidence of the nature, duration, and severity of her mental anguish which establishes a substantial disruption in her daily routine.

ANSWER ("NONE" or in Dollars and Cents): 100,000.00

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QUESTION NO. 8

Did MIDLAND FUNDING LLC knowingly engage in acts, if any, that resulted in actual damages (other than mental anguish), being suffered by CHRYSTAL A. SNOW?

“Knowingly” means actual awareness, at the time of the conduct of the falsity, deception or unfairness of the conduct in question. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

ANSWER (“Yes” or “No”): yes.

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QUESTION NO. 9

Did MIDLAND FUNDING LLC intentionally engage in acts, if any, that resulted in mental anguish being suffered by CRYSTAL A. SNOW?

“Intentionally” means actual awareness of the falsity, deception, or unfairness of the conduct in question coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or detrimental ignorance of the unfairness. Specific intent may be inferred where objective manifestations indicate that a person acted intentionally or may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally.

ANSWER (“Yes” or “No”): Yes.

QUESTION NO. 10

10-A Do you find by clear and convincing evidence that MIDLAND FUNDING LLC acted with malice towards CHRYSTAL A. SNOW in acts, if any, that resulted in actual damages or mental anguish to her?

“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.

“Malice” means a specific intent to cause substantial injury to or an act or omission by which when viewed objectively from the standpoint of actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Your answer to 10-A MUST BE UNANIMOUS.

ANSWER (“Yes” or “No”): Yes.

If you answered “Yes” to 10-A, answer 10-B.

If you answered “No” to 10-B, skip 10-A and answer Question No. 11.

10-B What sum of money, if paid now in cash, should be assessed against MIDLAND FUNDING LLC and awarded to CHRYSTAL A. SNOW as exemplary damages for the acts, if any, that resulted in actual damages or mental anguish to her?

“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, frequency and character of the wrong(s);
- (2) The degree of culpability of MIDLAND FUNDING LLC;
- (3) The situation and sensibilities of the parties concerned;
- (4) The extent to which such conduct offends a public sense of justice and propriety;
- (5) The size of the award needed to deter similar wrongs in the future.

Your answer to 10-B MUST BE UNANIMOUS.

ANSWER (“NONE” or in Dollars and Cents): 8.0 million dollars

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QUESTION NO. 11

What is a reasonable fee for the necessary legal services of the attorney for CHRYSTAL A. SNOW with regard to the her claim against MIDLAND FUNDING LLC?

You are instructed that only reasonable and necessary services related to the conduct you found to have occurred in your answers to Questions 1, 2, 3, 4 and 5 can be considered.

The factors you may consider in determining the reasonableness of any attorney fee award are:

- The time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation, and ability of the lawyer or lawyers performing the services;
- Whether the fee is fixed or contingent on results obtained; and
- Whether before the legal services were rendered collection of the fee was uncertain.

Answer with an amount for each of the following:

TRIAL COURT

Pre-Trial \$ 2,250.00

Jury Trial..... \$ 1,500.00

Post-Judgment..... \$ 500.00

COURT OF APPEALS (DALLAS).....

Briefs \$ 3,000.00

Oral Argument \$ 1,000.00

Rehearing \$ 500.00

SUPREME COURT OF TEXAS (AUSTIN).....

Petition for Review \$ 2,000.00

Briefs \$ 2,000.00

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Oral Argument \$ 2,000.00
Rehearing \$ 1,000.00

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is have the complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

To preside during your deliberations,

To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge,

To write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the Judge,

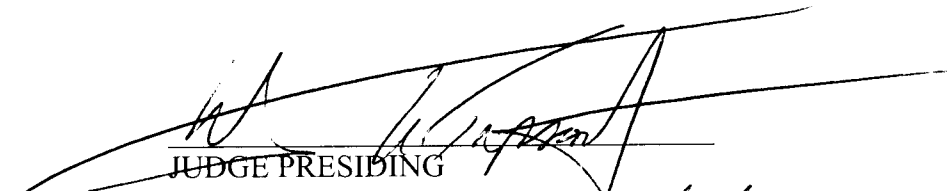
To conduct the vote on the questions;

To write your answers to the questions in the spaces provided, and

To certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the Judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures of the jurors who agreed to the answers, you will inform the Bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



JUDGE PRESIDING
S. C. W. 10/30/04