

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

TIERRA DE LOS LAGOS, LLC d/b/a §
BEE SAND COMPANY, §

Plaintiff. §

V. §

CIVIL ACTION NO. 3:21-cv-00298

PONTCHARTRAIN PARTNERS, §
LLC, §

Defendant. §

CHARGE OF THE COURT

MEMBERS OF THE JURY:

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be. If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph. The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict. 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.

The fact that a person brought a lawsuit and is in court seeking damages creates no inference that a person is entitled to a judgment. Anyone can make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a presiding juror to guide you in your deliberations and to speak for you here in the courtroom.

You may discuss the case with other jurors only when you are all together in the jury room. 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 use your phone or any other electronic device during your deliberations for any reason.

Your verdict must be unanimous. After you have reached a unanimous verdict, your presiding juror must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case. If you need to communicate with me during your deliberations, the presiding juror should write the inquiry and give it to the Court Security Officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any questions.

DEFINITIONS

“**Bee Sand**” shall mean Tierra De Los Lagos, LLC d/b/a Bee Sand Company.

“**Pontchartrain**” shall mean Pontchartrain Partners, LLC.

QUESTION NO. 1

Did Bee Sand and Pontchartrain agree that Pontchartrain would pay \$100 per load for hauling services and materials provided by Bee Sand?

Answer "Yes" or "No."

ANSWER: YES

If you answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 2

Did Pontchartrain and Bee Sand agree that Pontchartrain would pay \$120 or \$125 per load for hauling services and materials provided by Bee Sand?

Answer "Yes" or "No."

ANSWER: YES

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

If you answered "Yes" to Question No. 2, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3

Did Pontchartrain fail to comply with the agreement?

Answer "Yes" or "No."

ANSWER: YES

If you answered "Yes" to Question No. 3, 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 Bee Sand 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.

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

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

ANSWER: \$ 111,090.00

QUESTION NO. 5

Did Bee Sand perform compensable work for Pontchartrain for which it was not compensated?

Bee Sand performed compensable work if it rendered valuable services or furnished valuable materials to Pontchartrain; Pontchartrain accepted, used, and benefited from the services or materials; and, under the circumstances, Pontchartrain was reasonably notified that Bee Sand expected to be compensated for the services or materials.

Answer "Yes" or "No."

ANSWER: _____

NO
YES *NO*

If you answered "Yes" to Question No. 5, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 6

What is the reasonable value of such compensable work at the time and place it was performed?

Answer in dollars and cents, if any.

ANSWER: _____

After you retire to the jury room, you will select your 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 –

1. To preside during your deliberations,
2. To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. To write out and hand to the Court Security Officer any communications concerning the case that you desire to have delivered to the judge,
4. To conduct all voting on the questions,
5. To write your answers to the questions in the spaces provided, and
6. To certify your verdict in the space provided for the presiding juror's signature.

You should not discuss this 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, you will inform the Court Security Officer at the door of the jury room that you have reached a verdict, and then you will return to court with your verdict.

You may now proceed to the jury room to begin your deliberations.

SIGNED this 30th day of January 2024.



ANDREW M. EDISON
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE

We, the jury, have answered the above questions as indicated, and return the answers as our verdict.

[REDACTED]

PRESIDING JUROR