

ORIGINAL

CAUSE NO. 2013-61098

SCOTT D. MARTIN and
SKM PARTNERSHIP, LTD.
Plaintiffs,

VS.

ANDREWS KURTH LLP
Defendant.

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
234th JUDICIAL DISTRICT

FILED
Chris Daniel
District Clerk
Time: NOV 11 2015
By: _____
Deputy
Harris County, Texas

JURY CHARGE

MEMBERS 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 experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

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. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.
8. 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.
9. Do not answer questions by drawing straws or by any method of chance.
10. 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.
11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
12. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten 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

“Scott Martin” means Scott Martin and SKM Partnership.

“MRMC” means Martin Resource Management Corporation.

“Andrews Kurth” means Andrews Kurth LLP and its attorneys.

QUESTION 1

Did the negligence, if any, of those named below proximately cause the injury in question, if any, to Scott Martin?

“Negligence,” when used with respect to the conduct of Andrews Kurth, means failure to use ordinary care, that is, failing to do that which an attorney of ordinary prudence would have done under the same or similar circumstances or doing that which an attorney of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care,” when used with respect to the conduct of Andrews Kurth and its attorneys, means that degree of care that an attorney of ordinary prudence would use under the same or similar circumstances.

“Proximate cause,” when used with respect to the conduct of Andrews Kurth, means a cause, unbroken by any new and independent cause, that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that an attorney exercising ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

“New and independent cause” means the act or omission of a separate and independent agency, not reasonably foreseeable by an attorney exercising ordinary care, that destroys the causal connection, if any, between the act or omission inquired about and the occurrence in question and thereby becomes the immediate cause of such occurrence.

“Negligence” when used with respect to the conduct of Scott Martin, means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care,” when used with respect to the conduct of Scott Martin, means that degree of care that a person of ordinary prudence would use under the same or similar circumstances.

“Proximate cause,” when used with respect to the conduct of Scott Martin, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

Answer “yes” or “no” for each of the following:

Andrews Kurth

yes

Scott Martin

NO

QUESTION 2

Did a relationship of trust and confidence exist between Ruben Martin and Scott Martin?

Answer "yes" or "no."

Answer: NO

If you answered "Yes" to Question 2, then answer the following question. Otherwise, do not answer the following question.

QUESTION 3

Did Ruben Martin fail to comply with his fiduciary duty to Scott Martin?

Because a relationship of trust and confidence existed between them, Ruben Martin owed Scott Martin a fiduciary duty. To prove Ruben Martin failed to comply with his fiduciary duty, Andrews Kurth must show:

1. The transactions in question were not fair and equitable to Scott Martin; or
2. Ruben Martin did not make reasonable use of the confidence that Scott Martin placed in him; or
3. Ruben Martin failed to act in the utmost good faith or exercise the most scrupulous honesty toward Scott Martin; or
4. Ruben Martin placed his own interests before Scott Martin's, used the advantage of his position to gain a benefit for himself at the expense of Scott Martin, or placed himself in a position where his self-interest might conflict with his obligations as a fiduciary; or
5. Ruben Martin failed to fully and fairly disclose all important information to Scott Martin concerning the transactions.

Answer "yes" or "no."

Answer: _____

QUESTION 4

Did Ruben Martin engage in oppressive conduct with respect to MRMC that proximately caused the injury in question, if any, to Scott Martin?

A corporate officer and controlling shareholder engages in "oppressive" conduct if he abuses his authority over the corporation with the intent to harm the interests of one or more of the shareholders, in a manner that does not comport with the honest exercise of his business judgment, and by doing so creates a serious risk of harm to the corporation.

"Proximate cause," when used with respect to the conduct of Ruben Martin, means a cause, unbroken by any new and independent cause, that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

Answer "yes" or "no."

Answer: NO

QUESTION 5

Did Ruben Martin commit fraud against Scott Martin?

Fraud occurs when—

- a. a party makes a material misrepresentation, and
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means a promise of future performance made with an intent, at the time the promise was made, not to perform as promised.

Answer “yes” or “no.”

Answer: NO

If you answered "yes" for Andrews Kurth in response to Question 1 and "yes" for Scott Martin or Ruben Martin (or both) in response to Questions 1, 3, 4 or 5, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found.

QUESTION 6

For each person you found caused or contributed to cause the injury in question, if any, to Scott Martin, find the percentage of responsibility attributable to each:

Andrews Kurth	<u>100</u> %
Scott Martin	<u>0</u> %
Ruben Martin	<u>0</u> %
Total	100%

Answer this question if you answered "Yes" to Question 1 as to Andrews Kurth. Otherwise, do not answer this question.

QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate Scott Martin for the injury in question, if any, proximately caused by the negligence?

Consider the elements of damages listed below and none other. Consider each element separately. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the acts or omissions, if any, of Scott Martin, Ruben Martin, or Andrews Kurth. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Do not reduce the amounts, if any, in your answer because of any amounts you included in answer to any subparts of this question or to any other question.

Do not include in your answer any amount that you find Scott Martin could have avoided by the exercise of reasonable care.

- a. the loss in value to Scott Martin's ownership interests in Martin Resource Management Corporation:

In determining damages, if any, for the loss in value of Scott Martin's ownership interest in MRMC, you should determine the difference between the result obtained for Scott Martin and the result that would have been obtained if Andrews Kurth had performed with ordinary care.

You should determine the loss in value of Scott Martin's ownership interest in MRMC, if any, as of the date of injury proximately caused by the conduct of Andrews Kurth if calculated on the following dates:

Answer: if calculated as of October 2, 2012 167m
if calculated as of August 12, 2010 99m
if calculated as of June 18, 2008 82m

- b. The reasonable and necessary fees and expenses incurred by Scott Martin. Do not include any attorneys' fees incurred for the prosecution of this case against Andrews Kurth.

Answer: 29,120,515.00

Answer this question if you answered "Yes" to Question 1 as to Andrews Kurth. Otherwise, do not answer this question.

QUESTION 8

When did Scott Martin discover or, in the exercise of reasonable care and diligence, when should he have discovered the wrongfully caused injury?

Answer with a date in the blank below.

Answer: 4/2008

QUESTION 9

Did Andrews Kurth fail to comply with its fiduciary duty to Scott Martin?

As Scott Martin's attorneys, Andrews Kurth owed Scott Martin a fiduciary duty. To prove Andrews Kurth failed to comply with its fiduciary duty, Scott Martin must show—

1. The transactions in question were not fair and equitable to Scott Martin; or
2. Andrews Kurth did not make reasonable use of the confidence that Scott Martin placed in it; or
3. Andrews Kurth failed to act in the utmost good faith or exercise the most scrupulous honesty toward Scott Martin; or
4. Andrews Kurth placed its own interests before Scott Martin's, used the advantage of its position to gain a benefit for itself at the expense of Scott Martin, or placed itself in a position where its self-interest might conflict with his obligations as a fiduciary; or
5. Andrews Kurth failed to fully and fairly disclose all important information to Scott Martin concerning the transactions.

Answer "yes" or "no."

Answer: yes

If you answered "Yes" to Question 9, then answer the following question. Otherwise, do not answer this question.

QUESTION 10

What sum of money, if any, paid now in cash, would fairly and reasonably compensate Scott Martin for his damages, if any, that were proximately caused by such conduct that you found in answer to Question 9?

"Proximate cause," when used with respect to the conduct of Andrews Kurth, means a cause, unbroken by any new and independent cause, that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that an attorney exercising ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

"New and independent cause" means the act or omission of a separate and independent agency, not reasonably foreseeable by an attorney exercising ordinary care, that destroys the causal connection, if any, between the act or omission inquired about and the occurrence in question and thereby becomes the immediate cause of such occurrence.

"Proximate cause," when used with respect to the conduct of Scott Martin, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

Do not reduce the amounts, if any, in your answers because of any amounts you included in answer to other questions. Do not include in your answer any amount that you find Scott Martin could have avoided by the exercise of reasonable care. Do not add any amount for interest on any damages, if any.

For purposes of answering this question, the Settlement Agreement Lawsuit is the lawsuit filed by Scott Martin against Ruben Martin in Gregg County, Texas on May 2, 2008, entitled *Scott D. Martin v. Ruben S. Martin, III*, Trial Court Cause No. 2008-961-A, in the District Court of Gregg County, Texas, 188th Judicial District-A, and the related appeals in the Texarkana Court of Appeals, Case No. 06-09-00069-CV, and on petition for review to the Texas Supreme Court, Case No. 11-0076.

Consider the following elements of damages, if any, and none others: The amount of reasonable and necessary fees and expenses that Andrews Kurth charged Scott Martin in the Settlement Agreement Lawsuit after March 2009.

Answer in dollars and cents, if any.

Answer:

1,672,563.00

If you answered "Yes" in response to Question 9 and "yes" for Scott Martin or Ruben Martin (or both) in response to Questions 1, 3, 4, or 5, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found.

QUESTION 11

For each person you found caused or contributed to cause the harm to Scott Martin found by you in Question 10, find the percentage of responsibility attributable to each:

Andrews Kurth	<u>100</u> %
Scott Martin	<u>0</u> %
Ruben Martin	<u>0</u> %
Total	100%

Answer this question only if you have answered "Yes" to Question 9. Otherwise, do not answer this question.

QUESTION 12

When did Scott Martin discover or, in the exercise of reasonable care and diligence, when should he have discovered the breaches of fiduciary duty of Andrews Kurth?

Answer with a date:

Answer:

9-2013

Answer the following question only if you unanimously answered "Yes" to Question 9. Otherwise, do not answer the following question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION 13

Do you find by clear and convincing evidence that the injury in question to Scott Martin resulted from malice?

"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 by Andrews Kurth to cause substantial injury or harm to Scott Martin.

Answer "Yes" or "No."

Answer: _____

Instructions regarding Presiding Juror:

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 ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve 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 twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.
4. There is a special instructions before Question 13 explaining how to answer that question. Please follow the instruction. If all twelve of you answer Question 13, you will need to complete a second verdict certificate for that question.

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


JUDGE PRESIDING

Verdict Certificate

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

X Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. Catona Francisco

Catona Francisco

2. Mona L Carter

Mona L Carter

3. Patricia Jaramillo

Patricia Jaramillo

4. Sandra Rojas Olivo

Sandra Rojas Olivo

5. Michael Walker

Michael Walker

6. Kristen Rivera

KRISTEN RIVERA

7. Mitzi Hubbard

Mitzi Hubbard

8. Elaine P Robichaux

Elaine P Robichaux

9. Dante Olvera

Dante Olvera

10. Sean Hinson Court

Sean Hinson Court

11.

Catona Francisco

Catona Francisco

Signature of Presiding Juror

Printed Name of Presiding Juror

If you have answered Question No. 13, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

The jury was unanimous in answering Questions No. 9 and 13.

Signature of Presiding Juror

Printed Name of Presiding Juror