

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

DR. ANNE K. G. BAZILWICH, :
Plaintiff, :
 : Civil No. 1:05-CV-120
v. :
 :
COUNTRYWIDE HOME LOANS, INC., :
Defendant. :
_____ :

CHARGE TO THE JURY

Now that you have heard the evidence and arguments, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and not question it, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

The lawyers may have referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by the lawyers and the law stated by the Court in these instructions, you are to follow the Court's instructions.

Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather it is yours.

You must perform your duties as jurors without bias or

prejudice as to any party. You are not to be governed by sympathy, prejudice or public opinion.

All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Evidence in the Case

Statements and arguments of counsel are not evidence in the case. However, when the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, and all facts which may have been admitted or stipulated.

Any evidence to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be disregarded.

Evidence--Direct, Indirect, or Circumstantial

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness. The other is indirect or circumstantial evidence --the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Credibility of Witnesses -- Discrepancies in Testimony

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is believable. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters to which the witness testifies, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, any bias or prejudice, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit their testimony. Two or more persons witnessing an incident or a transaction may see

or hear it differently, which is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, you think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying. You may find that the testimony of a small number of witnesses is more credible than the testimony of a larger number of witnesses to the contrary.

Expert Witnesses

Some of the testimony you heard was given by expert witnesses. These witnesses are persons who, by education, training or experience, have developed expertise beyond the level of the average person in some field. They are allowed to state opinions on matters within the area of their expertise and the reasons for those opinions.

You are not required to accept an expert's opinion. Rather, you should consider each expert opinion and give it the weight you think it deserves. As with the testimony of any witness, you must decide whether it is believable. For instance, you may disregard any expert's opinion entirely or in part if you conclude:

- (1) the opinion is not based on sufficient education, training and experience;
- (2) the reasons given by an expert in support of his or her opinion are not sound;
- (3) the expert's testimony is outweighed by other evidence; or
- (4) the expert is biased.

Deposition Testimony

Some of the testimony before you is in the form of videotaped and transcribed depositions which have been received into evidence. A deposition is simply a procedure where the attorneys for one side may question a witness or adversary party under oath before a court stenographer prior to trial. This is part of the pretrial discovery process, and each side is entitled to take depositions. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a live witness at trial.

Louis Georgiades as Plaintiff's agent

You are instructed that Louis Georgiades was Plaintiff's agent. Therefore, communications between Louis Georgiades and Defendant should be considered to be communications between Plaintiff and Defendant.

Corporations

The law makes no distinction between corporations and private individuals, nor does it distinguish between the size or type of business in which a corporation engages. All persons, including corporations, stand equal before the law and are to be dealt with as equals in this case. The corporate Defendant in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

In other words, at all times, you should consider treating this matter as an action between persons of equal standing and worth in the community.

Corporate Liability

Corporations and associations are not natural persons, and under the law of Vermont, a corporation may only act through its agents, including its officers and employees. A corporation or association is liable for the acts and the omissions of an employee or agent who is acting within the scope of his or her employment or agency. For the purposes of your deliberations, you should consider the act or omission of an employee or agent of Defendant, taken within the scope of his or her employment, to be the act or omission of Defendant itself.

Verdict -- Unanimous -- Duty to Deliberate

The verdict must represent the considered judgment of each juror. To return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Instructions of Law

Now I will give you instructions concerning the law that applies to this case. You must follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

You are to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact.