

ANDREA POLITO and ANDREA
POLITO PHOTOGRAPHY, INC.,

Plaintiffs,

v.

NEELY MOLDOVAN and
ANDREW MOLDOVAN,
Defendants.

CAUSE NO. DG-15-03069

FILED

JUL 28 2017

FELICIA RYRE
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

ORIGINAL

DALLAS COUNTY, TEXAS

134TH JUDICIAL DISTRICT

FILED

JUL 28 2017

FELICIA RYRE
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

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 included in this Jury Charge, 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. I have previously given 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.

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 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 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

"Circumstantial Evidence" 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.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"The NBC Story" means the NBC Channel 5 News broadcast and accompanying online story airing and published January 16, 2015.

"Polito" means Plaintiff Andrea Polito individually.

"APP" means Plaintiff Andrea Polito Photography, Inc.

Question No. 1:

Did Neely Moldovan or Andrew Moldovan knowingly publish a false statement regarding Polito or APP that was defamatory?

"Publish" means intentionally or negligently to communicate the matter to a person other than Andrea Polito or Andrea Polito Photography who are capable of understanding its meaning.

You are instructed that, by republishing the NBC story, Neely Moldovan or Andrew Moldovan published the NBC story for the purposes of this definition.

"Defamatory" means an ordinary person would interpret the statement in a way that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach the person's honesty, integrity, virtue, or reputation.

You are instructed that a statement can be defamatory if, as a whole and not merely individual statements contained in it, either by omitting material facts or suggestively juxtaposing facts in a misleading way, create a substantially false and defamatory impression.

In deciding whether a statement is defamatory, you must construe the statement as a whole and in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.

"Knowingly" means Neely Moldovan or Andrew Moldovan knew or should have known, in the exercise of ordinary care, that the statements they published, if any, were false and had the potential to be defamatory.

"Ordinary care" concerning the truth of the statement and its potential to be defamatory means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"False" means that a statement is not substantially true. A statement is "substantially true" if it varies from the literal truth in only minor details or if, in the mind of the average person, the gist of the statement is no more damaging to the person affected by it than a literally true statement would have been.

Answer "Yes" or "No" for each Defendant.

	<u>Answer</u>	
	Polito	APP
Neely Moldovan	<u>Yes</u>	<u>Yes</u>
Andrew Moldovan	<u>Yes</u>	<u>Yes</u>

Question No. 2:

Did Neely Moldovan or Andrew Moldovan disparage the business of APP?

A person disparages the business of another if he or she publishes a disparaging false statement about the business, and, when he publishes the statement, he knows the falsity of the statement or acts with reckless disregard of whether the statement is false/acts with ill will or intends to interfere with the economic interest of APP, and his publication of the statement played a substantial part in inducing others not to do business with APP and resulted in a specific pecuniary loss to APP.

A statement is "published" if it is intentionally communicated to a person other than APP who is capable of understanding its meaning.

You are instructed that, by republishing the NBC story, Neely Moldovan or Andrew Moldovan published the NBC story for the purposes of this definition.

Answer "Yes" or "No" for each

Neely Moldovan	<u>Answer</u> <u>Yes</u>
Andrew Moldovan	<u>Yes</u>

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

Question No. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate Polito or APP for its actual pecuniary loss, if any, that was proximately caused by the defamatory statements as found by you in Question No. 1?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Do not include in your answer any amount that you find Polito or APP could have avoided by the exercise of reasonable care.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any parties ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgement.

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

1. Injury to the reputation of Polito sustained in the past.

Answer: \$ 70,000.00

2. Injury to the reputation of APP sustained in the past.

Answer: \$ 70,000.00

3. Injury to reputation that, in reasonable probability, Polito will sustain in the future.

Answer: \$ 40,000.00

4. Injury to the reputation that, in reasonable probability, APP will sustain in the future

Answer: \$ 100,000.00

5. Polito's mental anguish sustained in the past.

Answer: \$ 50,000.00

6. Polito's mental anguish that, in reasonable probability, Polito will sustain in the future.

Answer: \$ 25,000.00

7. APP's lost profits sustained in the past that were a natural, probable, and foreseeable consequence of Neely Moldovan or Andrew Moldovan's statement.

Answer: \$ 375,000.00

8. APP's lost profits that, in reasonable probability, APP will sustain in the future.

Answer: \$ 150,000.00

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

Question No. 4:

What sum of money, if paid now in cash, would fairly and reasonably compensate APP for its monetary loss, if any, that was proximately caused by the disparaging statements as found by you in Question No. 2?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damage you find.

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

1. Monetary loss sustained in the past.

Answer: 0

2. Monetary loss that, in reasonable probability, will be sustained in the future.

Answer: 0

If you unanimously answered "Yes" to any part of Question No. 1 for Neely Moldovan or Andrew Moldovan, then answer the following question to Neely Moldovan or Andrew Moldovan. Otherwise, do not answer the following question.

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

Question No. 5:

Do you find by clear and convincing evidence that the harm to Polito or APP from Neely Moldovan or Andrew Moldovan statements 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 Neely Moldovan or Andrew Moldovan to cause substantial injury or harm to APP or Polito.

Answer "Yes" or "No" for each.

	Polito	APP
Neely Moldovan	<u>Yes</u>	<u>Yes</u>
Andrew Moldovan	<u>Yes</u>	<u>Yes</u>

Answer the following question regarding Neely Moldovan or Andrew Moldovan only if you unanimously answered "Yes" to Question 5. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 6:

What sum of money, if any, if paid now in cash, should be assessed against Neely Moldovan or Andrew Moldovan and awarded to Polito or APP as exemplary damages, if any, for the conduct found in response to Question No. 5?

"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 of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of ~~the~~ Neely Moldovan or Andrew Moldovan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of Neely Moldovan or Andrew Moldovan.

Answer in dollars and cents, if any.

	Polito	APP
Neely Moldovan	\$ <u>12,500.00</u>	\$ <u>12,500.00</u>
Andrew Moldovan	\$ <u>25,000.00</u>	\$ <u>25,000.00</u>

If you unanimously answered "Yes" to any part of Question 2 for Neely Moldovan or Andrew Moldovan, then answer the following question for Neely Moldovan or Andrew Moldovan. Otherwise, do not answer the following question.

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

Question No. 7:

Do you find by clear and convincing evidence that the harm to APP from the disparagement of APP 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 Neely Moldovan or Andrew Moldovan to cause substantial injury or harm to APP, ~~as Delia~~ as

Answer "Yes" or "No" for each.

	APP
Neely Moldovan	<u>Yes</u>
Andrew Moldovan	<u>Yes</u>

Answer the following question regarding Neely Moldovan or Andrew Moldovan only if you unanimously answered "Yes" to Question 7. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

Question No. 8:

What sum of money, if any, if paid now in cash, should be assessed against Neely Moldovan or Andrew Moldovan and awarded to APP as exemplary damages, if any, for the conduct found by you in response to Question No. 7?

"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 of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the Defendants.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. Net worth of Neely Moldovan or Andrew Moldovan.

Answer in dollars and cents, if any.

APP

Neely Moldovan

\$ 50,000⁰⁰

Andrew Moldovan

\$ 25,000⁰⁰

If you answered "Yes" to any part of Question Nos. 1 or 2, then answer the following question. Otherwise, do not answer the following question.

Question No. 9:

Were Neely Moldovan or Andrew Moldovan a part of a conspiracy that damaged Polito or APP?

For the persons below to be part of a conspiracy, he or she and another person or persons must have had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to Polito and APP. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

Answer "Yes" or "No."

Defendant

Answer

Neely Moldovan

Yes

Andrew Moldovan

Yes

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. You may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 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 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 4, 5, 6 and 7 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

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



JUDGE PRESIDING

Verdict Certificate

Check one:

- ☐ Our verdict is unanimous. All 12 of us have agreed to each and every answer.
The presiding juror has signed the certificate for all 12 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.
- ☒ 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. John D. Butler
2. Mark E. Gannaway
3. William A. Draper
4. Cynthia Churchill
5. Ryutai Fisher
6. Jaymee Arreola
7. Nam Phuong Hoang
8. Keith Jones
9. Gary D. Orr
10. Gregory Johnson
11. _____

1. John D. Butler
2. MARK E. GANNAWAY
3. WILLIAM A. DRAPER
4. Cynthia Churchill
5. Ryutai FISHER
6. Jaymee Arreola
7. Nam Phuong Hoang
8. KEITH JONES
9. GARY D. ORR
10. Gregory Johnson
11. _____

If you have answered Questions 4, 5, 6, or 7, then you must sign this certificate also.

Additional Certificate

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

Answer "yes" or "no" for each of the following.

Question No. 4 Yes

Question No. 5 Yes

Question No. 6 Yes

Question No. 7 Yes

John D. Butler

Signature of Presiding Juror

John D. Butler

Printed Name of Presiding Juror

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