

TORO ROJO, INC. d/b/a  
ACTION TRUCKING COMPANY,

*Plaintiff,*

v.

MULCH MATTERS, INC. and PRIME  
TREES, INC. d/b/a MULCH MATTERS,  
INC.,

*Defendants.*

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IN THE COUNTY CIVIL COURT

AT LAW NO. 2

HARRIS COUNTY, TEXAS

**JURY CHARGE**

**LADIES AND GENTLEMEN 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 experience with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

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 5 of the 6 jurors. The same 5 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 5 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.

## **DEFINITIONS**

**“Action Trucking”** shall mean Toro Rojo, Inc. d/b/a Action Trucking Company.

**“Mulch Matters”** shall mean Mulch Matters, Inc. and Prime Trees, Inc. d/b/a Mulch Matters, Inc.

### **Instruction No. 1**

If Action Trucking and Mulch Matters agreed to other essential terms but failed to specify price, it is presumed a reasonable price was intended.

**Question No. 1**

Did Mulch Matters and Action Trucking enter into an agreement that Action Trucking would provide transportation services for mulch and tree materials to Mulch Matters in exchange for payment?

Answer "Yes" or "No."

Answer: Yes

Answer the following question only if you answered "Yes" to Question No. 1. Otherwise, do not answer the following Question No. 2.

**Question No. 2**

Did Mulch Matters fail to comply with the terms of the parties' agreement?

Answer "Yes" or "No."

Answer: Yes

If your answer to Questions 1 and 2 are "Yes," then answer the following question. Otherwise, do not answer the following question. If you answered "No" to Questions No. 1 or 2 please stop.

### Question No. 3

Was Mulch Matters' failure to comply excused?

Failure to comply is excused if Mulch Matters paid all of the amounts owed under the parties' agreement.

Failure to comply by Mulch Matters is excused by Action Trucking's previous failure to comply with a material obligation of the same agreement.

Failure to comply by Mulch Matters is also excused by Action Trucking's fraud. Fraud occurs when:

1. a party makes a material misrepresentation; and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion; and
3. the misrepresentation is made with the intention that it should be acted on by the other party; and
4. the other party relies on the misrepresentation and thereby suffers injury.

Misrepresentation means:

1. A false statement of fact; or
2. A promise of future performance made with an intent, at the time the promise was made, not to perform as promised; or
3. A statement of opinion based on a false statement of fact; or
4. A statement of opinion that the maker knows to be false; or
5. An expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

"Special knowledge" means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

Failure to comply by Mulch Matters is also excused if the following circumstances occurred:

1. Action Trucking:
  - a. by words or conduct made a false representation or concealed material facts; and
  - b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts' and
  - c. with the intention that Mulch Matters would rely on the false representation or concealment in acting or deciding not to act; and
2. Mulch Matters did not know and had no means of knowing the real facts, and Mulch Matters relied to its detriment on the false representation or concealment of material facts.

Answer "Yes" or "No."

Answer: No

If your answer to Questions 1 and 2 are "Yes," and your answer to Question 3 is "No," then answer the following question. Otherwise, do not answer the following question.

**Question No. 4**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Action Trucking for its damages, if any, that resulted from such failure to comply?

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

Unpaid amounts owed pursuant to the Contract.

The reasonable, necessary, and customary cost of the goods and services delivered by Action Trucking, if any, that Mulch Matters agreed to pay for, less any offsets, payments, or credits. Do not include in your answer any amount that you find Action Trucking could have avoided by the exercise of reasonable care.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Answer: 86,973.50



**CHARGE OF THE COURT**

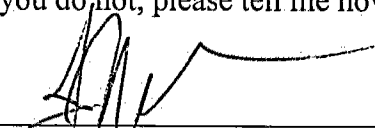
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;
  - b. preside over your deliberations, meaning 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 5 jurors. The same 5 jurors must agree on every answer in the charge. This means you may not have one group of 5 jurors agree on one answer and a different group of 5 jurors agree on another answer.
2. If 5 jurors agree on every answer, those 5 jurors sign the verdict.  
  
If all 6 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 6 of you agreeing on some answers, while only 5 of you agree on other answers. But when you sign the verdict, only those 5 who agree on every answer will sign the verdict.

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

  
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JIM F. KOVACH  
Judge Presiding

DATE AND TIME SIGNED:

5:43 p.m. Dec 2, 2021

FILED  
CLERK OF COURT  
HARRIS COUNTY TEXAS

2021 DEC -3 AM 9:04

FILED

VERDICT CERTIFICATE

Check one:



Our Verdict is unanimous. All six (6) of us have agreed to each and every answer. The Presiding Juror has signed the certificate for all six (6) of us.

Sharon Sanders  
Signature of Presiding Juror

Sharon Sanders  
Printed Name of Presiding Juror

OR

\_\_\_\_\_ Our Verdict is not unanimous. Five (5) of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. \_\_\_\_\_

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