

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**CHARLES COATS,**  
Plaintiff,

vs.

**COHN WHOLESALE FRUIT &  
GROCERIES, INC., d/b/a SACKNSAVE,**  
Defendant.

Case No. CI01-57

**JOURNAL ENTRY ON TRIAL**

**DATE OF TRIAL:** June 18-19, 2002.

**APPEARANCES:**

For plaintiff: John E. Beltzer with plaintiff.  
For defendant: Brian D. Nolan with defendant's employee, Alan Melcher.

**SUBJECT:** Jury Trial.

**PROCEEDINGS:**

Tuesday, June 18, 2002:

The clerk displayed the jury orientation video. After introductory comments, the court administered the oath for examination to the jury panel. The clerk drew the names of 15 prospective jurors. The court conducted voir dire examination. During the court's examination, the court excused three prospective jurors for cause, one of which was only tentatively excused because of pressing personal or business concerns. For each excused juror, the clerk drew a replacement and the court examined each replacement prospective juror. The court admonished the panel and recessed the trial for the mid-morning recess.

Counsel for plaintiff conducted voir dire examination. The plaintiff passed the panel for cause. Counsel for defendant conducted voir dire examination. The defendant passed the panel for cause.

Counsel for plaintiff and counsel for defendant alternately exercised peremptory challenges to the panel of 15 jurors. The court then administered the trial oath to the jury of seven persons, consisting of:

Sandra L. Garwood, Kerrie J. Lambert, Markita Klinger, Susan L. Judge, Lila J. Gartner, Sharon K. Hinrichsen, and John W. Vogel.

The court admonished the jury, excused the balance of the jury panel, and recessed the trial for lunch.

Following the lunch recess, with all counsel and parties or party representatives present, the court stated preliminary instructions to the jury. Counsel for plaintiff and counsel for defendant presented opening

statements. The plaintiff presented evidence. Dr. David Young was sworn and testified. During direct examination, the court admonished the jury and recessed the trial for the mid-afternoon recess. Following the recess, counsel resumed and concluded the examination of Dr. Young. Ben Westergren was sworn and testified. The court admonished the jury and recessed the trial for the day, to resume on Wednesday, June 19, 2002, at 9:00 a.m.

Wednesday, June 19, 2002:

The trial resumed with all counsel and parties or party representatives present. The plaintiff, Charles Coats, was sworn and testified. During direct examination, the court admonished the jury and recessed the trial for the mid-morning recess. Following the recess, counsel resumed and completed the examination of Charles Coats. Kathryn Coats was sworn and testified. The plaintiff rested. The court admonished the jury and excused the jury from the courtroom.

In the absence of the jury, counsel for defendant moved for a directed verdict. Counsel for defendant and counsel for plaintiff presented arguments. The court denied the motion. The court briefly recessed the trial.

The jury returned, and the defendant presented evidence. Richard Howe, Tony Emme, and John Arthur Cole were sworn and testified. The plaintiff, Charles Coats, who was previously sworn, was recalled and testified further. The defendant rested. The plaintiff rested on rebuttal without rebuttal evidence. The court admonished the jury and excused the jury for lunch.

In the absence of the jury, the defendant renewed the defendant's motion for directed verdict. Counsel for defendant and counsel for plaintiff presented arguments. The court denied the motion. The plaintiff moved for directed verdict on the issues of contributory negligence and assumption of the risk. Counsel for plaintiff and counsel for defendant presented arguments. The court deferred ruling upon the motion to the instruction conference. The court recessed the trial for lunch until 1:20 p.m.

Following the lunch recess, the court conducted an informal instruction conference with counsel in chambers off the record. Thereafter, the court conducted a formal instruction conference in the courtroom with all counsel and parties or party representatives present, but in the absence of the jury. At the beginning of the conference, the defendant verbally moved for leave to amend the answer by interlineation to conform to the proof, stating the specific proposed amendment. Although the plaintiff formally objected, counsel

for plaintiff conceded that in view of the evidence no surprise or unfair prejudice would result. The court granted the motion, and defendant's counsel accomplished the amendment forthwith. The court denied the plaintiff's motion for directed verdict on the issues of contributory negligence and assumption of risk upon which ruling had previously been deferred.

The court submitted to counsel the proposed Instructions Nos. 1 through 12, inclusive, and the proposed Verdict Forms Nos. 1, 2, and 3. Plaintiff asserted no objection to the proposed instructions and verdict forms, except as to Section C of Instruction No. 4, regarding which the plaintiff does not object to the wording but asserts that the instruction is not warranted by the evidence. Defendant asserted no objection to the proposed instructions and verdict forms, except as to Section A of Instruction No. 4, regarding which the defendant does not object to the wording but asserts that the instruction is not warranted by the evidence. The court overruled all objections. Neither party requested any additional instructions.

Pursuant to agreement of counsel, the court limited closing arguments to 20 minutes per side, of which the plaintiff reserved five minutes for rebuttal. Counsel stipulated regarding excuse of attorneys during deliberations, and for written communications and receipt of verdict in their absence and the absence of the parties after being excused. At the conclusion of the conference, the court recessed the trial to arrange for copies of the instructions.

The jury returned, and counsel for plaintiff and counsel for defendant presented closing arguments. The court read the written instructions to the jury and submitted the cause at 4:43 p.m. The court directed the bailiff to conduct the jury to the jury room to commence deliberations. The court recessed the trial for jury deliberations.

At 9:01 p.m., with both counsel and the plaintiff present, but in the absence of the defendant's employee, the jury returned to open court and reported that it had reached a verdict. The clerk file-stamped the completed verdict form and read the verdict aloud, wherein the jury stated its verdict for the plaintiff of \$5,931.00. Upon inquiry by the court and without objection, the court allowed the jury foreperson to correct a minor mathematical mistake in line 3 of the jury's selected option in the verdict form, from \$5,931.00 to \$5,931.30. Upon inquiry by the court, all jurors responded by show of hands that it was their unanimous verdict. Counsel for plaintiff and counsel for defendant waived further polling

of the jury. The court accepted the corrected verdict and stated that judgment would be entered thereon the following morning. The court discharged the jury with thanks.

Signed at **O'Neil**, Nebraska, on **June 20, 2002**;  
DEEMED ENTERED upon file stamp date by court clerk.  
If checked, the court clerk shall:

• Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

**9** (Trial docket entry dictated.)

BY THE COURT:

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William B. Cassel  
District Judge

Mailed to: