

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

LAWRENCE PRIBIL,
Plaintiff,

Case No. 20407

vs.

**BARTON KOINZAN and SANDRA
KOINZAN, husband and wife; TERRY
HELD; and GENEVIEVE SHAW,**
Defendants.

**BARTON KOINZAN and SANDRA
KOINZAN, husband and wife,**
Third-Party Plaintiffs,

vs.

**TOWNSHIP OF GRATTEN, COUNTY OF
HOLT, NEBRASKA,**
Third-Party Defendant.

**JOURNAL ENTRY ON TRIAL
AND INTERLOCUTORY
JUDGMENT**

DATE OF TRIAL: September 25-28, 2000.

APPEARANCES:

For plaintiff: George H. Moyer, Jr. with plaintiff.

For defendants:

Koinzan: Thomas H. DeLay with defendants.

Held & Shaw: Kathleen K. Rockey with defendants.

Gratten Township: John P. Heitz without corporate representative.

SUBJECT: Jury Trial.

PROCEEDINGS:

September 25, 2000: The juror orientation video was displayed. After introductory comments by the court, the jury panel was duly sworn for examination. The names of 18 prospective jurors and three prospective alternate jurors were duly drawn by the clerk. Upon the drawing of one prospective juror, all counsel agreed that the juror should be excused, and the prospective juror was excused and a replacement

duly drawn by the clerk. Voir dire examination was conducted by the court. The panel was admonished and a mid-morning recess was taken.

Voir dire examination was then conducted by counsel for plaintiff. During the plaintiff's examination, on plaintiff's motion, one juror was excused for cause and a replacement duly drawn by the clerk, and examined by the court and counsel for plaintiff. The plaintiff passed the panel for cause. Voir dire examination was then conducted by counsel for defendants Koinzan. The defendants Koinzan passed the panel for cause. Voir dire examination was then conducted by counsel for defendants Held and Shaw. The defendants Shaw and Held passed the panel for cause. Counsel for the defendant Gratten Township waived examination, and passed the panel for cause. Peremptory challenges to the panel of 18 prospective jurors were exercised by counsel for plaintiff and collectively by counsel for defendants. All parties waived further examination of the prospective alternate jurors, and exercised peremptory challenges to the panel of 3 prospective alternate jurors. The trial jury of 12 persons and the alternate juror were duly sworn and admonished, and the trial was recessed for lunch.

Following the lunch recess, the jury returned, and preliminary instructions were given by the court to the jury. Opening statement was presented by counsel for plaintiff. Opening statement was presented by counsel for defendants Koinzan. Opening statement was presented by counsel for defendants Held and Shaw. Opening statement was presented by counsel for defendant Gratten Township. The jury was admonished, and a brief recess was taken.

Following the recess, the plaintiff, Lawrence Pribil, was sworn and testified. During direct examination, the jury was admonished and excused from courtroom. In the absence of the jury, a discussion was held with counsel regarding exhibits. A brief recess was taken.

Following the recess, the jury returned and the examination of the plaintiff continued. During direct examination, the jury was admonished and excused for the day, and the trial recessed until Tuesday, September 26, 2000, at 9:00 a.m.

September 26, 2000: The trial resumed with all counsel and parties present, and the direct examination of the plaintiff continued. During such examination, the jury was admonished and a brief recess was taken.

Following the recess, the examination of the plaintiff continued. During cross-examination, the jury was admonished and excused for the mid-morning recess. In the absence of the jury, plaintiff's offer of proof was considered, to which the defendants objected. Arguments of counsel were heard on the objections. The objections were sustained and the offer refused for reasons stated on the record. The recess continued.

Following the recess, the cross-examination of the plaintiff continued. During the continued cross-examination, the jury was admonished and recess was taken for lunch.

Following the recess, the examination of the plaintiff was resumed and concluded. Shirley Walker and Russell E. Hilger were sworn and testified. At the close of direct examination of Russell E. Hilger, the jury was admonished and excused from the courtroom. In the jury's absence, the plaintiff declined the court's invitation to make an offer of proof. A brief recess was taken. Following the recess, in the jury's absence, the defendants Koinzan moved for mistrial, in which motion the defendants Held and Shaw joined. Arguments of counsel were heard or waived. The motion was denied, subject to reconsideration upon motion for new trial. A further brief recess was taken.

Whereupon, the jury returned. Upon plaintiff's request, the direct examination of Russell E. Hilger was reopened, and the examination was concluded. Kevin Lichty and Ron Cemper were sworn and testified. The jury was admonished, and a brief recess was taken.

Following the recess, Mark Storjohann, Steve Wright, and Mark Pribil were sworn and testified. During direct examination of Mark Pribil, the jury was admonished and excused for the day, and the trial recessed until Wednesday, September 27, 2000, at 9:00 a.m.

September 27, 2000: The trial resumed with all counsel and parties present, and without objection, the plaintiff deferred further testimony by Mark Pribil, and Merlin Shaw and Ron Asher were sworn and testified. Thereafter, the examination of Mark Pribil resumed. At the close of direct examination, the jury was admonished and a brief recess was taken.

Following the recess, the examination of Mark Pribil was concluded. The plaintiff rested. The jury was admonished and excused from the courtroom.

In the absence of the jury, the defendants Koinzan moved for directed verdict and the defendants Held and Shaw moved for directed verdict. Arguments of counsel were heard. The respective motions

were denied. The jury returned, and was admonished and excused for lunch. In the absence of the jury, a brief discussion was held on the record with counsel. There were no additional motions at that time. The trial was recessed for lunch.

Following the lunch recess, the plaintiff moved for leave to reopen the plaintiff's evidence. After a bench conference at which counsel agreed that the defendants' motions could be considered as made and ruled upon at the close of the plaintiff's reopened evidence, there was no objection to the plaintiff's motion, which was granted. Counsel entered into a stipulation on the record and an additional exhibit was received. The plaintiff renewed his rest subject to the bench conference.

The defendants, Barton Koinzan and Terry Held, were sworn and testified. At the close of direct examination of Terry Held, the jury was admonished and a brief recess was taken.

Following the recess, in the absence of the jury, the content of the bench conference was confirmed for the record. The jury returned, and the examination of Terry Held was concluded. All of the defendants rested. The jury was admonished and a brief recess was taken.

Following the recess, Marion Lehmann was sworn and testified on rebuttal. The plaintiff rested on rebuttal. A bench conference was held in low tones. The jury was admonished and excused until 8:00 a.m. on Thursday, September 28, 2000.

In the absence of the jury at the close of all of the evidence, the plaintiff moved for directed verdict on the issues of extent of ownership of the crop and mitigation of damages. Arguments of counsel were heard or waived. The motion was granted as to the issue of extent of ownership and ruling deferred to the formal instruction conference on the issue of mitigation of damages. The defendants Koinzan, Held, and Shaw renewed the respective motions for directed verdict made at the close of the plaintiff's evidence. Further arguments of counsel were waived. The motions were denied. The presence of the defendants during the formal instruction conference was individually waived by each defendant on the record. The plaintiff elected to remain for the formal instruction conference.

An informal instruction conference was held in chambers with all counsel present.

Following the informal conference, with all counsel and the plaintiff present, and in the absence of the jury, a formal instruction conference was held in open court. The court granted the plaintiff's previous

motion for directed verdict on the issue of mitigation of damages upon which ruling was previously deferred.

The court's proposed instructions Nos. 1 through 11, inclusive, and the proposed verdict form were considered. The plaintiff objected to Instructions Nos. 5, 6A(4), 8C, 8D, 10, and the verdict form. The defendants Koinzan objected to Instructions Nos. 5, 6A(2), and 8A. The defendants Held and Shaw objected to Instructions Nos. 5 and 6A(2). The defendant Gratten Township did not object to any proposed instruction or the verdict form. Arguments of counsel were heard or waived. All objections were overruled.

The plaintiff submitted an additional requested instruction, identified as Plaintiff's Requested Instruction No. 1 consisting of 4 pages. All of the defendants objected to the additional requested instruction. Arguments of counsel were heard or waived. The objections were sustained, and the additional requested instruction was refused. The court endorsed the same as "refused" and directed the clerk to duly file the same.

The defendants Koinzan submitted an additional requested instruction, identified as Defendants Koinzans' Requested Instruction No. 1 consisting of 1 page. The plaintiff objected to the additional requested instruction. Arguments of counsel were heard or waived. The objection was sustained, and the additional requested instruction was refused. The court endorsed the same as "refused" and directed the clerk to duly file the same.

There were no additional requested instructions for the other defendants.

Time limits of 60 minutes per side, allocated 29 minutes to the defendants Koinzan, 29 minutes to the defendants Held and Shaw, and 2 minutes to the defendant Gratten Township, for closing arguments were established.

All counsel stipulated that counsel may be excused during jury deliberations, and that in their absence any written communication may take place between the court and the jury and further written instructions may be given, and the verdict may be received in the absence of counsel and the absence of the parties without further notice. The court approved the stipulation, but will nevertheless attempt to reach counsel in the event of questions or a verdict. The trial was recessed until 8:00 a.m. on Thursday, September 28, 2000.

September 28, 2000: With all counsel present, but without any of the parties being present, and in the absence of the jury, the defendants Koinzan verbally made a motion in limine regarding plaintiff's closing argument, which motion was joined in by the defendants Held and Shaw. The plaintiff resisted the motion. Arguments of counsel were heard. The motion was denied. The plaintiff verbally moved to modify Instruction No. 8C, which motion was resisted by the defendants Koinzan, Held, and Shaw. Arguments of counsel were heard. The motion was denied. The plaintiff moved to reopen the plaintiff's case in chief for additional evidence, which motion was resisted by defendants Koinzan, Held, and Shaw. Arguments of counsel were heard. The motion was denied.

Whereupon, the jury returned, with all counsel present and all of the parties then present except the plaintiff and the defendant Held. Counsel for plaintiff requested a brief recess to inquire regarding the plaintiff's absence. The jury was admonished and a brief recess was taken.

With all counsel present, and all parties present except defendant Held, the jury returned, and counsel for plaintiff presented closing argument. Counsel for defendants presented closing argument. Counsel for plaintiff presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 10:11 a.m. The court discharged the alternate juror, and the jury retired to the jury room.

At 2:00 p.m., with attorney Thomas P. Herzog, who entered his appearance as co-counsel for plaintiff, and attorney Heitz present, and defendants Koinzan and Shaw personally present, but in the absence of attorneys Moyer, DeLay, and Rockey, and in the absence of the plaintiff and defendant Held, the jury returned and announced that it had reached verdict. The verdict form was duly filed by the clerk, and read aloud by the clerk in open court. Upon inquiry by the court if it was their unanimous verdict, all 12 jurors joined in an affirmative response. Further polling of the jury was waived by all counsel or parties present. The verdict was accepted by the court. The jury was discharged with the thanks of the court.

JUDGMENT:

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. JUDGMENT is entered on the jury verdict in favor of the plaintiff, Lawrence Pribil, and against the defendants, Barton Koinzan, Sandra Koinzan, Terry Held, and Genevieve Shaw, jointly and severally, in the amount of: \$34,920.60, together with the costs of the action, taxed in the amount of \$979.94.

2. The judgment shall bear interest at the rate of 7.241% per annum from the date of this judgment until paid.

3. This judgment is interlocutory in character and does not constitute a final judgment pending resolution of the remaining issues bifurcated for later trial.

Dated: September 28, 2000.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19__ by ____.
 - : Enter judgment on the judgment record.
Done on _____, 19__ by ____.
 - : Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 19__ by ____.
- 9** (Trial docket entry dictated.)

Mailed to:

BY THE COURT:

William B. Cassel
District Judge