

CAUSE NO. 2012-CI-19589

**HAYS STREET BRIDGE
RESTORATION GROUP AND
BEATRIZ VALADEZ**

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IN THE DISTRICT COURT

V.

73RD JUDICIAL DISTRICT

**CITY OF SAN ANTONIO AND
SHERYL SCULLEY**

BEXAR COUNTY, TEXAS

JUDGMENT

On July 7, 2014, the Court called this cause for trial.

Plaintiffs Hays Street Bridge Restoration Group and Beatrice Valadez appeared in person and through their attorneys of record and announced ready for trial.

Defendant City of San Antonio appeared in person and through their attorneys of record and announced ready for trial.

Defendant Leticia Vacek appeared through her attorney of record and moved for continuance of the trial of this cause.

The Court considered Defendant Vacek's motion for continuance, the evidence and the arguments of counsel, and granted the motion.

Thereafter, Plaintiffs announced on the record a non-suit with prejudice against Defendant Vacek and this matter proceeded to trial.

The Court determined, as a matter of law, that the Memorandum of Understanding between Plaintiff Hays Street Bridge Restoration Group and Defendant City of San Antonio was ambiguous as to the word "funds" in Article III, Department of Planning, section 3 of the Memorandum of Understanding and it was the duty of the jury to interpret the word "funds."

A jury was impaneled and sworn in. The jury heard evidence and arguments of counsel. On July 11, 2014, Defendant City of San Antonio moved for instructed verdict on the Plaintiffs' causes of action. The motion was granted only as to Plaintiff Beatrice Valadez and all claims of Plaintiff Beatrice Valadez were dismissed. The Court then submitted the Charge of the Court with questions, definitions, and instructions to the jury. The jury returned a verdict and the Court received, filed and entered the verdict in the record. The questions submitted to the jury and the jury's findings are attached as Exhibit "A," and incorporated by reference herein.

On July 22, 2014, Plaintiff Hays Street Bridge Restoration Group filed its Motion for Entry of Judgment. On July 23, 2014, Defendant City of San Antonio filed its Motion to Disregard the Jury Findings and Motion to Enter Judgment. On August 7, 2014, the Court heard

the motions. Plaintiff's Motion for Entry of Judgment is granted in part and denied in part, Defendant's Motion for Entry of Judgment is granted in part and denied in part, and Defendant's Motion to Disregard the Jury Findings is denied.

Based on the jury's verdict and the Court's application of the law, the Court finds that:

1. The unique purpose and circumstances of the Memorandum of Understanding cannot be adequately remedied by monetary damages; and

2. An order of specific performance is appropriate to remedy Defendant City of San Antonio's failure to comply with the Memorandum of Understanding with respect to the property located at 803 North Cherry Street.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant City of San Antonio shall allocate, apply and use all funds raised by Plaintiff Hays Street Bridge Restoration Group, including the property located at 803 North Cherry Street, by applying said funds directly to the approved City of San Antonio Budget for the Hays Street Bridge project costs.

IT IS FURTHER ORDERED that, as the jury found that the property located at 803 North Cherry Street was not "owned, held or claimed as a park" within the meaning of Texas Local Government Code §253.001(f), Plaintiff Hays Street Bridge Restoration Group's request for Declaratory Judgment is denied.

IT IS ORDERED that Plaintiff's request for costs and attorney's fees is denied and the Defendant's request for costs is denied.

The Court **ORDERS** execution to issue for this Final Judgment.

This judgment finally disposes of all parties and all claims and is appealable. All other relief not granted in this judgment is **DENIED**.

SIGNED on September 19, 2014.



JUDGE PRESIDING

ORIGINAL

CAUSE NO. 2012-CI-19589



**HAYS STREET BRIDGE
RESTORATION GROUP AND
BEATRIZ VALADEZ**

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IN THE DISTRICT COURT

V.

73RD JUDICIAL DISTRICT

**CITY OF SAN ANTONIO AND
SHERYL SCULLEY**

BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

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 this 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 this 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. You have already been given 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.

In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you instructions in addition to those that I have previously given you. You should carefully and strictly follow all of my instructions during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
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

EXHIBIT "A"

Document
scanned as filed.

FILED
DONNA KAY MEKINNEY
DISTRICT CLERK
BEXAR COUNTY

2014 JUL 11 PM 4:22

DEPUTY
[Signature]

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 and which you are bound to accept in place of any other meaning.

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. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

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. The answers to the questions must be based on the decision of at least ten (10) out of the twelve (12) jurors. The same ten (10) jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten (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.

INSTRUCTIONS AND DEFINITIONS

You are instructed that:

"PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in evidence in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted into evidence. For a fact to be proven by a preponderance of the evidence, you must find that the fact is more likely true than not true.

"CIRCUMSTANTIAL EVIDENCE" means that 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 a witness or 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.

The abbreviation **"MOU"** as used herein refers to the Memorandum of Understanding dated June 4, 2002.

You are further instructed that:

To form a valid contract, the parties must have the same understanding of the subject matter of the contract and all its essential terms. To be enforceable, a contract must be reasonably definite and certain.

The only way a City can act is by and through its governing body. A City's governing body may act only by resolution or ordinance and may not delegate the right to make decisions affecting the transaction of city business.

QUESTION NO. 1

Did the Hays Street Bridge Restoration Group and the City of San Antonio agree to the terms outlined in the MOU?

Answer "Yes" or "No":

Yes

Instruction: In answering this question, you must consider the facts and circumstances surrounding the making and signing of the MOU as well as the specific terms in the MOU. You may consider what the parties said and did in light of the surrounding circumstances. You may not consider the parties' unexpressed thoughts or intentions.

Instruction for Question No. 2: If you answered "Yes" to Question No. 1, then answer Question No. 2. Otherwise, do not answer Question No. 2.

QUESTION NO. 2

Did the Hays Street Bridge Restoration Group and the City of San Antonio sign the MOU with the intent that it be a mutual and binding agreement?

Answer "Yes" or "No":

YES

Instruction: In answering this question, you must consider the facts and circumstances surrounding the making and signing of the MOU as well as the specific terms in the MOU. You may consider what the parties said and did in light of the surrounding circumstances. You may not consider the parties' unexpressed thoughts or intentions.

Instruction for Question No. 3: If you answered "Yes" to Question No. 2, then answer Question No. 3. Otherwise, do not answer Question No. 3.

QUESTION NO. 3

Did the Hays Street Bridge Restoration Group and the City of San Antonio intend that the word "funds" in Article III, Department of Planning, section 3 of the MOU included only donations of money?

Answer "Yes" or "No": NO

Instruction: In answering this question, it is your duty to interpret the term "funds." You must decide its meaning by determining the intent of the parties at the time of the agreement. Consider all of the facts and circumstances surrounding the making of the agreement, the interpretation placed on the agreement by the parties, and the conduct of the parties. You may not consider the parties' unexpressed thoughts or intentions.

Instruction for Question No. 4: If you answered "Yes" to Question No. 3, then do not answer Question No. 4. Otherwise, answer Question No. 4.

QUESTION NO. 4

Did the Hays Street Bridge Restoration Group and the City of San Antonio intend that the word "funds" in Article III, Department of Planning, section 3 of the MOU included donations of money and in-kind contributions?

Answer "Yes" or "No": Yes

Instruction: In answering this question, it is your duty to interpret the term "funds." You must decide its meaning by determining the intent of the parties at the time of the agreement. Consider all of the facts and circumstances surrounding the making of the agreement, the interpretation placed on the agreement by the parties, and the conduct of the parties. You may not consider the parties' unexpressed thoughts or intentions.

Instruction for Question No. 5: If you answered "Yes" to Question No. 4, then answer Question No. 5. Otherwise, do not answer Question No. 5.

QUESTION NO. 5

Do you find that the property located at 803 North Cherry Street was subject to the terms of the MOU?

Answer "Yes" or "No": Yes

Instruction for Question No. 6: If you answered "Yes" to Questions Nos. 1, 2 and 5, then answer Question No. 6. Otherwise, do not answer Question No. 6.

QUESTION NO. 6

Do you find that the City of San Antonio failed to comply with the MOU with respect to the property located at 803 North Cherry Street?

Answer "Yes" or "No":

Yes

Instruction for Question No. 7: If you answered "Yes" to Question No. 6, then answer Question No. 7. Otherwise, do not answer Question No. 7.

QUESTION NO. 7

Do you find that the Hays Street Bridge Restoration Group complied with the MOU up until the time of the City's failure to comply?

Answer "Yes" or "No":

YES

QUESTION NO. 8

Do you find that the City of San Antonio owned, held or claimed the property located at 803 North Cherry Street as a park?

Answer "Yes" or "No":

No

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.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff of this Court. You should not discuss the 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 or obtained the signatures, you will advise the Bailiff at the door of the jury room that you have reached a verdict, and then you will return into Court with your verdict.

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

Instructions for Signing the Verdict Certificate:

1. 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.

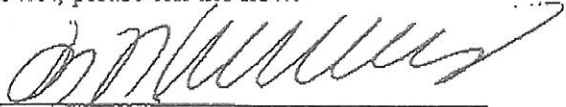
2. If ten jurors agree on every answer, those ten jurors sign the verdict.

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 or eleven who agree on every answer will sign the verdict.

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.

Printed Name of Presiding Juror

Signature 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.

Printed Name of Juror

Signature of Juror

- | | | |
|-----|-----------------------------------|-----------------------------------|
| 1. | <u>Elizabeth Esparza-Martinez</u> | <u>Elizabeth Esparza-Martinez</u> |
| 2. | <u>FEDERICO H FUENTES</u> | <u>Federico H Fuentes</u> |
| 3. | <u>TERRELL SMART</u> | <u>Terrell Smart</u> |
| 4. | <u>Joshua Waltz</u> | <u>Joshua Waltz</u> |
| 5. | <u>Nichole Molina Gonzalez</u> | <u>Nichole M. Gonzalez</u> |
| 6. | <u>MARIA G. TORRES</u> | <u>Maria G. Torres</u> |
| 7. | <u>EDUARDO AGAYON</u> | <u>Eduardo Agayon</u> |
| 8. | <u>Rafael X. Morales</u> | <u>Rafael X. Morales</u> |
| 9. | <u>Michael Canales</u> | <u>Michael Canales</u> |
| 10. | <u>Joseph D. GRECO</u> | <u>Joseph D. Greco</u> |
| 11. | <u>Joseph P Kozoluyk</u> | <u>Joseph P Kozoluyk</u> |

(Verdict)

FILED
8:25 O'CLOCK P.M.

JUL 11 2014

DONNA KAY MCKINNEY
District Clerk, Bexar County, Texas
BY Katherine Hiri
DEPUTY